IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
IDEANOMICS, INC.,	Case No. 24-12728 (CTG)
Debtor.	(Joint Administration Requested)

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS, PURSUANT TO SECTIONS 105, 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULES 2002, 4001, 6003, 6004 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (I) AUTHORIZING THE DEBTORS TO (A) USE CASH COLLATERAL, (B) OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING AND GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE CLAIMS, AND (C) PROVIDE ADEQUATE PROTECTION, (II) MODIFYING THE AUTOMATIC STAY, (III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors")[1] in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), hereby file *Debtors' Motion for Entry of Interim and Final Orders, Pursuant to Sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code and Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedures (I) Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Senior Secured Superpriority Postpetition Financing and Granting Liens and Superpriority Administrative Claims, and (C) Provide Adequate Protection (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* (the "Motion").[2] This Motion is supported by the (a) *Declaration of Alpesh Amin in Support of the Debtors' Motion for Entry of Interim Motion*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or state identification number are, are: Ideanomics, Inc. (8374); Wireless Advanced Vehicle Electrification, LLC (6793); Solectrac, Inc. (4653); Timios Holdings Corp. (0190); Justly Holdings Inc. (3657); Justly Markets LLC f/k/a Delaware Board of Trade Holdings, Inc. (5107); VIA Motors International, Inc. (7063); and VIA Motors, Inc. (0185). The headquarters for the above-captioned Debtors is located at 1441 Broadway, 5th Floor, Suite 5116, New York, New York 10018.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Loan Documents (as defined herein), as applicable.

for Entry of Interim and Final Orders, Pursuant to Sections 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code and Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedures (I) Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Senior Secured Superpriority Postpetition Financing and Granting Liens and Superpriority Administrative Claims, and (C) Provide Adequate Protection (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing and (IV) Granting Related Relief (the "DIP Declaration"), attached hereto as **Exhibit B**, and the (b) *Declaration of Alpesh Amin in Support of the Debtors' Chapter 11 Proceedings and First Day Pleadings* (the "First Day Declaration" and, together with the DIP Declaration, the "Declarations"), filed contemporaneously herewith and each incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION, VENUE AND AUTHORITY

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The legal bases for the relief sought herein are sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code and Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

A. General Background

4. The Debtors are technology companies that have, in recent years, focused on electric vehicle ("EV") and EV-adjacent businesses, including the development of local and last-mile delivery vehicle concepts and associated charging products. The Debtors, through their WAVE business, are leaders in innovative high-power inductive (i.e., wireless) charging solutions for medium and heavy-duty electric vehicles, allowing for these vehicles to charge at depot facilities without the inconvenience of cable-based charging systems. Among other things, this technology presents opportunities for the autonomous EVs of the future to charge on their routes, at all hours, without human assistance.

5. On the date hereof, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code (the "Petition Date"). The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these Chapter 11 Cases, and no request has been made for the appointment of a trustee or examiner.

6. Contemporaneously with the filing of this Motion, the Debtors have filed with the Court a motion requesting joint administration of the Chapter 11 Cases for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

7. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the First Day Declaration.

B. The Debtors' Capital Structure.

Funded Debt	Maturity	Total Amount Outstanding[3]
Prepetition Tillou Promissory Notes	May 2024	$14,347,850.64
Secured Debenture Purchase Agreement	Variable	$4,524,500
Mitsubishi Financing Arrangements	Variable	$9,174,213
NFS Leasing Financing Arrangements	Variable	$1,475,069
Small Business Association Paycheck Protection Program	April 2025	$133,256
Therese Note	June 2023	$865,006
TOTAL FUNDED DEBT	$30,519,894.64	

8. *Prepetition Tillou Promissory Notes*. Debtor Ideanomics is party to several prepetition financing arrangements with Tillou Management and Consulting LLC (in its capacity as the lender under the Prepetition Loan Documents, the "Prepetition Lender"), including that certain *Promissory Note*, dated December 13, 2022, by and between Ideanomics and the Prepetition Lender in the original principal amount of $2,000,000; that certain *Promissory Note*, dated March 19, 2023, by and between Ideanomics and the Prepetition Lender, in the original principal amount of $2,000,000; that certain *Amended and Restated Promissory Note*, dated April 25, 2024, by and between Ideanomics and the Prepetition Lender, in the original principal amount of $4,137,095; that certain *Amended and Restated Promissory Note*, dated May 29, 2024, by and between Ideanomics and the Prepetition Lender, in the original principal amount of $7,217,095; that certain *Amended and Restated Promissory Note*, dated June 18, 2024, by and between Ideanomics and the Prepetition Lender, in the original principal amount of $7,862,095; that certain *Amended and Restated Promissory Note*, dated July 19, 2024, by and between Ideanomics and the Prepetition Lender, in the original principal amount of $8,638,095; that certain *Amended and*

[3] Amounts include the accrued interest and approximate fees and expenses due and owing under the applicable debt instruments.

Restated Promissory Note, dated August 9, 2024, by and between Ideanomics and the Prepetition Lender, in the original principal amount of $10,382,095; that certain *Amended and Restated Promissory Note*, dated November 5, 2024, by and between Ideanomics and Tillou, in the original principal amount of $13,835,911.64; and that certain *Amendment No. 1 to Amended and Restated Promissory Note*, dated November 25, 2024, by and between Ideanomics and the Prepetition Lender, which increased the original principal amount to $14,347,850.64 (together, with all other amendments, amendments and restatements, supplements, and all documentation entered in connection therewith, the "Prepetition Promissory Notes"). Each of the Debtors have guaranteed all obligations under the Prepetition Promissory Notes. Obligations under the Prepetition Promissory Notes are secured by a first priory lien on substantially all assets of the Debtors.

9. *Secured Debenture Purchase Agreement*. Pursuant to that certain *Secured Debenture Purchase Agreement* (the "SDPA") dated as of October 25, 2022 by and between Ideanomics and YA II PN, Ltd. ("Yorkville"), Ideanomics issued to Yorkville, and Yorkville purchased from Ideanomics, the Specified Debentures (as defined in the SDPA). Pursuant to that certain *Assignment and Assumption Agreement* (the "Assignment and Assumption Agreement," together with the Prepetition Promissory Notes, the "Prepetition Debt Documents"), dated October 29, 2024, by and among Yorkville, the Prepetition Lender, and Ideanomics, Prepetition Lender purchased from Yorkville, and Yorkville assigned to the Prepetition Lender, all of Yorkville's rights to and interests in, and assumed any of Yorkville's obligations under, the Specified Debentures and the other Debenture Documents, as defined in the Assignment and Assumption Agreement (this assigned and assumed indebtedness, along with the indebtedness issued under the Prepetition Promissory Notes, the "Prepetition Loans" and the obligations thereunder, the "Prepetition Tillou Obligations"). As of October 23, 2024, the amount owed to Tillou, under the

SDPA was $4,524,500. Each of the Debtors, along with certain non-debtor affiliate, guarantee the obligations under the SDPA. Obligations under the SDPA are secured by a first priority lien on substantially all of the Debtors' assets.

10. *Mitsubishi Financing Arrangements*. Debtor Solectrac, Inc. ("Solectrac") has entered into two separate agreements providing financing from Mitsubishi: (a) *The Floorplan and Security Agreement* and (b) the *Vendor Agreement* (collectively, the "Mitsubishi Loans"). The aggregate amount outstanding under the Mitsubishi Loans is $9,174,213. The Mitsubishi Loans are secured by the specific goods and equipment financed by the Mitsubishi Loans, and described further below.

a. *Floorplan and Security Agreement*. On December 21, 2022, Solectrac entered into the Floorplan and Security Agreement ("FPSA") with Mitsubishi HC Capital America, Inc ("Mitsubishi"). The FPSA is guaranteed by Ideanomics. There are currently two Lines of Credit open with Mitsubishi under the FPSA.

b. *Vendor Agreement*. On March 9, 2022, Solectrac, Mitsubishi HC Capital America, Inc, Mitsubishi HC Capital Canada, Inc. (collectively "MHCC") entered into that certain Vendor Agreement (US & Canada) (the "Vendor Agreement"). Pursuant to the Vendor Agreement, MHCC provides loans and other financing to dealers and distributors located in the United States and Canada for the benefit of Solectrac.

c. *Intercreditor Agreement*. Mitsubishi and the Prepetition Lender entered into that certain Intercreditor Agreement (the "Mitsubishi Intercreditor Agreement") dated as of December 22, 2022. Pursuant to the Mitsubishi Intercreditor Agreement, the Prepetition Lender's security interest in any Collateral granted under the FPSA is junior to that of Mitsubishi. Under the FPSA, Collateral consists of all inventories of Borrower that is financed by the Mitsubishi with the proceeds of advances made by Mitsubishi to Borrower; leases and accounts related thereto, and cash and insurance proceeds of any of the foregoing.

11. *NFS Leasing Master Equipment Finance Agreement*. On November 22, 2022, Ideanomics and Wireless Advanced Vehicle Electrification, LLC ("WAVE" and together with Ideanomics, the "NFS Leasing Borrowers") entered into the Master Equipment Finance

Agreement ("MEFA") with NFS Leasing, Inc. ("NFS"). The MEFA is secured by the equipment and other goods financed by the funds advanced to the NFS Leasing Borrowers by NFS. As of the Petition Date, $1,475,069 is outstanding under the MEFA.

12. *SBA Loan*. On April 10, 2020, Ideanomics borrowed $300,000 at an annual interest rate of 1.0% from a commercial bank through the Small Business Administration Paycheck Protection Program (the "SBA Loan"). The SBA Loan is currently in equal monthly installments, with the final payment due on April 10, 2025. As of the Petition Date, there is approximately $133,256 outstanding under the SBA Loan.

13. *Therese Note*. On April 6, 2023, Ideanomics entered into that certain *Secured Negotiable Promissory Note* in the amount of $1,000,000 made payable to Therese Lee Carabillo (the "Therese Note"). The Therese Note is secured by a personal guaranty from Shane McMahon. The Therese Note was initially set to mature on June 6, 2023. Shane McMahon entered into that certain *Guaranty* dated as of April 6, 2023, which guaranteed all amounts under the Therese Note. On April 25, 2024, Carabillo and Stephen Skoller, as Trustee of The Vincent K. McMahon 2008 Irrevocable Trust dated December 23, 2008 (the "McMahon Trust") entered into that certain *Note Purchase Agreement* (the "Carabillo NPA") whereby Carabillo sold the Therese Note to the McMahon Trust for $923,601.00. In accordance with the Carabillo NPA, the parties also executed that certain *Assignment and Acceptance* by which Carabillo assigned the Therese Note to the McMahon Trust. As of the Petition Date, $865,006 remains outstanding under the Therese Note.

C. The Debtors' Immediate Liquidity Needs

14. The Debtors have recently faced substantial headwinds that have negatively impacted their business operations and in turn their liquidity. The Debtors commenced the Chapter 11 Cases to preserve and maximize the value of their estates for the benefit of their stakeholders. *See, e.g.*, First Day Decl. at ¶¶ 49-56, 61.

15. To facilitate and fund this process, the Debtors, with the assistance of their advisors, focused on negotiating the proposed DIP Facility with the proposed DIP Lender. The Debtors and the DIP Lender subsequently came to a mutual agreement on the terms and conditions reflected in the DIP Facility (defined below), including with respect to the use of Cash Collateral. The DIP Facility will mature eight months after the Petition Date, and all amounts outstanding under the DIP Facility become due and payable in full on the Maturity Date.

16. In particular, the DIP Facility consists of (a) a term loan in the aggregate principal amount of $11,619,000 of "new money" loans that will be made available to the Borrowers pursuant to the terms of the DIP Orders and (b) a "creeping roll up" of the Prepetition Tillou Obligations during the interim period and up to the full amount of the Prepetition Tillou Obligations upon entry of the Final DIP Order. The DIP Credit Agreement and the Proposed Interim Order contemplate that the Prepetition Tillou Obligations will be "rolled up" on a dollar-for-dollar basis concurrently with the making of Term Loan Advances (as defined in the DIP Credit Agreement), which will be made weekly, during the Interim Period. Upon entry of the Final DIP Order, the remaining Prepetition Tillou Obligations will be "rolled up" and the DIP Obligations shall be increased on a dollar-for-dollar basis by such amount in accordance with the DIP Credit Agreement.

17. The Debtors require an immediate capital infusion to fund the Chapter 11 Cases and to preserve the value of their estates. DIP Decl. at ¶ 7. As of the Petition Date, the Debtors project that absent approval of the DIP Facility, the Debtors will be unable to, among other things, (a) satisfy payroll, pay vendors and suppliers, and meet overhead expenses, (b) fund working capital needs and capital expenditures, (c) pay for goods or services critical to the operation of its business, (d) pay property taxes and other taxes, and (e) finance other general corporate purposes.

Failure to obtain the DIP Facility would negatively affect the Debtors' ability to make payments essential to their success in chapter 11 and jeopardize the Debtors' ability to continue its sale process and preserve the value of their estates, in each case, to the detriment of the Debtors' stakeholders.

D. The Debtors' Restructuring Efforts and Efforts to Obtain Financing

18. Based on the lackluster financial performance, numerous operational issues, and public reporting concerns, the Debtors' ability to augment liquidity by using the public equity markets has largely vanished. With limited capital resources and continuing operating losses, the Debtors began to implement initiatives to reduce costs and improve liquidity.

19. To assist with those initiatives and to evaluate restructuring alternatives, in Fall 2023, the Debtors engaged Foley & Lardner LLP ("Foley"), as legal counsel, and Riveron Consulting ("Riveron"), as financial advisor.

20. At an operational level, the Debtors ceased all business operations except for those performed by Debtor WAVE. The Debtors also laid off hundreds of employees, retaining only approximately 16 employees to focus remaining capital and assets on WAVE—the business closest to market-ready.

21. Since Fall 2023 and through the Petition Date, the Debtors considered and pursued a range of possible options, including (i) seeking financing from new financing sources and existing stakeholders; (ii) soliciting interest in strategic transactions with third parties; (iii) attempting to market and sell all or a portion of its assets and/or operations to third parties; and (iv) negotiating with its stakeholders around potential in- and out-of-court restructuring options that would enable the Debtors to continue as an operating business. The Debtors pursued all such options. Unfortunately, notwithstanding these comprehensive efforts, Ideanomics was delisted from NASDAQ on June 8, 2024. The Debtors concluded that, based on its deteriorating financial

condition, the value maximizing path was to identify a purchaser for its valuable assets and run a market-tested auction sale process. In November of 2024, the Debtors retained SSG Advisors, LLC ("SSG"), as investment banker, to further assist in these efforts.

22. In parallel with its various prepetition initiatives, the Debtors, with the assistance of their advisors, engaged in extensive good faith, arm's-length negotiations over the terms of the DIP Facility. Given the Debtors' current circumstances, the optimal source of debtor-in-possession financing was the DIP Lender and, taken as a whole, the terms of the proposed DIP Facility are fair and reasonable under the present circumstances of the Chapter 11 Cases. DIP Decl. at ¶¶ 13-14, 20-21.

23. To confirm the Debtors received the best financing alternative available for these Chapter 11 Cases, the Debtors, with the assistance of Riveron, solicited debtor-in-possession financing proposals from eleven (11) parties. Only one of those parties signed nondisclosure agreements and expressed an interest in providing financing to the Debtors.

24. As evidenced by the Debtors' and their advisors' efforts to secure postpetition financing, there are no viable alternative sources of DIP financing currently available to the Debtors, other than the proposed DIP Facility. The Debtors thus believe that the proposed DIP Facility represents the best, and importantly, only option currently available to address the Debtors' liquidity needs and create a pathway to exit from chapter 11.

25. The DIP Facility is critical to the Debtors' ability to fund the administrative costs of these Chapter 11 Cases, preserve liquidity for continued operations and provide the runway required to effectuate a value-maximizing and competitive sale process. Accordingly, the DIP Facility is necessary to the successful resolution of these Chapter 11 Cases.

RELIEF REQUESTED

26. By this Motion, and pursuant to sections 105, 361, 362, 363, 364, 503, 506, 507, and 552 of the Bankruptcy Code, rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), and rules 2002-1, 4001-2, 9006-1, and 9013-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors seek entry of interim and final orders (the "Proposed Orders") including the proposed interim order (the "Proposed Interim Order") substantially in the form attached hereto as **Exhibit A**, granting the following relief:

a. authorizing the Debtors to obtain a senior secured superpriority debtor-in-possession financing facility (the "DIP Facility") pursuant to the terms and conditions of that certain Senior Secured Superpriority Debtor-in-Possession Loan Agreement, attached to the Proposed Interim Order as **Exhibit 1** (as the same may be amended, restated, amended and restated, supplemented, waived, or otherwise modified in accordance with the terms thereof from time to time the "DIP Credit Agreement") by and among the (A) Borrowers, (B) the subsidiaries of the Company from time to time party thereto as guarantors, and (C) Tillou Management and Consulting LLC, as lender (in such capacity, together with any successors and assigns permitted under the DIP Loan Documents, the "DIP Lender," and in such capacities as DIP Lender and Prepetition Lender, "Tillou") consisting of term loan commitments in an aggregate principal amount equal to $30,491,350.64 (the "DIP Loan"), allocated and made available to the Borrowers as follows;

   i. a "new money" term loan in the aggregate principal amount of $11,619,000 (the "New Money Term Loans"), pursuant to which (A) $6,957,000 shall be made available to the Borrowers to draw in accordance with the DIP Credit Agreement upon entry of the Proposed Interim Order ($1,815,700 of which shall be placed in a segregated account to fund the Wind Down Budget), subject to the terms and conditions set forth in the DIP Credit Agreement, and the Proposed Interim Order; and (B) $4,662,000 of additional commitments shall be made available to the Borrowers to draw in accordance with the DIP Credit Agreement upon entry of the Final Order, subject to the terms and conditions set forth in the DIP Term Credit Agreement and the other DIP Loan Documents; and

   ii. conversion of up to $18,872,350.64 of Prepetition Tillou Obligations (such conversion, the "Roll-Up") which will be deemed "rolled up" as Loans on a dollar-for-dollar basis concurrently with

the making of the New Money Term Loans during the Interim Period (*i.e.*, $6,957,000) following entry of (and subject to) the Proposed Interim Order and all of which will be deemed "rolled up" as Loans following entry of (and subject to) the Final DIP Order.

b. authorizing the Debtors to execute and deliver the DIP Credit Agreement, collectively with the Proposed Interim Order, the Final Order, the Budget (as defined below), and all and all other agreements, documents, and instruments delivered or executed in connection therewith to the extent that the DIP Lender determines there is a need for such other documents and instruments, in each case as amended, restated, supplemented, or otherwise modified from time to time (collectively, the "DIP Loan Documents") and to perform such other acts as may be necessary, convenient, advisable, or appropriate in connection with the DIP Loan Documents;

c. authorizing the Debtors to place $1,815,700 of funds into a segregated account to fund the Wind-Down Budget;

d. authorizing the Debtors to incur, guarantee, and pay, as applicable, loans, advances, extensions of credit, financial accommodations, reimbursement obligations, fees (including, without limitation, any unused line fees, closing fees, commitment fees, administrative agency fees, the reasonable and documented fees and disbursements of the DIP Lender's attorneys, costs, expenses, and other liabilities, all other obligations (including indemnities and similar obligations, whether contingent or absolute) and all other Obligations (as defined in each respective DIP Credit Agreement) due or payable under the DIP Facility (the "DIP Obligations");

e. subject and subordinate only to the Carve-Out (as defined herein) and the relative priorities set forth in the Proposed Interim Order granting allowed superpriority administrative expense claim status pursuant to section 364(c)(1) of the Bankruptcy Code in each of the Chapter 11 Cases and any Successor Cases (as defined herein) to the DIP Obligations;

f. authorizing the Debtors to use the "cash collateral" (as defined in section 363(a) of the Bankruptcy Code) of the Prepetition Lenders (as defined herein) (the "Cash Collateral") in accordance with the terms of the Proposed Interim Order, that the Debtors are holding or may obtain, pursuant to sections 361 and 363 of the Bankruptcy Code and Bankruptcy Rules 4001(b) and 6004 and in accordance with the Budget (as defined herein);

g. granting to the DIP Lender automatically perfected security interests in and liens on all DIP Collateral (as defined herein), including, without limitation, all property constituting Cash Collateral, which liens shall be subject to the Carve-Out;

h. authorizing the Debtors to provide adequate protection to the Prepetition Lender (as defined herein) solely to the extent of any Diminution in Value (as defined herein) on the terms set forth herein;

i. approving certain stipulations by the Debtors with respect to the Prepetition Loan Documents and the Prepetition Collateral (each as defined herein) as set forth here-in;

j. waiving any applicable stay and provisions for immediate effectiveness of the Proposed Interim Order;

k. vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the Proposed Interim Order;

l. granting related relief; and

m. scheduling a final hearing (the "Final Hearing") to consider entry of a final order (the "Final Order") authorizing and approving, among other things, the relief requested in the Motion on a final basis, which order shall be in form substantially similar to the Proposed Interim Order and otherwise reasonably acceptable to the Debtors, the DIP Lender, and the Prepetition Lender, and approving the form of notice with respect to the Final Hearing.

27. By this motion the Debtors seek approval to obtain the DIP Facility, a superpriority senior secured term loan credit facility to be funded by one of the Prepetition Lender. The DIP Facility provides the Debtors with financing necessary to enable the Debtors to run an efficient, and organized value-maximizing sale process with the DIP Lender acting as the "Stalking Horse Bidder".

28. The DIP Facility reflects compromise and coordination among the Debtors and their stakeholders and constitutes an integrated and interdependent postpetition financing package. DIP Decl. at ¶¶ 11-12. *First,* the DIP Facility is integral to the Debtors' continued and uninterrupted operation of their businesses. The Debtors will rely on the DIP Facility for liquidity for the Debtors' payroll, working capital and other operating expenses and to facilitate the Debtors' operating collections and cash management system. Approval of the DIP Facility will provide the

Debtors with continued access to this critical financial infrastructure during the pendency of the Chapter 11 Cases and avoid operational disruption and value destruction. *Second,* the DIP Facility provides for enough funding for the administration of these Chapter 11 Cases and a robust sale process. In exchange for consenting to the Roll Up, the DIP Lender is allowing the Debtor to place $1,815,700 into a segregated account to facilitate the wind-down of the Debtors as contemplated in the Wind-Down Budget, attached as Exhibit 3 to the Proposed Interim Order. DIP Decl. at ¶ 13. *Third*, the ongoing commitments of the DIP Lender represents significant value to the estates, and the DIP Lender is only willing to extend these commitments if the DIP Facility is given superpriority status and the Roll Up is approved. By virtue of extending their commitments via the DIP Facility and demonstrating a continued interest in remaining in the Debtors' capital structure, the DIP Lender is providing a vote of confidence in, and critical liquidity to, the Debtors' estates.

29. The proposed financing was obtained following a robust competitive marketing process run with the assistance Riveron as financial advisor to the Debtors. During the competitive bidding process, the Debtors solicited financing proposals from ten (10) potential sources of capital and obtained no financing proposals. The Debtors ultimately concluded that, under the circumstances, the DIP Facility presents the most favorable pricing and terms, affords the Debtors the greatest certainty of execution, and provides the best opportunity for successful Chapter 11 Cases. *See* DIP Decl. at ¶¶ 10-11.

30. The Debtors require uninterrupted access to their cash and an immediate capital infusion to, among other things, (a) satisfy payroll, pay vendors and suppliers, and meet overhead expenses, (b) fund working capital needs and capital expenditures, (c) pay for goods and services critical to necessary operations, (d) pay property taxes and certain other taxes and related expenses, and (e) finance other general corporate purposes. Without the DIP Facility, the Debtors would be

unable to cover these expenses, its ability to run a sale process would be jeopardized, and there would be a rapid deterioration of the value of the Debtors' estates. Such a decline in the Debtors' financial position would likely catalyze the conversion of the cases to a Chapter 7 liquidation proceeding, resulting in substantial value destruction. Securing the DIP Facility on the terms proposed herein, was an essential inducement to reach an agreement with the DIP Lender and establish a strong foundation for the Debtors at the outset of these Chapter 11 Cases.

31. For these reasons, and for the reasons set forth below and, in the Declarations, the Debtors believe that entering into the DIP Credit Agreement and the related DIP Loan Documents constitutes a sound exercise of the Debtors' business judgment. Accordingly, the Debtors respectfully request that the Court enter the Proposed Orders.

CONCISE SUMMARY OF TERMS OF DIP FACILITY[4]

32. Under the disclosure requirements of Bankruptcy Rules 4001(b), (c), and (d) and Local Rules 4001-2(a)(i) and (ii), the following table concisely summarizes the significant terms of the DIP Facility and the Proposed Interim Order:

Bankruptcy Code/Local Rule	Summary of Relevant DIP Facility Provisions
Borrowers Bankruptcy Rule 4001(c)(1)(B)	Ideanomics Inc., Solectrac, Inc., Wireless Advance Vehicle Electrification, LLC, Via Motors International, Inc., Via Motors, Inc., Justly Holdings Inc., Justly Markets LLC, and Timios Holdings Corp.
Guarantors Bankruptcy Rule 4001(c)(1)(B)	None
DIP Lender Bankruptcy Rule 4001(c)(1)(B)	Tillou Management and Consulting LLC and/or one or more of its affiliates (in its capacities as Prepetition Lender and DIP Lender, "Tillou"). *See* Preamble of DIP Credit Agreement.

[4] This summary, including the defined terms it uses (whether or not defined within the summary), is qualified in its entirety by the provisions of the Proposed Interim Order and the DIP Loan Documents, as applicable. To the extent that there are any conflicts between this summary, on the one hand, and the Proposed Interim Order or any DIP Document, on the other, the terms of the Proposed Interim Order or such DIP Document shall govern.

Bankruptcy Code/Local Rule	Summary of Relevant DIP Facility Provisions
Maturity Date Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(ii)	The Maturity Date of the DIP Facility is the earliest of: (a) the first Business Day following the date that is eight (8) months following the date hereof, (b) the date on which (i) a sale of all or substantially all of the Borrowers' assets has been consummated and (ii) the Bankruptcy Court has authorized payment the sale proceeds to the Lender pursuant to section 363 of the Bankruptcy Code, (c) forty-five (45) days after the Petition Date, in the event that the Final DIP Order shall not have been entered on or before such date, (d) the date of dismissal of any Case or conversion of any of the Chapter 11 Cases to a Chapter 7 case, (e) the effective date of a Plan, and (f) the date on which payment of the Obligations is accelerated by the Lender as provided in Article VII. *See* DIP Credit Agreement, Article 1.
Amount and Facility Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L. R. 4001-2(a)(i)(A)	The DIP Facility consist of (a) $11,619,000 of "new money" loans that will be made available to the Borrowers pursuant to Section 2.1(a) in accordance with the Interim Order or Final DIP Order, as applicable, and (b) the Prepetition Tillou Obligations, which will be deemed "rolled up" as Loans on a dollar-for-dollar basis concurrently with the making of "new money" loans during the Interim Period following entry of (and subject to) the Interim Order and the remainder of which will be deemed "rolled up" as Loans following entry of (and subject to) the Final DIP Order, in accordance with Section 2.1(a)(ii) of the DIP Credit Agreement. *See* Preamble of DIP Credit Agreement.
Roll Up of Prepetition Tillou Obligations Del. Bankr. L.R. 4001-2(a)(i)(O)	The DIP Facility consists of a dollar-for-dollar "creeping roll up" of the Prepetition Tillou Obligations beginning upon entry of the Interim Order with the remaining Prepetition Tillou Obligations being "rolled up" upon entry of the Final DIP Order. *See* DIP Credit Agreement, § 2.1(a)(ii).
Use of Proceeds Bankruptcy Rule 4001(b)(1)(B)(ii) Del. Bankr. L. R. 4001-2(a)(i)	The Borrowers shall use the proceeds of the Loan in accordance with the Budget, or the Wind Down Budget, as applicable, for post-petition and other operating expenses of the Borrowers and to pay other costs and expenses of administration of the Chapter 11 Cases in accordance with the Budget, or the Wind Down Budget, as applicable, subject to the Permitted Variance. *See* DIP Credit Agreement § 6.1(f).
Interest Rates Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L. R. 4001-2(a)(ii)	So long as no Event of Default has occurred and is continuing, the Borrowers shall pay interest on the aggregate outstanding and unpaid principal balance of the Term Loan Advances and on any other amounts payable under the Financing Documents at a rate per annum equal to twelve percent (12%) per annum (the "Base Rate"). *See* DIP Credit Agreement § 2.2.
Default Interest Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L. R. 4001-2(a)(i)	Following the occurrence and during the continuation of an Event of Default, the Borrowers shall pay interest on the aggregate outstanding and unpaid principal balance of the Term Loan Advances and on any other amounts payable under the Financing Documents (including any overdue amounts) at a rate per annum equal to the Base Rate plus four percent (4%) per annum.

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	See DIP Credit Agreement § 2.2.
Termination / Events of Default Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L. R. 4001-2(a)(i), 4001-2(a)(i)(M), and 4001-2(a)(i)(S)	The DIP Credit Agreement contains customary events of defaults for financings of this type and are set forth in Article VII of the DIP Credit Agreement. If any of the following events ("Events of Default") shall occur: (a) the Borrowers shall fail to pay any principal or interest within two days of the date due and payable under the DIP Credit Agreement (whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment, or otherwise), or any other Obligation due under any of the Financing Documents, when the same becomes due and payable hereunder or thereunder; (b) the Borrowers shall default in the observance or performance of any covenant, agreement, obligation, or restriction set forth in Section 6.2 of the DIP Credit Agreement; (c) the Borrowers shall default in the observance or performance of any other covenant, agreement, obligation or restriction set forth in the DIP Credit Agreement or any of the other Financing Documents after a period of twenty (20) calendar days has passed without such failure having been cured or remedied; (d) any representation or warranty of the Borrowers in any of the Financing Documents or in any document, certificate or other paper or notice given in connection therewith shall have been false or misleading in any material respect at any time made or deemed to have been made or repeated; (e) except for the Indebtedness related to the financing arrangements listed on Schedule 7(e) and all documents related thereto, any Borrower shall (i) fail to pay any principal or interest under any Material Indebtedness that is not otherwise subject to the automatic stay under section 362 of the Bankruptcy Code, when due and payable, and after giving effect to any applicable grace period in the agreement or instrument evidencing such Material Indebtedness or under which such Material Indebtedness has been incurred, or (ii) any event or condition occurs that results in any Material Indebtedness becoming due and payable or required to be prepaid, redeemed, purchased or defeased, in each case prior to its stated maturity by reason of any default, event of default or the like (however described); (f) any of the Financing Documents executed and delivered shall cease to be in full force and effect, or the Lender's Liens on any Collateral shall fail to be perfected in any material respect at any time, or shall fail to have the priority contemplated hereby at any time after such date; (g) the Bankruptcy Court shall enter any order (i) amending, supplementing, altering, staying, vacating, rescinding, reversing or otherwise modifying any DIP Order without the consent of the Lender, (ii) appointing a Chapter 11 trustee or appointing an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) in any of the Chapter 11 Cases; (iii) dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a Chapter 7 case or (iv) granting relief from the automatic stay to any creditor holding or asserting a Lien or reclamation claim on a material portion of the assets of the Borrowers taken as a whole or where the deprivation of the Borrowers of such assets will, in the reasonable opinion of the Lender, have a Material Adverse Effect; (h) the Bankruptcy Court shall grant an application filed by the Borrowers or any other interested party for the approval of any other Superpriority Claim or Lien in any of the Chapter 11 Cases which is pari passu with or senior to the claims or

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	Liens of the Lender against the Borrowers hereunder or under any of the other Financing Documents (unless substantially concurrently with the transactions contemplated by such application, all Obligations (whether contingent or otherwise) shall be paid in full in cash), or there shall arise any such Superpriority Claim or Lien; (i) any Borrower shall be unable to pay their post-petition debts as they mature; (j) except as provided in the Budget, the Borrowers shall pay or discharge any pre-petition Indebtedness, exclusive of (i) Indebtedness required to be paid and in fact paid in connection with the assumption of executory contracts which are not financial accommodations, and (ii) payments effected by involuntary set-offs; (k) a plan of reorganization shall be proposed by the Borrowers or approved by the Bankruptcy Court in any of the Chapter 11 Cases which does not satisfy the requirements of Section 3.3 of the DIP Credit Agreement; (l) the Bankruptcy Court shall not have entered the Interim Order, in form and substance reasonably satisfactory to Lender, on or before seven (7) Business Days after the Petition Date; (m) the Bankruptcy Court shall not have entered the Final DIP Order, in form and substance reasonably satisfactory to Lender, on or before forty-five (45) days after the Petition Date; (n) the Bankruptcy Court shall not have entered an order approving bid procedures, in form and substance reasonably satisfactory to Lender, on or before forty-five (45) days after the Petition Date; (o) any Borrower shall fail to comply with the terms of the Interim Order or the Final DIP Order, if any; (p) any Borrower shall (i) challenge or contest the validity or enforceability of any DIP Orders or deny that it has further liability thereunder, (ii) challenge or contest the nature, extent, amount, enforceability, validity, priority or perfection of the Obligations or any portion thereof, the Liens on the Collateral securing the Obligations, the Superpriority Claim in respect of the Obligations, the adequate protection Liens in favor of the Lender, the adequate protection amount, the adequate protection superpriority claims in favor of the Lender, the Prepetition Financing Agreements, or any Liens in favor of the Lender securing the Prepetition Financing Agreements, (iii) assert any claim, defense or cause of action that seeks to avoid, recharacterize, subordinate (whether equitable subordination or otherwise), disgorge, disallow, impair or offset all or any portion of the Obligations, the Liens on the Collateral securing the Obligations, the Superpriority Claim in respect of the Obligations, the adequate protection Liens in favor of the Lender, adequate protection amount, the adequate protection superpriority claims, the Prepetition Financing Agreements, or the Liens in favor of the Lender securing the Prepetition Financing Agreements, or (iv) investigate, join or file any motion, application or other pleading in support of, or publicly support any other Person that has asserted any of the claims, challenges or other requested relief contemplated in clauses (i) – (iii) above; (q) any Borrower shall materially modify or consent to any material modification of (i) any order approving bid procedures or (ii) any definitive documentation pursuant to a sale term sheet with the Lender that is materially adverse to the Lender, in each case without the prior written consent of the Lender; (r) any Borrower uses proceeds of the Loan for any purpose other than as permitted hereunder; (s) within 5 Business Days after the termination or resignation of the Borrowers' Chief Restructuring Officer, the Borrowers shall fail to appoint and install a replacement Chief Restructuring Officer reasonably acceptable to the Lender

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	and/or such replacement of Chief Restructuring Officer shall fail to accept such appointment and installation; or (t) any Borrower shall be enjoined from conducting any part of its business as a debtor-in-possession, or there shall occur any disruption to such business, which could reasonably be expected to have a Material Adverse Effect. *See* DIP Credit Agreement, Article VII.
Security and Priority Bankruptcy Rule 4001(c)(1)(B)(i)-(ii) Del. Bankr. L. R. 4001-2(a)(i)(G) and 4001-2(a)(i)(P)	The DIP Obligations shall, pursuant to section 364(c)(1) of the Bankruptcy Code, at all times constitute an allowed superpriority administrative expense claim (the "DIP Superpriority Claim") of the DIP Lender against the Debtors, and be payable from and have recourse to all assets and properties of the Debtors, with priority over any and all other administrative expenses, adequate protection claims, diminution in value claims, and all other claims asserted against the Debtors now existing or hereafter arising of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expenses or other claims arising under any other provisions of the Bankruptcy Code, including sections 105, 326, 327, 328, 330, 331, 363, 364, 365, 503, 506(b), 506(c), 507(a) (other than section 507(a)(1)), 507(b), 507(d), 546, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment, subject only to the Carve-Out, which DIP Superpriority Claim shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered an administrative expense allowed under section 503(b) of the Bankruptcy Code and shall be payable from and have recourse to all pre- and postpetition assets and property, whether existing on the Petition Date or thereafter acquired, of the Debtors and all proceeds thereof. The DIP Superpriority Claim shall be subject and subordinate only to the Carve-Out. Other than as expressly provided herein, including in paragraph 13 hereof with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these Cases or in any Successor Case and no priority claims are or will be senior to, prior to, or *pari passu* with the DIP Liens, the DIP Superpriority Claim, or any of the DIP Obligations or with any other claims of the DIP Lender arising hereunder or under the DIP Loan Documents (including the DIP Credit Agreement), or otherwise in connection with the DIP Facility. *See* Proposed Interim Order ¶ 2(g).
Joint Liability Del. Bankr. L.R. 4001-2(a)(i)(J)	All obligations of the Borrowers are joint and several. *See* DIP Credit Agreement, § 3.4.
Budget and Related Covenants Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)(E) and 4001-2(a)(iii)	The Borrowers shall have delivered to the Lender the Budget for the thirteen (13) weeks following the date hereof (the "Initial Budget") in form and substance satisfactory to the Lender in its sole discretion, a summary of which is attached to the Interim Order. The Borrowers will subsequently provide the DIP Lender with an updated Budget every Friday until the Termination Date for the remaining weeks left under the Initial Budget. Each updated Budget shall be subject to the written approval of the DIP Lender in its sole discretion (each such approved budget, a "Supplemental Approved Budget" and together with the Initial Budget, the "Budget"); *provided* that until such time as the DIP Lender approves in writing (for which email from counsel to the DIP Lender to counsel to the Debtors shall suffice) any updated Budget, the Borrowers shall be subject to and be

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	governed by the terms of the Initial Budget or such Supplemental Approved Budget, as applicable, then in effect in accordance with the Interim Order. The Borrowers shall provide to the DIP Lender (with a copy to the Committee, if any) a budget variance report (the "Budget Variance Report") on the Friday of every week until the Termination Date (except for the week during which the Interim Order is entered), and the Budget Variance Report shall set forth in reasonable detail actual receipts and disbursements of Borrowers, together with a statement certifying compliance with the Budget Covenant (as defined below) set forth below. The Borrowers shall not permit or suffer to exist, a negative variance in an amount not more than the greater of (i) 15% and (ii) $250,000 of total the total disbursements set forth in the Budget for such period (as reflected in the Budget) in the aggregate from the amounts set forth in the Budget (each, a "Permitted Variance"), as measured on a cumulative basis (the "Budget Covenant"). The Debtors shall operate in accordance with the Budget, subject to the Permitted Variance, and all disbursements of the Debtors shall be consistent with the provisions of the Budget, subject in each case to any Permitted Variance provided herein and in the DIP Credit Agreement; provided that if the Actual Variance (as defined in the DIP Credit Agreement) for any period is less than or equal to the Permitted Variance, the amount by which the Actual Variance is less than the Permitted Variance shall be carried forward to the next period and added to the Permitted Variance for such next period. *See* DIP Credit Agreement § 5.1(f); Proposed Interim Order ¶¶ 5(a) and (b).
Borrowing Conditions Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L. R. 4001-2(a)(i)(E)	**Conditions Precedent.** The first Term Loan Advance is subject to satisfaction by the Borrowers or waiver by the Lender of the following conditions precedent, in addition to those set forth in Section 5.2 of the DIP Credit Agreement: (a) The DIP Credit Agreement shall have been duly executed and delivered by the respective parties thereto, and all Financing Documents shall be in full force and effect and shall be in form and substance reasonably satisfactory to the Lender. (b) All corporate or limited liability company action and all third-party or governmental consents and approvals necessary for the valid execution, delivery and performance by each of the Borrowers of each of the Financing Documents to which it is a party shall have been duly and effectively taken or obtained (as the case may be) and remain in effect as of the date hereof and evidence thereof satisfactory to the Lender shall have been provided to the Lender. (c) To the extent requested by the Lender, all Uniform Commercial Code financing statements, releases except with respect to Permitted Liens and notices and assents shall have been executed and delivered (in recordable form where applicable) to the Lender, all relevant insurances shall have been modified to include the Lender, as assignee, additional insured or lender loss payee as applicable, all Collateral in which a security interest may be perfected only by the secured party's possession shall, if so requested by the Lender, have been delivered to the Lender or its nominee, and all other actions necessary or in the reasonable opinion of the Lender desirable for the perfection and protection and to achieve the priority contemplated hereby, of all Liens in favor of the Lender shall have been taken to the satisfaction of the Lender. (d) The Interim Order and all other interim and final orders, as applicable, entered in respect of cash management, adequate protection and other "first day" motions and documents filed or to be filed with, or submitted to, the Bankruptcy Court in connection therewith shall have been entered by the Bankruptcy Court and such orders and all related pleadings shall be in form and substance reasonably satisfactory to the Lender and consistent with the Budget, and shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to

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	a stay and shall not have been modified or amended other than as acceptable to the Lender in its sole discretion. The Interim Order shall, among other things, (a) have been entered by the Bankruptcy Court in the Chapter 11 Cases, and (b) provide that the Liens are automatically perfected upon the entry of the Interim Order and also grant to the Lender relief from the automatic stay of section 362(a) of the Bankruptcy Code to enable the Lender, if it elects to do so in its sole discretion, to make all filings and recordings and to take all other actions considered necessary or advisable by the Lender to perfect, protect and insure the priority of its Liens upon the Collateral and to exercise its rights and remedies to enforce its claims and liens under the Financing Documents after an expedited hearing. (e) The Borrowers shall have paid to the Lender the fees, costs and expenses earned, due and payable on the date hereof under the Financing Documents (including, without limitation, the fees, costs and expenses of counsel to the Lender incurred in connection with the Chapter 11 Cases and the negotiation, preparation, execution and delivery of the Financing Documents) in accordance with the Budget. (f) The Borrowers shall have delivered to the Lender the Budget for the thirteen (13) weeks following the date hereof in form and substance satisfactory to the Lender in its sole discretion, a summary of which is attached to the Interim Order. **Conditions to Advances.** Each Term Loan Advance is subject to the satisfaction by Borrowers or waiver by the DIP Lender of the following further conditions precedent: (a) Each of the representations and warranties of each of the Borrowers to the Lender herein or in any of the other Financing Documents or any document, certificate or other paper or notice in connection herewith shall be true and correct in all material respects immediately prior to, and after giving effect to, such Term Loan Advance, except (i) to the extent that any such representation or warranty expressly relates only to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects, on such earlier date, or (ii) to the extent that any such representation or warranty is no longer true and correct solely due to the filing of the Chapter 11 Cases. (b) The making of such Term Loan Advance shall not violate any requirement of applicable law and shall not be enjoined, temporarily, preliminarily or permanently by any governmental authority. (c) The Bankruptcy Court shall have entered the Interim Order or the Final DIP Order, as applicable, which shall be in full force and effect and shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Lender (i) authorizing and approving the transactions contemplated hereby, including, without limitation, the granting of the Superpriority Claim status and Liens described in Section 3.1 of the DIP Credit Agreement, and the payment of all fees referred to herein, and (ii) modifying the automatic stay to permit the Borrowers to perform their obligations under the Financing Documents and the its rights and remedies to enforce its claims and liens under the Financing Documents. If either the Interim Order or the Final DIP Order is the subject of a pending appeal in any respect, none of such Order, the disbursement of any portion of the proceeds of the Loan or the performance by any of the Borrowers of any of their obligations under any of the Financing Documents shall be the subject of a stay pending appeal. The Borrowers and the Lender shall be entitled to rely in good faith upon the DIP Orders notwithstanding objection thereto or appeal therefrom by any interested party. The Borrowers and the Lender shall be permitted and required to perform their respective obligations in compliance with the DIP Credit

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	Agreement notwithstanding any such objection or appeal unless the relevant Order has been stayed by a court of competent jurisdiction. (d) No Default or Event of Default shall have occurred and be continuing or result from the making of such Term Loan Advance. (e) The Borrowers shall be in compliance with the Budget subject only to Permitted Variance. (f) The Lender shall have received all other documentation and information reasonably requested by the Lender, in form and substance reasonably acceptable to the Lender. *See* DIP Credit Agreement §§ 5.1-5.2.
Stipulations as to Prepetition Claims and Liens Bankruptcy Rule 4001(c)(1)(B)(iii) Del. Bankr. L. R. 4001-2(a)(i)(Q)	Without limiting the rights of any party in interest as and to the extent set forth in paragraph 11 of the Interim Order, after consultation with their attorneys, the Debtors permanently, immediately, and irrevocably admit, acknowledge, represent, stipulate, and agree with the provisions set forth in the DIP Credit Agreement which stipulations shall be binding on the Debtors, their estates, and all parties in interest (collectively, the "Stipulations"): **Prepetition Tillou Obligations.** As of the Petition Date, the Debtors are justly and lawfully indebted and liable to the Prepetition Lender under the Prepetition Loan Documents (as defined below), without objection, defense, counterclaim, or offset of any kind, in the aggregate amount of not less than $18,872,350.64 with respect to the Prepetition Loans (on account of principal and certain accrued and unpaid prepetition interest and fees), plus accrued and accruing (both before and after the Petition Date) and unpaid interest including at the default rate), interest late fees, liquidated damages, other fees and expenses, and all other obligations under the Prepetition Loan Documents, including any and all attorneys', accountants', consultants', appraisers' and financial and other advisors' fees that are chargeable or reimbursable under the Prepetition Loan Documents (collectively, the "Prepetition Tillou Obligations"). **Validity, Perfection, and Priority of the Prepetition Liens.** The liens granted by the Debtors under the Prepetition Loan Documents (the "Prepetition Liens") for the benefit of the Prepetition Lender as security for the Prepetition Tillou Obligations (i) under that certain Pledge Agreement between Ideanomics and Tillou, dated as of December 13, 2022, (ii) under that certain Pledge Agreement between Ideanomics and Tillou, dated as of March 19, 2023, (iii) under that certain Pledge Agreement between Ideanomics and Tillou, dated as of April 25, 2024, (iv) under that certain Guaranty and Suretyship Agreement between the Borrowers and Tillou, dated as of November 5, 2024 and (v) under that certain Security Agreement between the Borrowers and Tillou, dated as of November 5, 2024 (collectively, the "Prepetition Security Documents," and together with the Prepetition Debt Documents, the "Prepetition Loan Documents"), encumber substantially all of the Debtors' assets and property and all proceeds thereof (collectively, the "Prepetition Collateral"). The Prepetition Liens on the Prepetition Collateral have been properly recorded and perfected under applicable law and are legal, valid, binding, enforceable, non-avoidable, and not subject to contest, avoidance, attack, offset, recharacterization, subordination, or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law, or otherwise, and were granted to or for the benefit of the Prepetition Lender for fair consideration and reasonably equivalent value. As of the Petition Date, (a) the Prepetition Liens are senior in priority over any and all other liens on the Prepetition Collateral, subject only to any permitted liens set forth in the Prepetition Loan Documents (the "Prepetition Permitted Liens") which, as of the Petition Date, were senior to the Prepetition Liens (solely to the extent any such Prepetition Permitted Liens were (i) valid, properly perfected, and non-avoidable as of the Petition Date or (ii) perfected after the Petition Date solely to the extent permitted by section 546(b) of the

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	Bankruptcy Code), (b) the Prepetition Tillou Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the Prepetition Loan Documents, (c) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Tillou Obligations exist, and no portion of the Prepetition Liens or Prepetition Tillou Obligations is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or any other applicable law, and (d) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against the Prepetition Lender or any of its respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon, or related to the Prepetition Loan Documents, (e) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Tillou Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, perfection, and priority of the liens securing the Prepetition Tillou Obligations, and (f) the Prepetition Tillou Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code. *See* Proposed Interim Order ¶ G.
Effect of Stipulations Bankruptcy Rule 4001(c)(1)(B)(iii) Del. Bankr. L. R. 4001-2 (a)(i)(Q)	The Borrower's stipulations in the Interim Order and Final DIP Order shall be binding in all circumstances and for all purposes upon the Borrowers and other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases, and any other person or entity acting or seeking to act on behalf of the Borrowers' estates.
Limitations on Investigations of Liens Del. Bankr. L.R. 4001-2(a)(i)(L)	The Interim Order prohibits the use of financing to investigate the liens of the Prepetition Lender, except for up to $25,000 of the DIP Facility, DIP Collateral, the Petition Collateral, and the Cash Collateral may be set aside for a Committee (if any) appointed in these Chapter 11 Cases to investigate the liens prior to the Challenge Period. *See* Proposed Interim Order, ¶ 12.
Challenge Period Bankruptcy Rule 4001(c)(1)(B)(iii) Del. Bankr. L. R. 4001-2(a)(i)(Q)	The earlier of: (i) the date that the Court sets as the deadline for the submission of bids related to the Asset Sale; and (ii) seventy-five (75) days following the entry of the Interim Order. *See* Proposed Interim Order ¶ 11(b).
Approval of the DIP Facility Del. Bankr. L. R. 4001-2(a)(i)(R)	Approval of the DIP Facility shall be subject to the satisfaction of the Condition to each Advance as set forth by the terms of the DIP Facility and the entry of the Bankruptcy Court of an order in form and substance reasonably acceptable to the DIP Lender.
Adequate Protection Bankruptcy Rule 4001(c)(1)(B)(ii)	The Prepetition Lender shall receive adequate protection of its interests in the Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition Lender's interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, as a result of the use of Prepetition

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Del. Bankr. L. R. 4001-2(a)(i)(G)	Collateral, including Cash Collateral, the priming of its interests in Prepetition Collateral by the DIP Facility and Carve-Out, and the imposition or enforcement of the automatic stay (collectively, "Diminution in Value"). As adequate protection and subject to paragraph 11 hereof, the Prepetition Lender will be granted the following: **Adequate Protection Liens.** Pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, effective as of the Petition Date and perfected without the need for execution by the Borrowers or the recordation or other filing by the Prepetition Lender of security agreements, account control agreements, pledge agreements, financing statements, or other similar documents or the possession or control by the Prepetition Lender of any DIP Collateral, the Prepetition Lender, solely to the extent of any Diminution in Value, shall be granted valid, binding, continuing, enforceable, fully perfected replacement and additional liens on and security interests in (collectively, the "Adequate Protection Liens") all DIP Collateral. The Adequate Protection Liens shall be junior only to the DIP Liens, the Carve-Out, and any Permitted Encumbrance, and senior to all other security interests in, liens on, or claims against the DIP Collateral. The Adequate Protection Liens shall be non-avoidable and shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code. The Adequate Protection Liens shall be enforceable against and binding upon the Borrowers, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in any Successor Case. **Adequate Protection Superpriority Claim.** To the extent of the aggregate Diminution in Value, the Prepetition Lender shall be granted allowed superpriority administrative expense claims against the Borrowers and their estates, as provided in section 507(b) of the Bankruptcy Code, immediately junior to the DIP Obligations and subject only to the Carve-Out, and with priority in payment over any and all other claims and administrative expense claims against the Borrowers, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 507(a) (other than 507(a)(1)), 507(b), 546(c), 546(d), 552(b), 1113, 1114, and any other provision of the Bankruptcy Code, and shall at all times be senior to the rights of the Borrowers, and any successor trustee or creditor in the Chapter 11 Cases or any Successor Case (the "Adequate Protection Superpriority Claims"). **Adequate Protection Payments, Etc.** As further adequate protection, from and after entry of the Interim Order, the Prepetition Lender shall receive from the Debtors, (1) payment in cash, as and when due under the terms of the Prepetition Loan Documents, of all interest due under the Prepetition Loan Documents, calculated at the non-default rates under the Prepetition Loan Documents, and (2) (x) upon entry of the Interim Order, immediate cash payment of all accrued and unpaid fees and disbursements (including all reasonable and documented fees, out-of-pocket costs and expenses of legal, financial, and other advisory professionals of the Prepetition Lender (including, without limitation, Faegre Drinker Biddle & Reath LLP)) owing to the Prepetition Lender under the Prepetition Loan Documents, whether incurred prior to or after the Petition Date and (y) thereafter, when due, all fees and other amounts (including all reasonable and documented legal and advisory fees, out-of-pocket costs and expenses of legal, financial, and other advisory professionals of the Prepetition Lender (including, without limitation, Faegre Drinker Biddle & Reath LLP)) owing to the Prepetition Lender by the Debtors under the Prepetition Loan Documents, provided that payment of any fees and expenses of the Prepetition Lender's professionals incurred after entry of the Interim Order shall be subject to the notice and objection provisions of paragraph 2(h) of the Interim Order (the

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	"Adequate Protection Payments"). Payment of any amounts set forth in clause (2)(y) of the Interim Order shall not be subject to disgorgement or recharacterization. *See* Proposed Interim Order, ¶ 4.
Covenants Bankruptcy Rule 4001(c)(1)(B)	The DIP Credit Agreement contains covenant provisions ordinary and customary for financing of this type. *See* DIP Credit Agreement, Article 6.
Carve-Out Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L. R. 4001-2(a)(i)(F)	The "Carve-Out" means the sum of (a) all statutory fees payable to the U.S. Trustee pursuant to section 1930(a)(6) of title 28 of the United States Code ("U.S. Trustee Fees"), and (b) for all reasonable fees and disbursements incurred by the Debtors and any Committee for any attorneys and financial advisors for the Debtors and the Committee, respectively, and a single investment banker for the Debtors (collectively, the "Estate Professionals"), retained by final order of the Bankruptcy Court (which order has not been reversed, vacated, or stayed, unless such stay has been vacated) pursuant to sections 327 or 1103(a) of the Bankruptcy Code as applicable to the extent allowed by order of the Bankruptcy Court (which order has not been reversed, vacated, or stayed, unless such stay has been vacated) under sections 328, 330 and/or 331 of the Bankruptcy Code and any interim compensation procedures order, and a claims agent retained by Debtors (the "Allowed Professional Fees"), but solely to the extent such fees and disbursements are within the corresponding amounts set forth in the line-items in the Budget, or the Wind-Down Budget, as applicable ("Budgeted Fees & Expenses") *provided*, that after written notice delivered by email (or other electronic means) to the Debtors from the DIP Lender of the occurrence of an Event of Default ("Carve-Out Trigger Notice"), the amount of the Carve-Out shall not exceed $185,000 plus the Budgeted Fees & Expenses incurred prior to the date of the Carve-Out Trigger Notice and U.S. Trustee Fees. *See* Proposed Interim Order, ¶ 13.
Milestones Bankruptcy Rule 4001(c)(1)(B)(vi) Del. Bankr. L. R. 4001-2(a)(i)(H)	The Borrowers shall comply with the following milestone deadlines (each, a "Milestone" and collectively, the "Milestones"): (a) not later than 10 days after the Petition Date, the Borrowers shall file a motion to establish bid procedures and approve the sale of assets to the Lender as a stalking horse bidder pursuant to the terms of an asset purchase agreement among the Borrowers and the Lender, free and clear of all liens, claims and encumbrances, subject to higher and better offers in an auction process pursuant to Section 363 of the Bankruptcy Code; (b) not later than 45 days after the Petition Date, (i) a hearing shall occur with respect to the motion to establish bid procedures and approve the sale of assets to the Lender as a stalking horse bidder, free and clear of all Liens and other claims, subject to higher and better offers in an auction process pursuant to Section 363 of the Bankruptcy Code provided that it shall not be required that an order be entered by such date finally approving a sale to the stalking horse bidder or any other transaction counterparty, and (ii) the Bankruptcy Court shall have entered the Final DIP Order (x) authorizing and approving the DIP Credit Agreement pursuant to Section 364(c) of the Bankruptcy Code and Bankruptcy Rule 4001, and (y) providing that the Obligations are secured by a first priority perfected Lien on the Collateral, subject only to Permitted Prior Liens and the Carve Out, in form and substance satisfactory to the Lender in its sole discretion, which Final DIP Order shall be in full force and effect, and shall not have been reversed,

Bankruptcy Code/Local Rule	Summary of Relevant DIP Facility Provisions
	modified or amended in any respect without the prior written consent of the Lender; (c) not later than eight (8) months after the Petition Date, the Borrowers shall have confirmed a Plan, unless otherwise agreed by the Lender. *See* DIP Credit Agreement § 6.1(i), (j), and (k).
506(c) and 552(b) Waivers Bankruptcy Rule 4001(c)(1)(B)(x) Del. Bankr. L. R. 4001-2(a)(i)(V)	Subject to entry of the Final Order, Tillou is entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code and a waiver of the provisions of section 506(c) of the Bankruptcy Code. *See* Proposed Interim Order, ¶ M.
Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(B)(xi) Del. Bankr. L. R. 4001-2(a)(i)(U)	Subject to the entry of the Final DIP Order, all claims or causes of action of the Borrowers arising under sections 502(d), 542, 544, 545, 547,548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code (the "Avoidance Actions") provided that the lien on Avoidance Actions shall be limited to the proceeds and property recovered in connection therewith. *See* Proposed Interim Order, ¶ 2(d).
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The Borrowers shall indemnify and hold harmless the Lender and each of its Affiliates and each of the respective officers, directors, members, partners, employees, agents, advisors, attorneys and representatives of each (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and reasonable expenses (including, without limitation, reasonable fees and disbursements of counsel (including the reasonable allocated costs, expenses and disbursements of in-house counsel of the Lender, financial advisors and consultants), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party (including, without limitation, in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense in connection therewith), in each case arising out of or in connection with or by reason of the Loan, the DIP Credit Agreement, any other Financing Document or any of the transactions contemplated hereby or thereby, or any actual or proposed use of the proceeds of the Loan, except to the extent such claim, damage, loss, liability or expense is found by a court of competent jurisdiction to have resulted solely from such Indemnified Party's gross negligence or willful misconduct as determined by the final non-appealable judgment of a court of competent jurisdiction. In the case of an investigation, litigation or other proceedings to which the indemnity in Section 9.2 of the DIP Credit Agreement applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Borrower, any of their directors, security holders or creditors, an Indemnified Party or any other person, or an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Borrowers further agree that no Indemnified Party shall have any liability (whether direct or indirect, in contract, tort, or otherwise) to the Borrowers or any of their Affiliates, Subsidiaries, security holders or creditors for or in connection with the transactions contemplated hereby, except for direct damages (as opposed to special, indirect, consequential or punitive damages including, without limitation, any loss of profits, business or anticipated savings) which are hereby expressly waived) determined by the final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from such Indemnified Party's gross negligence or willful misconduct. The foregoing indemnity shall survive the occurrence of the Maturity Date, the termination of the

Bankruptcy Code/Local Rule	Summary of Relevant DIP Facility Provisions
	Financing Documents, the termination of the commitments of the Lender to make credit extensions hereunder and the repayment, satisfaction or discharge of all Obligations. *See* DIP Credit Agreement § 9.2.
Automatic Stay Waiver/Modification Bankruptcy Rule 4001(c)(1)(B)(iv) Del. Bankr. L. R. 4001-2(a)(i)(S)	The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified pursuant to the Interim Order and the DIP Loan Documents as necessary to (i) permit the Debtors to grant the Adequate Protection Liens and the DIP Liens and to incur all DIP Obligations and all liabilities and obligations to the DIP Lender and Prepetition Lender hereunder and under the DIP Credit Agreement, as the case may be, and (ii) authorize the DIP Lender and Prepetition Lender to retain and apply payments and otherwise enforce their respective rights and remedies hereunder, subject to the provisions of paragraph 21(a), (b) and (c) of the Interim Order. *See* Proposed Interim Order, ¶ 21(e).
Remedies Notice Period and Emergency Hearing Del. Bankr. L. R. 4001-2(a)(i)(S) and 4001-2(a)(i)(T)	The Debtors and the Committee (if any) shall be entitled to an emergency hearing before this Court within five (5) calendar days after the Termination Notice is sent by the DIP Lender to the Debtors, the U.S. Trustee, and counsel to the Committee (if any) (such 5-calendar-day period, the "Default Notice Period"). If an emergency hearing is requested to be heard prior to the expiration of the Default Notice Period but is scheduled for a later date by the Court, the Default Notice Period shall be automatically extended for a maximum period of three (3) days *See* Proposed Interim Order, ¶ 21(b).
Marshalling Del. Bankr. L. R. 4001-2(a)(i)(X)	Subject to entry of the Final DIP Order, Tillou shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable. *See* Interim Order, ¶ 25(h).

33. The inclusion of the foregoing Significant Provisions is necessary (such explanation being required by Local Rule 4001-2(a)(i)) to obtain (a) the DIP Lender's agreement to provide the DIP Facility on the terms and conditions reflected in the DIP Credit Agreement and (b) the Prepetition Lender's consent to the Debtors' use of Cash Collateral during the Chapter 11 Cases. As set forth herein, the DIP Facility is critical to the Debtors' successful sale efforts and granting the relief requested pursuant to the Proposed Orders and will maximize the value of the Debtors' estates for all parties in interest.

34. In light of the foregoing, the Debtors submit that the Significant Provisions are appropriate under the facts and circumstances of the Chapter 11 Cases. Accordingly, the Significant Provisions in the Proposed Orders should be approved.

BASIS FOR RELIEF

A. The Debtors Should Be Authorized to Obtain Postpetition Financing on a Senior Secured and Superpriority Basis

i. The Debtors Exercised Sound and Reasonable Business Judgment in Deciding to Enter into the DIP Facility

35. Provided that an agreement to obtain postpetition credit is consistent with the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in exercising its sound business judgment in obtaining such credit. *See, e.g.*, *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *Trans World Airlines, Inc., Plaintiff, v. Travellers International AG., et. al* (*In re Trans World Airlines, Inc.*) 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that the bankruptcy court approve a postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re Barbara K Enters., Inc.*, No. 08-11474 (MG), 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (the court's function is "to defer to a debtor's own business judgment so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *In re Ames Dep't Stores, Inc., Eastern Retailers Ser-vice Corp., et al.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

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

37. Moreover, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender to determine whether the terms of a postpetition financing arrangement are fair and reasonable. *See In re United States Concrete, Inc.*, No. 10-11407 (PJW), 2010 Bankr. LEXIS 6016, at *9 (Bankr. D. Del. May 21, 2010) (noting that the debtors were unable to find financing on more favorable terms and finding the financing to be fair and reasonable); *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co.* (*In re Ellingsen MacLean Oil Co.*), 65 B.R. 358, 365, n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into a "hard" bargain to acquire funds for its reorganization), *aff'd sub nom. In re Ellingsen MacLean Oil Co., Inc.*, 834 F.2d 599 (6th Cir. 1987).

38. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied "as long as the proposed action appears to enhance the debtor's estate." *Crystalin, L.L.C. and Citizens National Bank of Greater St. Louis v. Selma Props., Inc.* (*In re Crystalin, L.L.C.*), 293 B.R. 455, 464 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 566, n.16 (8th Cir. 1997)) (cleaned up). To satisfy the business judgment rule, courts require that the debtors show that "a sound business purpose" justifies taking the proposed

action (e.g., obtaining postpetition credit). *See Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp.* (*In re Montgomery Ward Holding Corp.*), 242 B.R. 147, 153 (D. Del. 1999) (citations omitted); *In re Phx. Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987). Courts exhibit great judicial deference to a debtor's exercise of business judgment. *See Stanziale v. Nachtomi* (*In re Tower Air, Inc.*), 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task."); *Parnes v. Bally Ent. Corp.*, 722 A.2d 1243, 1246 (Del. 1999) ("The presumptive validity of a business judgment is rebutted in those rare cases where the decision under at-tack is `so far beyond the bounds of reasonable judgment that it seems essentially in-explicable on any ground other than bad faith.") (citing *In re J.P. Stevens & Co., Inc.*, 542 A.2d 770, 780-81 (Del. Ch. 1988)).

39. Further, in determining whether the Debtors have exercised sound business judgment in deciding to enter into the DIP Loan Documents, the Court may appropriately take into consideration non-economic benefits to the Debtors offered by the DIP Financing. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York observed that:

> Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps to foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125 (JMP), 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009).

40. Under the circumstances, the Debtors' determination to move forward with the DIP Financing is a sound exercise of their business judgment following a thorough process and good faith, arms'-length negotiations, and in light of the limited financing alternatives available. The DIP Facility is critical to the Debtors' ability to fund operations, pay the administrative costs of the Chapter 11 Cases, and to preserve the value of the Debtors' estates. *See* Budget. Moreover, in addition to providing the Debtors with incremental liquidity, the DIP Facility will allow the Debtors to use Cash Collateral on a consensual basis. This will in turn ensure continued, uninterrupted operations, thereby preserving the value of the estates for the benefit of all stakeholders. Furthermore, the DIP Facility is the only available source of liquidity to make such payments. The Debtors' management team and legal and financial advisors were actively involved throughout the process, and the Debtors believe that they have obtained the best financing terms available given the circumstances. Accordingly, the Court should authorize the Debtors' entry into the DIP Loan Documents as it is a reasonable exercise of the Debtors' business judgment.

ii. The Debtors Meet the Conditions Necessary Under Section 364(c) and (d) of the Bankruptcy Code to Obtain Postpetition Financing on a Senior Secured and Superpriority Basis

41. The Debtors propose to obtain financing under the DIP Facility by providing the DIP Lender superpriority claims and liens pursuant to section 364(c) and (d)(1) of the Bankruptcy Code. Specifically, the DIP Lender will be granted the DIP Liens on substantially all of the Debtors' assets and administrative expense claims in the Chapter 11 Cases with priority over all other claims (subject in each case only to the Carve-Out).

42. The Debtors meet the requirements for relief under section 364(c) of the Bankruptcy Code, which permits a debtor, with Court authorization, to obtain postpetition financing and, in return, to grant superpriority administrative status and liens on its property. Specifically, section 364(c) of the Bankruptcy Code provides as follows:

> If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—
>
> (a) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
>
> (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (c) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

43. In evaluating proposed postpetition financing under section 364(c) of the Bankruptcy Code, courts perform a qualitative analysis and consider whether (a) unencumbered credit or alternative financing without superpriority status is available to the debtor, (b) the credit transactions are necessary to preserve assets of the estate, and (c) the terms of the credit agreement are fair, reasonable, and adequate, especially given the circumstances. *See, e.g.*, *In re Trans World Airlines, Inc.*, 163 B.R. at 974; *In re L.A. Dodgers LLC*, 457 B.R. at 313; *In re Aqua Assocs.*, 123 B.R. 192, 195-99 (Bankr. E.D. Pa. 1991); *In re St. Mary Hosp.*, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); *In re LATAM Airlines Grp. S.A.*, 620 B.R. 722, 767 (Bankr. S.D.N.Y. 2020); *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *In re Ames Dep't Stores, Inc.*, 115 B.R. at 37-40.

44. Further, the Debtors meet the requirements for relief under section 364(d) of the Bankruptcy Code, which permits a debtor, with Court authorization, to obtain postpetition financing secured by liens that are senior to prepetition liens. Specifically, section 364(d) of the Bankruptcy Code provides as follows:

> (a) The court, after notice and a hearing, may authorize the 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:

> (i) the trustee is unable to obtain such credit otherwise; and
>
> (ii) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.
>
> (b) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

11 U.S.C. § 364(d).

45. Accordingly, the Debtors may incur "priming" liens under the DIP Facility if either (a) the Prepetition Lender has consented or (b) the Prepetition Lender's interests in collateral are adequately protected.

46. Here, the Debtors have amply satisfied the necessary conditions under section 364(c) and (d) of the Bankruptcy Code for authority to enter into the DIP Loan Documents. Given the circumstances, the Debtors could not obtain credit on an unsecured, junior secured, or administrative expense basis. For all the reasons discussed further below, the Debtors respectfully submit that the Court should grant the Debtors' request to enter into the DIP Facility pursuant to section 364(c) and (d) of the Bankruptcy Code.

a. *The Debtors Are Unable to Obtain Financing on More Favorable Terms Than the DIP Facility*

47. In order to satisfy this test, a debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by section 364(c) or 364(d) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986) ("The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable."); *see also Pearl-Phil GMT (Far E.) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense); *In re Ames Dep't Stores, Inc.*, 115 B.R. at 40

(approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c), to obtain less onerous terms where debtor approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders); *In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). This is especially true where time is of the essence. *See In re Reading Tube Indus. And Lash Holdings Ltd (In re Reading Tube Indus.),* 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987) ("Given the `time is of the essence' nature of this type of financing, we would not require this or any debtor to contact a seemingly infinite number of possible lenders.").

48. Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor on an unsecured or administrative priority basis, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom. Anchor Say. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d at 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that the requirements of section 364 of the Bankruptcy Code were met); *In re Ames Dep 't Stores, Inc.*, 115 B.R. at 37-39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b) of the Bankruptcy Code).

49. As described more fully above and in the DIP Declaration, the Debtors sought financing from multiple market sources and engaged in extensive and good-faith negotiations with the DIP Credit Parties to obtain the best financing terms available. *See* DIP Decl. at ¶ 10. Due to

the uncertainties related to the Chapter 11 process, no lenders were willing to provide postpetition financing to meet the Debtors' immediate cash needs in the timing required on an unsecured, junior secured, or administrative priority basis. *Id*. The DIP Lender's prepetition loans are secured by perfected liens on substantially all of the Debtors' assets. *See id*. at ¶ 11. As a result, the DIP Lender was unwilling to offer consent for any alternative DIP proposal that would prime the DIP Lender's liens. *Id.* Simply put, the DIP Facility provided the Debtors with the liquidity they need at the lowest cost available, and, therefore, the Debtors have concluded that it the represents the Debtors' best available postpetition financing option. Accordingly, the Debtors, therefore, submit that they have met the standard for obtaining the proposed DIP Facility.

b. *The DIP Facility is Necessary to Preserve the Value of the Debtors' Estates*

50. The Debtors, as debtors in possession, have a fiduciary duty to protect and maximize their estates' assets. *See In re Mushroom Transp. Co.,* 382 F.3d 325, 339 (3d Cir. 2004); *Burtch v. Ganz,* 405 B.R. 148, 154 (E.D. Pa. 2009). The Debtors' immediate access to postpetition financing is essential to their ability to effectively carry out that duty. The Debtors need an immediate capital infusion to operate their business postpetition and to fund the Chapter 11 Cases. As of the Petition Date, the Debtors project that they lack sufficient funds to operate their enterprise and continue paying their debts as they come due absent access to postpetition financing, and they do not have readily available sources of additional financing. The liquidity to be provided by the DIP Facility, together with the use of Cash Collateral, will enable the Debtors to fund their operations during the course of the Chapter 11 Cases as they pursue restructuring alternatives and to preserve and maximize the value of their estates for the benefit of all parties in interest. *See* DIP Decl. at ¶¶ 12 & 15.

c. *The Terms of the DIP Facility and the Proposed Adequate Protection Are Fair, Reasonable, and Adequate Under the Circumstances*

51. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.,* 294 B.R. at 886; *see also In re Ellingsen MacLean Oil Co.,* 65 B.R. at 365 n.7 (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See Transcript of Record* at 740: 4-6, *In re Lyondell Chem. Co.,* No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009) ("[B]y reason of present market conditions, as disappointing as the [debtor-in-possession financing] pricing terms are, I find the provisions [of the financing] reasonable here and now.").

52. As set forth in the DIP Declaration, the Debtors believe that the fees to be paid under the DIP Facility are appropriate, particularly in light of the circumstances of the Chapter 11 Cases and market practice for debtor-in-possession financings of this size and type. *See* DIP Decl. at ¶ 19. All of the terms of the DIP Facility were extensively negotiated by the Debtors and their advisors to ensure that the terms were as favorable to the Debtors as possible under the circumstances, and the Debtors believe that such terms represent fair consideration for the critical financing being provided by the DIP Lender. *See id.* at ¶ 21. Accordingly, the fees provided for under the DIP Facility (which consist solely of professional fees) are reasonable and within market practice for debtor-in-possession financings of this size and type, and the Court should authorize the Debtors to pay the fees provided under the DIP Loan Documents in connection with the DIP Facility.

53. When priming of liens is sought under section 364(d) of the Bankruptcy Code, the courts also examine whether the prepetition secured creditors are being provided adequate

protection for the value of their liens. *See In re Utah 7000, L.L. C.*, No. 08-21869 (JAB), 2008 WL 2654919, at *3 (Bankr. D. Utah July 3, 2008); *In re Beker Indus. Corp., and Beker Phosphate Corp. (In re Beker Indus. Corp.),* 58 B.R. 725, 736-737 (Bankr. S.D.N.Y. 1986). Although the Bankruptcy Code does not define "adequate protection," section 361 of the Bankruptcy Code delineates a non-exhaustive list of the available types of adequate protection, including: periodic cash payments, additional liens, replacement liens, and the "indubitable equivalent of such entity's interest in such property." 11 U.S.C. § 361. The focus of the requirement is to protect a secured creditor from the diminution in the value of its interest in the particular collateral during the period of use. *See The Resolution Trust Corp., as Conservator of Cartaret Federal Savings Bank v. Swedeland Dev. Grp., Inc.; Haylex Acquisition Co.; Unsecured Creditors Committee; First Fidelity Bank, National Association (In re Swedeland Dev. Grp., Inc.),* 16 F.3d 552, 564 (3d Cir. 1994) ("[T]he whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.").

54. The Debtors propose to provide a variety of forms of adequate protection to protect the interests of the Prepetition Lender in the Debtors' property from any diminution in value of the Prepetition Collateral (including Cash Collateral) resulting from the (a) use of Cash Collateral by the Debtors and (b) the imposition of the automatic stay (in each case, subject to the Carve-Out and the liens and claims of the DIP Lender). These include (a) security interests in, and liens on the DIP Collateral, as applicable (the "Adequate Protection Liens"); (b)(i) payment in cash of all interest at the non-default rate arising from or related to the Prepetition Loan Documents at the applicable contract rates and at the times specified in the applicable Loan Documents through the Chapter 11 Cases (the "Secured Lender Payments") and (ii) the payment of all reasonable and documented fees, costs, expenses and charges of the Prepetition Lender to the extent payable under

the Prepetition Loan Documents (together with the Secured Lender Payments, the "Adequate Protection Payments"); and (c) an allowed superpriority administrative expense claim against the Debtors' estates under section 507(b) of the Bankruptcy Code, with priority over all administrative expense claims and unsecured claims against the Debtors and their estates of any kind or nature whatsoever, subject to the Carve-Out (the "Adequate Protection Superpriority Claim").

55. In addition to the proposed Adequate Protection Payments and Adequate Protection Superpriority Claims, the critical liquidity provided by the proposed DIP Facility permits the Debtors to avoid a disorderly chapter 7 liquidation and instead to conduct the plan and sale process in a way that will maximize the value of the Prepetition Collateral for the benefit of all parties in interest. Courts have held enhancement of collateral is a critical component of adequate protection and have considered "whether the value of the debtor's property will increase as a result of the . . . proposed financing." *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (finding that improvements to collateral financed by postpetition financing proceeds would improve collateral value in excess of loans and, therefore, provided adequate protection); *In re Sky Valley, Inc.*, 100 B.R. at 114 ("an increase in the value of the collateral . . . resulting from superpriority financing could result in adequate protection."), *aff' d sub nom. Anchor Say. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117 (N.D. Ga. 1989); *see In re Hubbard Power & Light*, 202 B.R. 680 (Bankr. E.D.N.Y. 1996) (approving postpetition financing to be used, in part, to fund cleanup costs of encumbered property anticipated to improve the value of the collateral, thereby serving the goal of adequate protection). The Debtors, therefore, further submit that the adequate protection as described herein is fair and reasonable and is sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

B. The Debtors Should Be Authorized to Use Cash Collateral

56. The Debtors should be permitted to use Cash Collateral pursuant to section 363(c)(2) of the Bankruptcy Code, which provides, in relevant part, that a debtor "may not use, sell, or lease cash collateral . . . unless: (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code further provides that "on request of an entity that has an interest in property . . . to be used, sole, or leased, by the trustee, the court . . . shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." *Id. §* 363(e).

57. The Adequate Protection Payments, the Adequate Protection Liens and the Adequate Protection Superpriority Claims, described above, are intended to protect the Prepetition Lender from any diminution in the value of their interests in the Prepetition Collateral resulting from the Debtors' use thereof during the pendency of the Chapter 11 Cases.

58. While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes adequate protection on a case-by-case basis. *See, e.g., In re Swedeland Dev. Grp., Inc.,* 16 F.3d at 564 ("[A] determination of whether there is adequate protection is made on a case by case basis."); *In re Martin,* 761 F.2d 472, 474 (8th Cir. 1985) ("[S]uch matters are to be left to case-by-case interpretation and development." (cleaned up)); *In re Satcon Tech. Corp.,* No. 12-12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012) (same). The adequate protection offered here is traditional, appropriate, and routinely granted—including in this district. *See, e.g., In re MD Helicopters, Inc.,* No. 22-10263 (KBO) (Bankr. D. Del. Apr. 26, 2022) [D.I. 205] (granting prepetition secured parties adequate protection liens, including liens on a depositary account funded postpetition, superpriority claims subject to a Carve-Out, fees, and expenses, and

requiring that the debtors deliver certain financial reports and budget compliance documents); *In re BHCosmetics Holdings, LLC,* No. 22-10050 (CSS) (Bankr. D. Del. Mar. 9, 2022) [D.I. 217] (granting certain prepetition secured parties adequate protection liens, superpriority administrative claims, fees, expenses, and control over all deposit accounts, and requiring the debtors to provide certain budget and financial reports).

59. In light of the foregoing, the Debtors further submit that the proposed Adequate Protection Payments, the Adequate Protection Liens and the Adequate Protection Superpriority Claims, to be provided for the benefit of the Prepetition Lender, are fair and appropriate under the circumstances and will ensure that the Debtors are able to continue using the Cash Collateral, subject to the terms and conditions set forth in the Proposed Interim Order, for the benefit of all parties in interest and the Debtors' estates.

C. The DIP Lender Should Be Afforded Good-Faith Protection Under Section 364(e) of the Bankruptcy Code

60. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. 11 U.S.C. § 364(e). Section 364(e) of the Bankruptcy Code provides as follows:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

Id.

61. The DIP Facility is the result of (a) the Debtors' reasonable and informed determination that the DIP Lender offered the most favorable terms on which to obtain vital

postpetition financing and (b) extensive arms'-length, good-faith negotiations between the Debtors and the DIP Lender. *See* DIP Decl. ¶¶ 20-21. The Debtors submit that the terms and conditions of the DIP Facility is reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to the DIP Lender, or any other party to the DIP Loan Documents other than as described herein. Accordingly, the Court should find that the obligations arising under the DIP Facility and other financial accommodations made to the Debtors have been extended by the DIP Lender in "good faith" within the meaning of section 364(e) of the Bankruptcy Code and should therefore hold that the DIP Lender is entitled to all of the protections afforded thereby.

D. The Roll Up of the Prepetition Tillou Obligations are Appropriate

62. The proposed Roll Up of the Prepetition Tillou Obligations into the DIP Facility is also an exercise of the Debtors' sound business judgment. *See* DIP Decl. at ¶ 19. Upon entry of the Proposed Interim Order, the Debtors seek to have the Prepetition Tillou Obligations held by the DIP Lender rolled up and converted into new term loans for every dollar of principal amount of the new money term loans extended (*i.e.*, up to $6,957,000). *Id.* at ¶ 13. The Debtors submit that the Roll Up is appropriate and reasonable given the facts and circumstances.

63. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third Circuit that such transactions should be approved when they are supported by a sound business purpose. *See In re Abbots Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor's use of assets outside the ordinary course of business under section 363(b) of the Bankruptcy Code should be approved if the debtor can demonstrate a sound business justification for the proposed transaction). The business judgment rule shields a debtor's

management from judicial second-guessing. *In re Johns-Manville Corp*., 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986).

64. Repaying prepetition debt (often referred to as a "roll-up") is a common feature in debtor-in-possession financing arrangements. The importance of "roll-up" features in DIP facilities has been repeatedly recognized by courts in this district and others, and such courts have granted relief similar to the relief requested herein. *See, e.g., In re American Tire Distributors, Inc*., No. 24-12391 (CTG) (Bankr. D. Del. Oct. 25, 2024) [D.I. 90] (authorizing a DIP facility with a roll-up on a three-to-one basis upon entry of the interim order); *In re Never Slip Holdings, Inc*., No. 24-10663 (LSS) (Bankr. D. Del. Apr. 26, 2024) [D.I. 133] (authorizing $120.8 million DIP facility comprised of $30.8 million of new money and a $90 million roll-up); *In re Sientra, Inc*., No. 24-10245 (JTD) (Bankr. D. Del. Mar. 11, 2024) [D.I. 168] (authorizing $90 million DIP facility comprised of $22.5 million of new money and a $67.5 million roll-up); *In re Restoration Forest Products Group, LLC*, No. 24-10120 (KBO) (Bankr. D. Del. Feb. 1, 2024) (authorizing approx. $93.3 million DIP facility, including approx. $64.3 million roll-up) [D.I. 44]; *In re Virgin Orbit Holdings, Inc*., No. 23-10405 (KBO) (Bankr. D. Del. Apr. 5, 2023) [D.I. 71] (approving $42.5 million in roll-up of the debtors' prepetition debt, which represents approximately 57% of the of DIP); *In re Vesta Holdings, LLC*, No. 22-11019 (LSS) (Bankr. D. Del. Dec. 2, 2022) [D.I. 141] (authorizing $37.87 million DIP facility comprised of $12.62 of new money and a $25.25 million roll-up); *In re Phoenix Servs. Topco LLC*, Case No. 22-10906 (MFW) (Bankr. D. Del. Sept. 29, 2022) [D.I. 237] (authorizing $100 million DIP facility comprised of $25 million of new money and a $75 million roll-up); *In re Nine Point Energy Holdings, Inc*., No. 21-10570 (MFW) (Bankr. D. Del. March 17, 2021) [D.I. 240] (authorizing $13 million of new money and a roll-up of $39 million pursuant to interim order); *In re Remington Outdoor Co., Inc*., No. 18-10684 (BLS)

(Bankr. D. Del. Mar. 28, 2018) [D.I. 177] (authorizing approximately $338 million DIP and a roll-up of approximately $150 million, including a full ABL roll-up of $114 million, pursuant to interim order); *In re Bon-Ton Stores, Inc*., No. 18-10248 (MFW) (Bankr. D. Del. Feb. 6, 2018) [D.I. 352] (authorizing full roll-up of all $489 million outstanding prepetition revolving obligations pursuant to interim order); *In re Real Indus. Inc*., No. 17-12464 (KJC) (Bankr. D. Del. Nov. 20, 2017) [D.I. 348] (authorizing approximately $365 million DIP facility that included a creeping roll-up pursuant to interim order and a full rollup pursuant to entry of a final order of approximately $266 million prepetition debt).

65. As set forth in the DIP Declaration, the proposed roll up of the Prepetition Tillou Obligations owed to the DIP Lender are justified under the circumstances and indispensable part of the DIP Facility. *First*, the DIP Lender specifically negotiated for the Roll Up in the context of their commitment to provide the DIP Facility on the terms described herein including the funding of the Wind Down Budget. DIP Decl. at ¶ 19. The Debtors, on the one hand, and the DIP Lender, on the other, engaged in arms' length negotiations and ultimately agreed to the Roll Up as consideration for, among other things, the DIP Lender making available $11.6 million in new money to fund the Chapter 11 Cases as well as fund the Wind-Down Budget. *Id.* Indeed, without the Roll-Up, the DIP Lender has indicated that it would not have agreed to provide the DIP Facility, which is critical to the Debtors' ongoing ordinary course operations, the success of these Chapter 11 Cases, and maximizing the value of the bankruptcy estates for the benefit of the creditors and all parties in interest. *Id.*

66. *Second*, as discussed in the DIP Declaration, the Debtors have an immediate need to obtain the DIP Facility and use Cash Collateral and are unable to obtain financing on more favorable terms from sources other than the DIP Lender. *Id.* at ¶¶ 7-8. As such, the refinancing

of the Prepetition Tillou Obligations as part of the DIP Facility is critical to the Debtors' obtaining access to the liquidity necessary to preserve and maximize the value of their estates. The Roll Up benefit the Debtors' estates by allowing the Debtors to run a robust sale process as well fund the administration and liquidation of these Chapter 11 Cases.

67. *Third*, because of the nature of the creeping roll up, the Roll Up is subject to challenge during the Challenge Period and is, therefore, not prejudicial to the rights of creditors in the Chapter 11 Cases.

68. Given the circumstances, the Debtors' agreement to the Roll Up under the DIP Facility represents an exercise of the Debtors' sound business judgment and should be approved. *Id.* at ¶ 20.

E. The Automatic Stay Should Be Modified on a Limited Basis

69. The Proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to permit (a) the Debtors to grant the liens and claims provided for under the DIP Facility, (b) the Debtors to incur the liabilities and obligations contemplated in the DIP Loan Documents, (c) the Debtors to pay all amounts required in accordance with the DIP Loan Documents, (d) the DIP Lender, subject to certain limitations included in the Proposed Interim Order and the DIP Credit Agreement, to exercise remedies upon the occurrence and during the continuation of an Event of Default under the DIP Loan Documents following the Default Notice Period, and (e) the Debtors to implement all of the terms, rights, benefits, privileges, remedies, and provisions of the Proposed Interim Order and the DIP Loan Documents, including allowing the DIP Lender to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the Proposed Interim Order.

70. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements, and, in the Debtors' business judgment, are reasonable and fair under the circumstances of the Chapter 11 Cases. *See, e.g., In re Yellow Corp.,* No. 23-11069 (CTG) (Bankr. D. Del. Sept. 15, 2023) [D.I. 571]; *In re Lannett Co., Inc.,* No. 23-10559 (JKS) (Bankr. D. Del. June 7, 2023) [D.I. 230]; *In re Carestream Health, Inc.,* No. 22-10778 (JKS) (Bankr. D. Del. Sep. 27, 2022) [D.I. 179]; *In re OSG Group Holdings, Inc.,* No. 22-10718 (JTD) (Bankr. D. Del. Aug. 9, 2022) [D.I. 75]; *In re Armstrong Flooring, Inc.,* No. 22-10426 (MFW) (Bankr. D. Del. Jun. 7, 2022) [D.I. 311]; *In re MD Helicopters, Inc.*, No. 22-10263 (KBO) (Bankr. D. Del. Apr. 26, 2022) [D.I. 205]; *In re BHCosmetics Holdings, LLC,* No. 22-10050 (CS S) (Bankr. D. Del. Mar. 9, 2022) [D.I. 217]; *In re Alto Maipo Del. LLC,* No. 21-11507 (KBO) (Bankr. D. Del. Dec. 17, 2021) [D.I. 166]; *In re PWM Prop. Mgmt. LLC,* No. 21-11445 (MFW) (Bankr. D. Del. Dec. 13, 2021) [D.I. 241]; *In re Riverbed Tech., Inc.,* No. 21-11503 (CTG) (Bankr. D. Del. Nov. 18, 2021) [D.I. 89]. The Debtors, therefore, submit that the modification of the automatic stay as set forth in the Proposed Interim Order should be approved.

F. The Scope of the Carve-Out Is Appropriate

71. The DIP Facility and the Proposed Interim Order subject the security interests and administrative expense claims under the DIP Facility and Adequate Protection Payments to the Carve-Out. Such carve-outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any official committee appointed can reimburse their professionals in certain circumstances during an event of default under the terms of the debtor's postpetition financing. *See In re Ames Dep't Stores, Inc.*, 115 B.R. at 38 ("Absent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced."). Additionally, the Carve-Out protects against administrative insolvency during the course of the Chapter 11 Cases by ensuring that, notwithstanding the grant of superpriority claims and liens

under the DIP Facility and Adequate Protection Payments, assets remain for the payment of the fees of the office of the United States Trustee for the District of Delaware (the "U.S. Trustee") and professional fees of the Debtors and any official committee appointed in the Chapter 11 Cases.

72. Courts in this district and others routinely approve carve-out provisions agreed to by debtors and their postpetition lenders. *See, e.g.*, *In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 15, 2023) [D.I. 571]; *In re Lannett Co., Inc.*, No. 23-10559 (JKS) (Bankr. D. Del. June 7, 2023) [D.I. 230]; *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Sep. 27, 2022) [D.I. 179]; *In re OSG Grp. Holdings, Inc.*, No. 22-10718 (JTD) (Bankr. D. Del. Aug. 9, 2022) [D.I. 75]; *In re Armstrong Flooring, Inc.*, No. 22-10426 (MFW) (Bankr. D. Del. Jun. 7, 2022) [D.I. 311]; *In re MD Helicopters, Inc.*, No. 22-10263 (KBO) (Bankr. D. Del. Apr. 26, 2022) [D.I. 205]; *In re BHCosmetics Holdings, LLC*, No. 22-10050 (CSS) (Bankr. D. Del. Mar. 9, 2022) [D.I. 217]; *In re Alto Maipo Del. LLC*, No. 21-11507 (KBO) (Bankr. D. Del. Dec. 17, 2021) [D.I. 166]; *In re PWM Prop. Mgmt. LLC*, No. 21-11445 (MFW) (Bankr. D. Del. Dec. 13, 2021) [D.I. 241]; *In re Riverbed Tech., Inc.*, No. 21-11503 (CTG) (Bankr. D. Del. Nov. 18, 2021) [D.I. 89].

G. Failure to Obtain Immediate Interim Access to the DIP Facility Would Cause Immediate and Irreparable Harm

73. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Fed. R. Bankr. P. 4001(b)—(c). Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

74. The Debtors request that the Court hold and conduct a hearing to consider entry of the Proposed Interim Order authorizing the Debtors, to immediately withdraw and borrow funds

under the DIP Facility. The Debtors are at risk of suffering immediate and irreparable harm if the Proposed Interim Order approving the DIP Facility is not entered sooner than 14 days after service of the DIP Motion. The Debtors require access to the DIP Loans prior to the Final Hearing and entry of the Proposed Final Order to preserve and maximize value and, therefore, to avoid immediate and irreparable harm and prejudice to the Debtors' estates and all parties in interest.

REQUEST FOR FINAL HEARING

75. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, and to fix a time and date prior to the Final Hearing for parties to file objections to this Motion.

DEBTORS' RESERVATION OF RIGHTS

76. Nothing contained herein is intended or should be construed as, or deemed to constitute, an agreement or admission as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, a waiver or impairment of the Debtors' rights to dispute any claim on any grounds, or an assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claims under applicable bankruptcy and non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment or transfer made pursuant to the Court's order is not intended, and should not be construed, as an admission as to the amount, priority, character, or validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

EMERGENCY CONSIDERATION

77. Pursuant to Local Rule 9013-1(m), the Debtors respectfully request emergency consideration of this Motion under Bankruptcy Rule 6003(b). Bankruptcy Rule 6003 provides that, "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to

use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition[.]" Fed. R. Bankr. P. 6003. As set forth in this Motion and the Declarations, the Debtors believe that an orderly transition into chapter 11 is critical to preserve the value of the Debtors' estates and that any delay in granting the relief requested herein could cause immediate and irreparable harm. If the Debtors are not able to access the Interim DIP Loan in the near term, they may not be able to preserve the value of their estates through the chapter 11 process. Accordingly, the Debtors submit that the relief requested herein satisfies Bankruptcy Rule 6003.

COMPLIANCE WITH BANKRUPTCY RULE 6004(A) AND WAIVER OF BANKRUPTCY RULE 6004(H)

78. To implement successfully the relief sought herein, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates and economic stakeholders. Accordingly, the Debtors respectfully submit that ample cause exists to justify the (a) finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and (b) waiving of the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

79. The Debtors will provide notice of this Motion to (a) the U.S. Trustee; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Prepetition Lender; (d) the United States Attorney's Office for the District of Delaware; (e) the Offices of the State Attorneys General for each state in which the Debtors conduct their business; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; and (h) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Interim Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: December 4, 2024
Wilmington, Delaware

ASHBY & GEDDES, P.A.

/s/ Ricardo Palacio

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Proposed Co-Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
	)	Case No. 24-12728 (CTG)
Ideanomics, Inc., *et al.*,[1]	)	
	)	(Jointly Administered)
Debtors.	)	
	)	**Re: D.I. ___**

INTERIM ORDER PURSUANT TO SECTIONS 105, 361, 362, 363, 364 AND 507 OF THE BANKRUPTCY CODE AND RULES 2002, 4001, 6003, 6004 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (I) AUTHORIZING THE DEBTORS TO (A) USE CASH COLLATERAL, (B) OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING AND GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE CLAIMS, AND (C) PROVIDE ADEQUATE PROTECTION, (II) MODIFYING THE AUTOMATIC STAY, (III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion") of the above-captioned debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), for the entry of an order pursuant to sections 105, 361, 362, 363, 364, and 507 of chapter 11 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and rules 2002-1, 4001-2, 9006-1, and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure for the District of Delaware (the "Local Rules") (i) authorizing the Debtors to (a) use cash collateral, (b) obtain senior secured superpriority postpetition financing and granting liens and superpriority administrative expenses claims subject and subordinate to the Carve Out

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number or state identification number, are: Ideanomics, Inc. (8374); Wireless Advanced Vehicle Electrification, LLC (6793); Solectrac, Inc. (4653); Timios Holdings Corp. (0190); Justly Holdings Inc. (3657); Justly Markets LLC f/k/a Delaware Board of Trade Holdings, Inc. (5107); VIA Motors International, Inc. (7063); and VIA Motors, Inc. (0185). The headquarters for the above-captioned Debtors is located at 1441 Broadway, 5th Floor, Suite 5116, New York, New York 10018.

(as defined below), and (c) provide adequate protection, (ii) scheduling interim and final hearings, and (iii) granting related relief, the Debtors sought, among other things, the following relief:

(i) authorizing Debtors Ideanomics, Inc. ("Ideanomics"), Solectrac, Inc. ("Solectrac"), Wireless Advance Vehicle Electrification, LLC ("WAVE"), Via Motors International, Inc. ("Via International"), Via Motors, Inc. ("Via Motors"), Justly Holdings Inc. ("Justly Holdings"), Justly Markets LLC ("Justly Markets"), and Timios Holdings Corp. ("Timios"), as borrowers (Ideanomics, Solectrac, WAVE, Via International, Via Motors, Justly Holdings, Justly Markets, and Timios together, the "Borrowers"), to obtain a senior secured superpriority debtor-in-possession financing facility (the "DIP Facility") pursuant to the terms and conditions herein, the terms and conditions set forth in the credit agreement attached hereto as **Exhibit 1** (as may be amended, restated, supplemented or otherwise modified from time to time, in each case with the consent of the DIP Lender (as defined below), the "DIP Credit Agreement"[2], collectively with this order, this "Interim Order", the Final Order (as defined below), the Budget (as defined below), and all other agreements, documents, and instruments delivered or executed in connection therewith to the extent that the DIP Lender determines there is a need for such other agreements, documents, and instruments, in each case as amended, restated, supplemented, or otherwise modified from time to time, the "DIP Loan Documents") provided by Tillou Management and Consulting LLC, as lender (in such capacity, together with any successors and assigns permitted under the DIP Loan Documents, the "DIP Lender" and, in such capacities as DIP Lender and Prepetition Lender (as defined below), "Tillou"), which DIP Facility shall be available, subject to the terms and conditions set forth in this Interim Order and the other DIP Loan Documents, (1) during the period (the "Interim Period") from the date hereof through and

[2] Capitalized terms used but not defined herein have the same meaning ascribed to such terms in the DIP Credit Agreement or the Motion, as appropriate.

including the date of entry of the Final Order by this Court, new money term loans in the aggregate amount of up to $6,957,000, plus the dollar for dollar roll-up of Prepetition Obligations into new term loans based on the interim funding in accordance with Section 2.1(a)(ii) of the DIP Credit Agreement (as defined herein) (the "Interim DIP Loan") and (2) upon entry of the Final Order, new money term loans in the aggregate amount of up to $11,619,000, plus the roll-up of the remaining Prepetition Obligations into new term loans (the "Final DIP Loan," together with the Interim DIP Loan, collectively, the "DIP Loan");

(ii) the Court's authorization for the Debtors to execute, deliver, and perform, as applicable, under the DIP Credit Agreement and all other DIP Loan Documents, and to perform such other and further acts as may be necessary, appropriate, or desirable in connection therewith;

(iii) the Court's authorization for the Debtors to use proceeds of the DIP Loans solely in accordance with the Budget (as defined below) annexed hereto as **Exhibit 2** (as updated from time to time in accordance with the terms of the DIP Credit Agreement and the other DIP Loan Documents, subject to the prior approval of the DIP Lender in its sole discretion, the "Initial Budget"), subject to the variances permitted under the DIP Credit Agreement and as otherwise provided herein and in the other DIP Loan Documents;

(iv) the Court's authorization to grant to the DIP Lender, in respect of the DIP Obligations (as defined below), a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code and first priority priming liens on and security interests in substantially all assets and property of the Debtors (now owned or hereafter acquired) pursuant to 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, in each case as and to the extent, set forth more fully below and in the DIP Loan Documents;

(v) the Court's authorization for the Debtors to use "cash collateral" as such term is defined in section 363 of the Bankruptcy Code in which the Prepetition Lender (as defined below) or the DIP Lender has an interest (the "Cash Collateral") solely in accordance with the Budget and the DIP Credit Agreement, subject to the variances permitted under the DIP Credit Agreement;

(vi) the Court's authorization to grant, as of the Petition Date, adequate protection for the benefit of Tillou (in its capacity as the lender under the Prepetition Loan Documents, the "Prepetition Lender"), as set forth more fully below, including the Adequate Protection Superpriority Claim, Adequate Protection Liens, and Adequate Protection Payments (each as defined below), to the extent of and as compensation for any Diminution in Value (as defined below), and the Debtors' satisfaction of the Milestones (as defined below) in accordance with the DIP Credit Agreement;

(vii) the modification or waiver by the Court of the automatic stay imposed by section 362 of the Bankruptcy Code and any other applicable stay (including Bankruptcy Rule 6004) to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility and this Interim Order and the other DIP Loan Documents, and to provide for the immediate effectiveness of this Interim Order;

(viii) the scheduling by the Court of a final hearing (the "Final Hearing") to consider entry of an order (the "Final Order") granting the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing and the transactions contemplated by the Motion; and

(ix) entry of the Final Order.

The Court having considered the Motion, the terms of the DIP Facility and the DIP Loan Documents (including the DIP Credit Agreement), the *Declaration of Alpesh Amin in Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Senior Secured Superpriority Postpetition Financing and Granting Liens and Superpriority Administrative Claims, and (C) Provide Adequate Protection, (II) Scheduling a Final Hearing, and (III) Granting Related Relief* [D.I. [●] (the "DIP Declaration"), the *Declaration of Alpesh Amin in Support of Chapter 11 Petitions and First Day Pleadings* [D.I. [●] (the "First Day Declaration"), and the evidence submitted at the hearing held before this Court on [●], 2024, to consider entry of this Interim Order (the "Interim Hearing"); and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing and is otherwise fair and reasonable and in the best interests of the Debtors, their creditors, and their estates, and essential for the continued operation of the Debtors' businesses and maximization of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Credit Agreement is a sound and prudent exercise of the Debtors' business judgment; and all objections and any reservations of rights included therein, if any, to the entry of this Interim Order having been withdrawn, resolved, or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. **Petition Date**. On December 4, 2024, (the "Petition Date"), the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy

3 The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the

Court for the District of Delaware (the "Court"). The Debtors have continued in the management and operation of their businesses and property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

B. **Jurisdiction and Venue**. The Court has jurisdiction over this proceeding, pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* dated February 29, 2012, from the United States District Court for the District of Delaware. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases and the proceeding on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation**. As of the date hereof, no official committee of unsecured creditors has been appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (a "Committee").

D. **Notice**. The Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Proper, timely, adequate, and sufficient notice of the Interim Hearing and the relief requested in the Motion has been provided to (a) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), (b) counsel to the Prepetition Lender and DIP Lender, (c) all other parties asserting a lien on or a security interest in the assets of the Debtors to the extent reasonably known to the Debtors, (d) the Office of the United States Attorney General for the State of Delaware, (e) the Internal Revenue Service, (f) those creditors holding the 30 largest unsecured claims against the Debtors' estates (excluding insiders), (g) the Securities and Exchange Commission, and (h) all parties who have filed a notice of appearance and request for service of

extent that any of the following conclusions of law constitutes finding of fact, they are adopted as such. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such.

papers pursuant to Bankruptcy Rule 2002 (the "Notice Parties"). Under the circumstances, such notice of the Interim Hearing and the relief requested in the Motion constitutes due, sufficient, and appropriate notice and complies with the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), (c), and (d), and the Local Rules, and no other or further notice need be provided for entry of this Interim Order.

E. **Prepetition Indebtedness**. Debtor Ideanomics represents that it is party to several prepetition financing arrangements with the Prepetition Lender, including that certain Promissory Note, dated December 13, 2022, by and between Ideanomics and Tillou, in the original principal amount of $2,000,000; that certain Promissory Note, dated March 19, 2023, by and between Ideanomics and Tillou, in the original principal amount of $2,000,000; that certain Amended and Restated Promissory Note, dated April 25, 2024, by and between Ideanomics and Tillou, in the original principal amount of $4,137,095; that certain Amended and Restated Promissory Note, dated May 29, 2024, by and between Ideanomics and Tillou, in the original principal amount of $7,217,095; that certain Amended and Restated Promissory Note, dated June 18, 2024, by and between Ideanomics and Tillou, in the original principal amount of $7,862,095; that certain Amended and Restated Promissory Note, dated July 19, 2024, by and between Ideanomics and Tillou, in the original principal amount of $8,638,095; that certain Amended and Restated Promissory Note, dated August 9, 2024, by and between Ideanomics and Tillou, in the original principal amount of $10,382,095; and that certain Amended and Restated Promissory Note, dated November 5, 2024, by and between Ideanomics and Tillou (as amended by that certain *Amendment No. 1 to Amended and Restated Promissory Note* by and between Ideanomics and Tillou dated November 25, 2024), in the principal amount of $14,347,850.64 (together, with all other

amendments, amendments and restatements, supplements, and all documentation entered in connection therewith, the "Prepetition Promissory Notes").

F. Additionally, the Debtors represent that, pursuant to that certain *Secured Debenture Purchase Agreement* (the "SDPA") dated as of October 25, 2022 by and between Ideanomics and YA II PN, Ltd. ("Yorkville"), Ideanomics issued to Yorkville, and Yorkville purchased from Ideanomics, the Specified Debentures as defined in the SDPA. Pursuant to that certain *Assignment and Assumption Agreement* (the "Assignment and Assumption Agreement," together with the Prepetition Promissory Notes, the "Prepetition Debt Documents"), dated October 29, 2024, by and among Yorkville, Tillou, and Ideanomics, Tillou purchased from Yorkville, and Yorkville assigned to Tillou, all of Yorkville's rights to and interests in, and assumed any of Yorkville's obligations under, the Specified Debentures and the other Debenture Documents, as defined in the Assignment and Assumption Agreement (this assigned and assumed indebtedness, along with the indebtedness issued under the Prepetition Promissory Notes, the "Prepetition Loans"). As of October 23, 2024, the amount owing to Yorkville under the SDPA was $4,524,500, which amount includes an outstanding principal balance in the amount of $3,915,000, accrued and unpaid interest in the amount of $490,451, and accrued and unpaid legal expenses of $119,049. In accordance with the Assignment and Assumption Agreement, such amounts are now owed to the Prepetition Lender.

G. **Stipulations as to Prepetition Obligations**. Without limiting the rights of any party in interest as and to the extent set forth in paragraph 11 hereof, after consultation with their attorneys, the Debtors permanently, immediately, and irrevocably admit, acknowledge, represent, stipulate, and agree with the provisions set forth in this paragraph G which stipulations shall be binding on the Debtors, their estates, and all parties in interest (collectively, the "Stipulations"):

(i) **Prepetition Obligations**. As of the Petition Date, the Debtors are justly and lawfully indebted and liable to the Prepetition Lender under the Prepetition Loan Documents (as defined below), without objection, defense, counterclaim, or offset of any kind, in the aggregate amount of not less than $18,872,350.64 with respect to the Prepetition Loans (on account of principal and certain accrued and unpaid prepetition interest and fees), plus accrued and accruing (both before and after the Petition Date) and unpaid interest (including at the default rate), late fees, liquidated damages, other fees and expenses, and all other obligations under the Prepetition Loan Documents, including any and all attorneys', accountants', consultants', appraisers' and financial and other advisors' fees that are chargeable or reimbursable under the Prepetition Loan Documents (collectively, the "Prepetition Obligations").

(ii) **Enforceability of the Prepetition Obligations**. The Prepetition Loan Documents and the Prepetition Obligations are (a) legal, valid, binding, enforceable, and non-avoidable obligations against the Debtors and (b) not subject to any contest, attack, objection, recoupment, defense, counterclaim, offset, subordination, recharacterization, avoidance, or other claim, cause of action, or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff, deduction, or defense of any kind, nature, or description that would in any way impair, reduce, or affect the validity, enforceability, and non-avoidability of any of the Prepetition Obligations.

(iii) **Validity, Perfection, and Priority of the Prepetition Liens**. The liens granted by the Debtors under the Prepetition Loan Documents (the "Prepetition Liens") for the benefit of the Prepetition Lender as security for the Prepetition Obligations (i) under that certain Pledge Agreement between Ideanomics and Tillou, dated as of December 13, 2022, (ii) under that

certain Pledge Agreement between Ideanomics and Tillou, dated as of March 19, 2023, (iii) under that certain Pledge Agreement between Ideanomics and Tillou, dated as of April 25, 2024, (iv) under that certain Guaranty and Suretyship Agreement between the Borrowers and Tillou, dated as of November 5, 2024 and (v) under that certain Security Agreement between the Borrowers and Tillou, dated as of November 5, 2024 (collectively, the "Prepetition Security Documents," and together with the Prepetition Debt Documents, the "Prepetition Loan Documents"), encumber substantially all of the Debtors' assets and property and all proceeds thereof (collectively, the "Prepetition Collateral"). The Prepetition Liens on the Prepetition Collateral have been properly recorded and perfected under applicable law and are legal, valid, binding, enforceable, non-avoidable, and not subject to contest, avoidance, attack, offset, recharacterization, subordination, or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law, or otherwise, and were granted to or for the benefit of the Prepetition Lender for fair consideration and reasonably equivalent value. As of the Petition Date, (a) the Prepetition Liens are senior in priority over any and all other liens on the Prepetition Collateral, subject only to any permitted liens set forth in the Prepetition Loan Documents (the "Prepetition Permitted Liens") which, as of the Petition Date, were senior to the Prepetition Liens (solely to the extent any such Prepetition Permitted Liens were (i) valid, properly perfected, and non-avoidable as of the Petition Date or (ii) perfected after the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code), (b) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the Prepetition Loan Documents, (c) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge

or defense including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or any other applicable law, and (d) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against the Prepetition Lender or any of its respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon, or related to the Prepetition Loan Documents, (e) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, perfection, and priority of the liens securing the Prepetition Obligations, and (f) the Prepetition Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(iv) **Indemnity**. Tillou and its Related Parties (as defined below) have acted in good faith and without negligence, misconduct, or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the DIP Facility and the use of Cash Collateral, including in respect of the granting of the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, the Adequate Protection Superpriority Claim (each as defined below), and any of the other rights, privileges, remedies, and protections granted hereunder or under the DIP Loan Documents (including the DIP Credit Agreement), any challenges or objections to the DIP Facility or the use of Cash Collateral, and all documents related to and all transactions contemplated by the foregoing. Accordingly, without limitation to any other right to indemnification (including any and all rights of the Prepetition Lender to indemnification under the Prepetition Loan

Documents), Tillou and each of its respective affiliates, officers, directors, fiduciaries, employees, agents, advisors, attorneys, and representatives (collectively, the "Related Parties") shall be and hereby are indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof or in any way related thereto. No exception or defense in contract, law, or equity exists as to any obligation set forth, as the case may be, in this paragraph G(iv), in the Prepetition Loan Documents, or in the DIP Credit Agreement, to indemnify and/or hold harmless Tillou and any Related Party, as the case may be, and any such defenses are hereby waived.

(v) **No Control**. Tillou is not deemed to be a control person or insider of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the DIP Facility, the DIP Loan Documents (including the DIP Credit Agreement), and/or the Prepetition Loan Documents.

(vi) **No Claims, Causes of Action**. As of the date hereof, there exist no claims or causes of action against Tillou or its Related Parties with respect to, in connection with, related to, or arising from the Prepetition Loan Documents and/or the DIP Loan Documents (including the DIP Credit Agreement) that may be asserted by the Debtors or any other person or entity.

(vii) **Cash Collateral**. Any and all of the Debtors' cash, whether existing as of the Petition Date or thereafter, wherever located (including, without limitation, all cash or cash equivalents in the control of or on deposit or maintained by the Debtors in any account or accounts, any amounts generated by the sale or other disposition of Prepetition Collateral, and all income, proceeds, products, rents or profits of any Prepetition Collateral), constitutes Cash Collateral of the Prepetition Lender.

(viii) **Default**. The Debtors are in default under the Prepetition Loan Documents and an event of default has occurred thereunder.

(ix) **Release**. Effective as of the date of entry of a Final Order which grants such relief, the Debtors and their estates hereby forever and irrevocably release, discharge, and acquit the former, current and future (a) DIP Lender, (b) the Prepetition Lender, (c) the Related Parties, (d) Affiliates of Tillou, and (e) officers, employees, directors, agents, representatives, owners, members, partners, financial and other advisors and consultants, legal advisors, shareholders, managers, consultants, accountants, attorneys, investment committee members, sub advisors and predecessors and successors in interest of Tillou and its Affiliates, in each case acting in their respective capacities as such (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the Prepetition Loans, the DIP Facility (including, for the avoidance of doubt, the DIP Loans), the DIP Loan Documents (including the DIP Credit Agreement), the Prepetition Loan Documents, and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called "lender liability" or equitable subordination claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection, or avoidability of the liens or claims of the Prepetition Lender or the DIP Lender (the "Releases"); *provided* that nothing in this paragraph is intended to limit or release any commitments and obligations of the DIP Lender under the DIP Credit Agreement or this Interim

Order. The Debtors further waive and release any defense, right of counterclaim, right of setoff or deduction to the payment of the Prepetition Obligations and the DIP Obligations which the Debtors now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to the entry of this Interim Order by the Court.

(x) **Sale and Credit Bidding**. Subject to the provisions of section 363(k) of the Bankruptcy Code, Tillou shall have the right to credit bid up to the full amount of the applicable outstanding Prepetition Obligations, if any, and the DIP Obligations, in each case including, without limitation, any accrued interest and fees, in a sale of any DIP Collateral (as defined below) or Prepetition Collateral, as applicable, and whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, or otherwise.

H. **Immediate Need for Postpetition Financing and Use of Cash Collateral**. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2). Good cause has been shown for entry of this Interim Order. An immediate need exists for the Debtors to use Cash Collateral on an interim basis and to obtain credit in an amount up to the Interim DIP Loan pursuant to this Interim Order and the DIP Credit Agreement in order to, among other things, enable the orderly continuation of their operations and to administer and preserve the value of their estates. In the absence of the immediate availability of such funds and liquidity in accordance with the terms hereof, the ability of the Debtors to maintain business relationships with their vendors, suppliers, licensors, licensees, and customers, to retain and pay their employees and otherwise finance their operations, including to continue to operate as a going concern, would not be possible, and immediate and irreparable harm to the Debtors and their estates and creditors would occur. Thus, the ability of the Debtors to preserve and maintain

the value of their assets and maximize returns for creditors requires the availability of working capital from the DIP Loans and the use of Cash Collateral.

I. **Roll-Up Loans**. Upon entry of this Interim Order and in accordance with Section 2.1(a)(ii) of the DIP Credit Agreement, and subject to paragraph 11 below, the Prepetition Obligations, (i) on a dollar for dollar basis, shall be rolled up and converted into DIP Obligations with the Interim DIP Loan on a final basis upon entry of this Interim Order and (ii) all remaining Prepetition Obligations shall be rolled up and converted into DIP Obligations upon entry of the Final Order (the "Roll-Up"). Tillou would not otherwise consent to the use of its Cash Collateral and would not be willing to provide the DIP Facility nor extend credit to the Debtors without the inclusion of the Roll-Up and conversion of the Prepetition Obligations as provided herein. The Roll-Up will enable the Debtors to obtain urgently needed financing to administer their Chapter 11 Cases, to fund their operations, and to maximize value for all parties in interest.

J. **No Credit Available on More Favorable Terms**. The DIP Credit Agreement is the best source of debtor-in-possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been unable to obtain credit on more favorable terms and conditions than those provided in this Interim Order, including for (a) adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense, (b) credit for money borrowed with priority over any or all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code, (c) credit for money borrowed secured by a lien on property of the estates that is not otherwise subject to a lien, or (d) credit for money borrowed secured by a junior lien on property of the estates which is subject to a lien. The Debtors are unable to obtain credit for borrowed money without granting the DIP Liens and the DIP Superpriority Claim to (or for the benefit of) the DIP

Lender and without granting the adequate protection as set forth herein (in each case, subject to the Carve-Out (as defined below)).

K. **Use of Cash Collateral and Proceeds of the DIP Facility, DIP Collateral, and Prepetition Collateral**. The Debtors represent and stipulate that all of the Debtors' cash, cash equivalents, negotiable instruments, investment property, and securities constitute Cash Collateral of the Prepetition Lender and the DIP Lender. All Cash Collateral, all proceeds of the Prepetition Collateral and the DIP Collateral, including proceeds realized from any sale or disposition thereof, or from payment thereon, and all proceeds of the DIP Facility (net of any amounts used to pay fees, costs, and expenses payable under the DIP Facility pursuant to this Interim Order or the Final Order) shall be used or applied in accordance with the terms and conditions of this Interim Order, the Budget (subject to variances permitted under the DIP Credit Agreement and hereunder), the Wind-Down Budget, if applicable, and the DIP Loan Documents (including the DIP Credit Agreement) and for no other purpose.

L. **Adequate Protection for the Prepetition Lender**. The Prepetition Lender has negotiated in good faith regarding the Debtors' use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estates and the continued operation of their businesses, in accordance with the terms hereof and the Budget (subject to variances permitted under the DIP Credit Agreement) or the Wind-Down Budget, if applicable. The Prepetition Lender has agreed to permit the Debtors to use the Prepetition Collateral, including the Cash Collateral, in accordance with the terms hereof and the Budget or the Wind-Down Budget, if applicable (subject to variances permitted under the DIP Credit Agreement) during the Interim Period subject to the terms and conditions set forth herein, including the protections afforded parties acting in "good faith" under section 364(e) of the Bankruptcy Code. The Prepetition Lender

is entitled to the adequate protection as and to the extent set forth herein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code, subject to paragraph 11 hereof. Based on the Motion and on the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including the Cash Collateral) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the Prepetition Lender's consent thereto; *provided* that nothing in this Interim Order shall (i) be construed as a consent by the Prepetition Lender (a) that it would be adequately protected in the event debtor-in-possession financing is provided by a third party (i.e., other than the DIP Lender) or (b) to the terms of any other such financing, including the consent to any lien encumbering the Prepetition Collateral (whether senior or junior) or to the use of Cash Collateral (except under the terms hereof), or (ii) prejudice, limit, or otherwise impair the rights of the Prepetition Lender to seek new, different, or additional adequate protection under any circumstances. The Prepetition Lender's consent to the Debtors' use of Cash Collateral and the granting of DIP Liens on the Prepetition Collateral is expressly conditioned upon entry of this Interim Order and does not and shall not constitute consent other than pursuant to this Interim Order and on the terms set forth herein.

M. **Sections 506(c) and 552(b); Marshaling**. In light of and in exchange for (i) the DIP Lender's willingness to provide the DIP Facility to the extent set forth herein, (ii) the DIP Lender's agreement that its liens and superpriority claims shall be subject and subordinate to the Carve-Out, as set forth herein, (iii) the Prepetition Lender's agreement that its Prepetition Liens and claims, including any adequate protection liens and claims, shall be subject and subordinate to the Carve-Out, as set forth herein, (iv) the consensual use of Cash Collateral consistent with the Budget (subject to the Permitted Variance) or the Wind-Down Budget, if applicable, and the terms

of this Interim Order, and (v) Tillou's agreement to the payment (in a manner consistent with the Budget or the Wind-Down Budget, if applicable, (subject to permitted variances as provided in the DIP Credit Agreement and subject to the terms and conditions of this Interim Order) of certain expenses of administration of these Chapter 11 Cases, subject to entry of a Final Order granting such relief, Tillou is entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code and a waiver of the provisions of section 506(c) of the Bankruptcy Code and of the equitable doctrine of marshaling and other similar doctrines upon entry of the Final Order.

N. **Extension of Financing**. The DIP Lender has indicated a willingness to provide financing to the Debtors in accordance with the DIP Loan Documents (including the DIP Credit Agreement and the Budget) and subject to (i) the entry of this Interim Order and the Final Order, (ii) approval of the terms and provisions of this Interim Order and the DIP Loan Documents (including the DIP Credit Agreement), including the milestones set forth in Section 6.1(i), (j) and (k) of the DIP Credit Agreement (the "Milestones") and the waivers set forth herein, and (iii) findings by this Court that such financing is essential to the Debtors' estates, that the DIP Lender is a good faith financier, and that the reversal or modification on appeal of the authorization hereunder for the Debtors to incur the debt under the DIP Facility, or the grant hereunder of the priority of the DIP Liens and the Adequate Protection Liens, does not affect the validity of such debt, or any priority of any such lien so granted as provided in section 364(e) of the Bankruptcy Code.

O. **Limitation of Liability**. The Debtors stipulate and, subject to paragraph 11, this Court finds that in making decisions to advance loans to the Debtors, in administering any loans, in permitting the Debtors to use Cash Collateral, in accepting the Budget, or in taking any other

actions permitted by this Interim Order or the DIP Loan Documents (including the DIP Credit Agreement), Tillou shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors.

P. **Business Judgment and Good Faith Pursuant to Section 364(e)**.

(i) The terms and conditions of the DIP Facility, and the interest and fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment, consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration;

(ii) all obligations incurred, payments made, and transfers or grants of security set forth in this Interim Order and the other DIP Loan Documents (including the DIP Credit Agreement) by the Debtors are granted to or for the benefit of the DIP Lender for fair consideration and reasonably equivalent value and are granted contemporaneously with the making of the loans and commitments and other financial accommodations secured thereby;

(iii) the DIP Facility was negotiated in good faith and at arm's length among the Debtors and the DIP Lender; and

(iv) the use of the proceeds to be extended under the DIP Facility will be so extended in good faith and for valid business purposes and uses, as a consequence of which the DIP Lender is entitled to the protection and benefits of section 364(e) of the Bankruptcy Code.

Q. **Relief Essential; Best Interest**. The relief requested in the Motion (and provided in this Interim Order) is necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and property and satisfies the requirements of Bankruptcy Rule 6003. It is in the best interest of the Debtors' estates

and consistent with the Debtors' exercise of their fiduciary duties that the Debtors are allowed to enter into the DIP Facility (including the Roll-Up), incur the DIP Obligations, grant the liens and claims contemplated herein and under the DIP Loan Documents (including the DIP Credit Agreement) to the DIP Lender and the Prepetition Lender, and use Prepetition Collateral, including Cash Collateral, as contemplated herein.

R. **Findings Regarding Corporate Authority**. The Debtors have all requisite corporate power and authority to enter into, ratify, and perform all of their obligations under the DIP Loan Documents (including the DIP Credit Agreement) to which they are a party.

S. **Immediate Entry**. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001.

NOW, THEREFORE, on the Motion of the Debtors and the record before this Court with respect to the Motion, including the record made during the Interim Hearing, and with the consent of the Debtors, the Prepetition Lender, and the DIP Lender, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. **Motion Granted**. The Motion is granted on an interim basis in accordance with the terms and conditions set forth in this Interim Order. Any objections to the Motion with respect to entry of this Interim Order, to the extent not withdrawn, waived, settled, or otherwise resolved, and all reservation of rights included therein, are hereby denied and overruled.

2. **DIP Facility**.

(a) **DIP Obligations**. The Debtors are expressly and immediately authorized and empowered to enter into the DIP Facility and to incur and to perform the DIP Obligations (including the Roll-Up) in accordance with and subject to this Interim Order and the other DIP

Loan Documents, to execute and deliver all DIP Loan Documents and all other related instruments, certificates, agreements, and documents, and to take all actions which may be reasonably required or otherwise necessary for the performance by the Debtors under the DIP Facility, including the creation and perfection of the DIP Liens described and provided for herein. The Debtors are hereby authorized and directed to pay all principal, interest, fees, expenses, indemnities, and other amounts described herein, in the DIP Credit Agreement, and in the other DIP Loan Documents as such shall accrue and become due hereunder or thereunder, including, without limitation, subject to paragraph 2(h) hereof, the reasonable and documented fees and expenses of the attorneys and financial and other advisors and consultants of the DIP Lender, as and to the extent provided for herein, in the DIP Credit Agreement, and in the other DIP Loan Documents (collectively, all loans, advances, extensions of credit, financial accommodations, fees (which shall be fully earned and non-refundable upon entry of this Interim Order), expenses, and other liabilities and obligations (including indemnities and similar obligations) in respect of DIP Loans, the DIP Facility, the DIP Credit Agreement, and the other DIP Loan Documents, including all "Obligations" under and as defined in the DIP Credit Agreement and the Roll-Up, as applicable, the "DIP Obligations"). The DIP Credit Agreement, the other DIP Loan Documents, and all DIP Obligations shall represent, constitute, and evidence, as the case may be, valid and binding obligations of the Debtors, enforceable against the Debtors, their estates, and any successor thereto in accordance with their terms. All obligations incurred, payments made, and transfers or grants of security set forth in this Interim Order and in the other DIP Loan Documents by any DIP Loan Party are granted to or for the benefit of the DIP Lender for fair consideration and reasonably equivalent value and are granted contemporaneously with the making of the loans and commitments and other financial accommodations secured thereby. No obligation, payment, transfer, or grant of security under the

DIP Loan Documents as approved under this Interim Order shall be voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment, or counterclaim. The term of the DIP Facility shall commence on the date of entry of this Interim Order and end on the Maturity Date, subject to the terms and conditions set forth herein and in the DIP Loan Documents.

(b) **Authorization to Borrow**. In order to continue to operate its business, subject to the terms and conditions of this Interim Order and the DIP Loan Documents, the Debtors are hereby authorized to borrow under the DIP Facility and incur DIP Obligations (including the Roll-Up) during the Interim Period.

(c) **Conditions Precedent**. The DIP Lender shall have no obligation to make the DIP Loan or any other financial accommodation hereunder or under the DIP Loan Documents (and the Debtors shall not make any request therefor) unless all conditions precedent to making DIP Loans under the DIP Credit Agreement have been satisfied or waived in accordance with the terms of the DIP Credit Agreement.

(d) **DIP Collateral**. As used herein, "DIP Collateral" shall mean all assets, interests, rights, and property of any nature whatsoever of the Debtors, including, without limitation, all property in which the Debtors and their estates have an interest (whether tangible, intangible, real, personal or mixed), whether now owned or hereafter acquired and wherever located, before or after the Petition Date, including, without limitation, all accounts, proceeds of leases, inventory, equipment, equity interests or capital stock in subsidiaries, investment property, instruments, chattel paper, contracts, patents, copyrights, trademarks and other general intangibles, commercial litigation claims, cash, any investment of such cash, inventory, accounts receivable, including intercompany accounts (and all rights associated therewith), other rights to payment whether

arising before or after the Petition Date, any deposit accounts, "cash collateral accounts", and, in each case all amounts on deposit therein from time to time, the proceeds of all claims or causes of action, and all rents, products, offspring, profits, proceeds, and substitutions thereof (including, without limitation, all Prepetition Collateral and, subject to the entry of a Final Order granting such relief, all claims or causes of action of the Borrowers arising under sections 502(d), 542, 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code (the "Avoidance Actions") *provided that* the lien on Avoidance Actions shall be limited to the proceeds and property recovered in connection therewith).

(e) **DIP Liens**. Effective immediately upon the entry of this Interim Order and subject to the Carve-Out, as set forth more fully in this Interim Order, the DIP Lender is hereby granted the following security interests and liens, which shall immediately be valid, binding, perfected, continuing, enforceable, and non-avoidable without the need for execution by the Borrowers or the recordation or other filing by the DIP Lender of security agreements, account control agreements, pledge agreements, financing statements, or other similar documents or the possession or control by the DIP Lender of any DIP Collateral (all liens and security interests granted to the DIP Lender pursuant to this Interim Order, any Final Order, and the DIP Credit Agreement, the "DIP Liens"):

(i) pursuant to section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected first-priority liens on and security interests in all DIP Collateral that is not subject to any liens or encumbrances immediately prior to the Petition Date, subject only to the Carve-Out; and

(ii) pursuant to section 363(c)(3) and 364(d)(1) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully perfected first priority, priming liens on and security interests in all other DIP Collateral, which liens and security interests shall be subject only to (a) any valid, enforceable, perfected, and non-avoidable lien or security interest in favor of any person other than the Prepetition Lender that was in existence immediately prior to the Petition Date or that is perfected as permitted by Section 546(b) of the Bankruptcy

Code, in each case, with respect to any DIP Collateral comprised of Prepetition Collateral, solely to the extent such lien is senior to the Prepetition Liens (a "Permitted Encumbrance")[4] and (b) the Carve-Out, and senior to all other liens and encumbrances in respect of the DIP Collateral.

(f) **Other Provisions Relating to the DIP Liens**. Effective immediately upon entry of this Interim Order, the DIP Liens shall secure all of the DIP Obligations, to the extent and subject to the priorities set forth herein, and such liens (and any superpriority claims and other senior liens, including adequate protection liens, granted hereunder) shall at all times have a higher priority and shall remain senior to the rights of the Debtors, any chapter 7 or chapter 11 trustee, and any secured, administrative priority, unsecured or other claims of any party in these Chapter 11 Cases under the Bankruptcy Code (except as (and solely to the extent) expressly provided herein), and the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Claims, and the Adequate Protection Liens granted herein shall not be made or become subject, junior, or subordinated to any "priming" or other liens, nor made *pari passu* with any other lien, security interest, or claim heretofore or hereafter granted under section 364 of the Bankruptcy Code or otherwise, in these Chapter 11 Cases (except as (and solely to the extent) expressly provided herein) or any Successor Case (as defined below), including to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (ii) any lien or security interest existing on or arising on or after the Petition Date, including, without limitation, any lien or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, (iii) any intercompany or affiliate lien

[4] Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Encumbrance is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest, including but not limited to the Debtors, the DIP Lender, the Prepetition Lender, or Committee (if any), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Encumbrance and/or security interest.

or claim; or (iv) any other lien, claim, or security interest under sections 361, 363, or 364 of the Bankruptcy Code or otherwise, in each case other than as (and solely to the extent) expressly set forth herein. The DIP Liens and the Adequate Protection Liens shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases, upon the conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (each such case or proceeding, a "Successor Case"), and/or upon the dismissal of the Chapter 11 Cases. Subject to the entry of a Final Order granting such relief, the DIP Liens and the Adequate Protection Liens shall not be subject to section 510 of the Bankruptcy Code, to the "equities of the case" exception of section 552 of the Bankruptcy Code, or to section 506(c) of the Bankruptcy Code, or sections 549, 550, or 551 of the Bankruptcy Code.

(g) **Superpriority Administrative Claim Status**. The DIP Obligations shall, pursuant to section 364(c)(1) of the Bankruptcy Code, at all times constitute an allowed superpriority administrative expense claim (the "DIP Superpriority Claim") of the DIP Lender against the Debtors, and be payable from and have recourse to all assets and properties of the Debtors, with priority over any and all other administrative expenses, adequate protection claims, diminution in value claims, and all other claims asserted against the Debtors now existing or hereafter arising of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expenses or other claims arising under any other provisions of the Bankruptcy Code, including sections 105, 326, 327, 328, 330, 331, 363, 364, 365, 503, 506(b), 506(c), 507(a)(other than section 507(a)(1)), 507(b), 507(d), 546, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment, subject only to the Carve-Out, which DIP Superpriority

Claim shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered an administrative expense allowed under section 503(b) of the Bankruptcy Code and shall be payable from and have recourse to all pre- and postpetition assets and property, whether existing on the Petition Date or thereafter acquired, of the Debtors and all proceeds thereof. The DIP Superpriority Claim shall be subject and subordinate only to the Carve-Out. Other than as expressly provided herein, including in paragraph 13 hereof with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these Chapter 11 Cases or in any Successor Case and no priority claims are or will be senior to, prior to, or *pari passu* with the DIP Liens, the DIP Superpriority Claim, or any of the DIP Obligations or with any other claims of the DIP Lender arising hereunder or under the DIP Loan Documents (including the DIP Credit Agreement), or otherwise in connection with the DIP Facility.

(h) **Professional Fees and Expenses**. The Debtors are authorized and directed to pay, as adequate protection, all accrued and unpaid fees and reasonable and documented disbursements incurred, whether accrued before, on, or after the Petition Date, by the legal and financial advisors to the DIP Lender (the "DIP Lender Advisors"). The DIP Lender Advisors shall not be required to file applications seeking compensation for services or reimbursement of expenses with the Court or comply with the U.S. Trustee fee guidelines; *however*, any time that such professionals seek payment of fees and expenses from the Debtors, each professional shall provide summary copies of its fee and expense statements or invoices (which shall include a general description of the nature of the matters for which services were performed, a list of professionals who worked on the matter, their hourly rate (if such professionals bill at an hourly rate) and the number of hours each

professional billed and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work-product doctrine) to the U.S. Trustee and counsel to the Committee (if appointed), contemporaneously with the delivery of such fee and expense statements to the Debtors. After delivery of a fee and expense statement or invoice, the Debtors, the U.S. Trustee, and the Committee (if appointed) shall have ten (10) calendar days to raise an objection thereto. Any objection to the payment of such fees or expenses shall be made only on the basis of "reasonableness," and shall specify in writing the amount of the contested fees and expenses and the detailed basis for such objection. To the extent an objection only contests a portion of an invoice, the undisputed portion thereof shall be promptly paid. If any such objection to payment of an invoice (or any portion thereof) is not otherwise resolved between the objecting party and the issuer of the invoice, either party may submit such dispute to the Court for a determination as to the reasonableness of the relevant disputed fees and expenses set forth in the invoice. This Court shall resolve any dispute as to the reasonableness of any fees and expenses. For the avoidance of doubt and without limiting any of the foregoing or any other provision of this Interim Order, the fees specified in the "Costs and Expenses" section of the DIP Credit Agreement are, upon entry of this Interim Order and irrespective of any subsequent order approving or denying the DIP Facility or any other financing pursuant to section 364 of the Bankruptcy Code, entitled to all of the protections of section 364(e) of the Bankruptcy Code that may apply to such fees, and are deemed fully earned, indefeasibly paid, non-refundable, irrevocable and non-avoidable as of the date of this Interim Order.

3. **Authorization and Approval to Use Cash Collateral and Proceeds of DIP Facility**. Subject to the terms and conditions of this Interim Order and the other DIP Loan Documents to the adequate protection granted to or for the benefit of the Prepetition Lender as hereinafter set forth, the Debtors are authorized during the Interim Period (and not beyond) to (a) use the Cash Collateral and (b) request and use proceeds of the DIP Loans, in each case as set forth in the Budget (subject to variances permitted under the DIP Loan Documents) or the Wind-Down Budget, if applicable, and in accordance with this Interim Order the other DIP Loan Documents (including the DIP Credit Agreement). Notwithstanding anything herein to the contrary, subject only to the Debtors' rights under paragraphs 21(a) and (b) hereof and the Carve-Out, the Debtors' right to use proceeds of DIP Loan or to use Cash Collateral hereunder shall terminate on the Maturity Date. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates or proceeds resulting therefrom outside the ordinary course of business except as expressly permitted herein and in the other DIP Loan Documents (subject to any required Court approval).

4. **Adequate Protection for Prepetition Lender**. The Prepetition Lender shall receive adequate protection of its interests in the Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition Lender's interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, as a result of the use of Prepetition Collateral, including Cash Collateral, the priming of its interests in Prepetition Collateral by the DIP Facility and Carve-Out, and the imposition or enforcement of the automatic stay (collectively, "Diminution in Value"). As adequate protection and subject to paragraph 11 hereof, the Prepetition Lender will be granted the following:

(a) **Adequate Protection Liens**. Pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, effective as of the Petition Date and perfected without the need for execution by the Borrowers or the recordation or other filing by the Prepetition Lender of security agreements, account control agreements, pledge agreements, financing statements, or other similar documents or the possession or control by the Prepetition Lender of any DIP Collateral, the Prepetition Lender, solely to the extent of any Diminution in Value, shall be granted valid, binding, continuing, enforceable, fully perfected replacement and additional liens on and security interests in (collectively, the "Adequate Protection Liens") all DIP Collateral. The Adequate Protection Liens shall be junior only to the DIP Liens, the Carve-Out, and any Permitted Encumbrance, and senior to all other security interests in, liens on, or claims against the DIP Collateral. The Adequate Protection Liens shall be non-avoidable and shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code. The Adequate Protection Liens shall be enforceable against and binding upon the Borrowers, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in any Successor Case.

(b) **Adequate Protection Superpriority Claim**. To the extent of the aggregate Diminution in Value, the Prepetition Lender shall be granted allowed superpriority administrative expense claims against the Borrowers and their estates, as provided in section 507(b) of the Bankruptcy Code, immediately junior to the DIP Obligations and subject only to the Carve-Out, and with priority in payment over any and all other claims and administrative expense claims against the Borrowers, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 507(a)(other than section 507(a)(1)), 507(b), 546(c), 546(d), 552(b), 1113, 1114, and any other provision of the

Bankruptcy Code, and shall at all times be senior to the rights of the Borrowers, and any successor trustee or creditor in the Chapter 11 Cases or any Successor Case (the "Adequate Protection Superpriority Claims").

(c) **Adequate Protection Payments, Etc**. As further adequate protection, from and after entry of this Interim Order, the Prepetition Lender shall receive from the Debtors, (1) payment in cash, as and when due under the terms of the Prepetition Loan Documents, of all interest due under the Prepetition Loan Documents, calculated at the non-default rates under the Prepetition Loan Documents, and (2) (x) upon entry of this Interim Order, immediate cash payment of all accrued and unpaid fees and disbursements (including all reasonable and documented fees, out-of-pocket costs and expenses of legal, financial, and other advisory professionals of the Prepetition Lender (including, without limitation, Faegre Drinker Biddle & Reath LLP)) owing to the Prepetition Lender under the Prepetition Loan Documents, whether incurred prior to or after the Petition Date and (y) thereafter, when due, all fees and other amounts (including all reasonable and documented legal and advisory fees, out-of-pocket costs and expenses of legal, financial, and other advisory professionals of the Prepetition Lender (including, without limitation, Faegre Drinker Biddle & Reath LLP)) owing to the Prepetition Lender by the Debtors under the Prepetition Loan Documents, provided that payment of any fees and expenses of the Prepetition Lender's professionals incurred after entry of this Interim Order shall be subject to the notice and objection provisions of paragraph 2(h) (the "Adequate Protection Payments"). Payment of any amounts set forth in this clause (2)(y) shall not be subject to disgorgement or recharacterization.

5. **The Budget**.

(a) The Budget attached hereto as **Exhibit 2** constitutes an approved "Budget" under the DIP Credit Agreement and will be considered the "Initial Budget". The Borrowers will

subsequently provide the DIP Lender with an updated Budget every Friday until the Termination Date for the remaining weeks left under the Initial Budget. Each updated Budget shall be subject to the written approval of the DIP Lender in its sole discretion (each such approved budget, a "Supplemental Approved Budget" and together with the Initial Budget, the "Budget"); *provided* that until such time as the DIP Lender approves in writing (for which email from counsel to the DIP Lender to counsel to the Debtors shall suffice) any updated Budget, the Borrowers shall be subject to and be governed by the terms of the Initial Budget or such Supplemental Approved Budget, as applicable, then in effect in accordance with this Interim Order. The Budget may only be amended, supplemented, modified, restated, replaced, or extended in accordance with this Interim Order and the other DIP Loan Documents (including the DIP Credit Agreement). Any such amendment, supplement, modification, restatement, replacement, or extension in accordance with the DIP Credit Agreement may be effected without further order of the Court, so long as approved in writing by the DIP Lender, with notice to the Committee (if any). The Budget is an integral part of this Interim Order and has been relied upon by the DIP Lender to provide the DIP Facility and consent to this Interim Order.

(b) Pursuant to the terms of the DIP Loan Documents, the Borrowers shall provide to the DIP Lender (with a copy to the Committee, if any) a budget variance report (the "Budget Variance Report") on the Friday of every week until the Termination Date (except for the week during which this Interim Order is entered), and the Budget Variance Report shall set forth in reasonable detail actual receipts and disbursements of Borrowers, together with a statement certifying compliance with the Budget Covenant (as defined below) set forth below. The Borrowers shall not permit or suffer to exist, a negative variance in an amount not more than the greater of (i) 15% and (ii) $250,000 of total the total disbursements set forth in the Budget for such

period (as reflected in the Budget) in the aggregate from the amounts set forth in the Budget (each, a "Permitted Variance"), as measured on a cumulative basis (the "Budget Covenant"). The Debtors shall operate in accordance with the Budget, subject to the Permitted Variance, and all disbursements of the Debtors shall be consistent with the provisions of the Budget, subject in each case to any Permitted Variance provided herein and in the DIP Credit Agreement; *provided* that if the Actual Variance (as defined in the DIP Credit Agreement) for any period is less than or equal to the Permitted Variance, the amount by which the Actual Variance is less than the Permitted Variance shall be carried forward to the next period and added to the Permitted Variance for such next period.

(c) The DIP Lender shall have no obligation to permit the use of proceeds of DIP Loans or Cash Collateral, and the Borrowers shall have no authority to use proceeds of DIP Loans or Cash Collateral, other than in accordance with the Budget subject to the Permitted Variance, subject to the Budget Covenant and as set forth in this Interim Order.

(d) **Wind-Down Budget**. Notwithstanding anything to the contrary contained in this Interim Order, upon entry of this Interim Order, the Debtors are authorized to use a portion of the DIP Loans to fund a segregated account (the "Wind-Down Account") in the amount necessary to fund the wind-down budget attached hereto as **Exhibit 3** (the "Wind-Down Budget"). Upon the consummation of the sale of all, or substantially all, of the Debtors' assets (an "Asset Sale"), the Debtors shall be authorized to use the funds in the Wind-Down Account to wind-down their affairs and the estates in accordance with the Wind-Down Budget; *provided* that for the purposes of this paragraph 5(d), a sale of the "Purchased Assets" as defined in that certain Asset Purchase Agreement between certain of the Debtors and Tillou dated as of December 4, 2024, shall constitute a sale of all, or substantially all, of the Debtors' assets. Any excess amounts in the

Wind-Down Account after payment of all expenses in accordance with the Wind-Down Budget (including the Carve-Out) shall be subject in all respects to the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, and the Adequate Protection Superpriority Claim. Except for permitting the funding of the Wind-Down Account in an amount equal to the Wind-Down Budget from the Prepetition Collateral or the DIP Collateral, as applicable, Tillou shall not have any responsibility, liability, or obligation whatsoever to fund, direct payment or reimbursement of any fees or disbursements, or otherwise ensure that the Debtors fund the Wind-Down Account.

6. **Monitoring of Collateral**. Tillou and its consultants and advisors shall be given reasonable access to the Debtors' books, records, assets, and properties for purposes of monitoring and inspecting the Debtors' businesses and the value of the DIP Collateral at the Debtors' cost and expense during normal business hours and upon reasonable notice.

7. **Financial Reporting**. Without limitation of the requirements of the DIP Credit Agreement, the Debtors shall provide to the DIP Lender, with a copy to the Committee, if any, (and, in each case, its consultants, advisors, and professionals) (a) all financial information required under the DIP Loan Documents and (b) access upon reasonable notice and during regular business hours to the Debtors' books and records, assets, and properties for purposes of monitoring its businesses and the value of the DIP Collateral. The Debtors shall also provide such reports and information required to be provided in the DIP Credit Agreement and reasonably cooperate, discuss with, and provide to the DIP Lender (and, in each case, its professionals) all such information as may be reasonably requested. In addition, the Debtors hereby authorizes their accountants, attorneys, financial advisors, bankruptcy professionals, and consultants to cooperate, consult with, and provide to the DIP Lender (and its consultants, advisors and professionals) all such information as may be reasonably requested with respect to the business, results of operations

and financial condition of the Debtors consistent with the requirements set forth in the DIP Loan Documents.

8. **Milestones**. It is a condition to the DIP Facility and the use of Cash Collateral that the Debtors shall comply with the Milestones. The failure to comply with any Milestone shall constitute an Event of Default (as defined in the DIP Credit Agreement) in accordance with the DIP Credit Agreement.

9. **Subordination of Intercompany, Affiliate Liens**. All intercompany or affiliate liens of the Debtors, if any (other than any liens granted to the DIP Lender), will be contractually subordinated to the DIP Liens and the Adequate Protection Liens granted pursuant to this Interim Order and under the DIP Credit Agreement, on terms satisfactory to the DIP Lender.

10. **DIP Lien and Adequate Protection Replacement Lien Perfection**. Automatically upon entry of this Interim Order, the DIP Liens and the Adequate Protection Liens shall be deemed to be valid, binding, perfected, enforceable, non-avoidable, and effective by operation of law, and not subject to challenge as of the Petition Date, without the need of any further action of any kind. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and the Adequate Protection Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, account control agreement, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens and the Adequate Protection Liens or to entitle the DIP Liens and the Adequate Protection Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender may, in its sole discretion, file such financing statements, deeds of trust, mortgages, security agreements, account control agreements, notices of liens, and other similar documents and is hereby granted relief from

the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, deeds of trust, mortgages, security agreements, account control agreements, notices, and other agreements or documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Chapter 11 Cases. The Debtors shall execute and deliver to the DIP Lender all such financing statements, mortgages, security agreements, account control agreements, notices and other documents as the DIP Lender may reasonably request to evidence, confirm, validate, or perfect or to insure the contemplated priority of the DIP Liens and the Adequate Protection Liens, and the Debtors shall take all such further actions that may be required under any applicable law or that the DIP Lender or Prepetition Lender, as applicable, may reasonably request in order to grant, preserve, protect or perfect the DIP Liens and Adequate Protection Liens granted pursuant to this Interim Order. The DIP Lender, in its sole discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtors have real or personal property and, in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Interim Order. To the extent that the Prepetition Lender is the secured party under any account control agreements, listed as loss payee under any of the Debtors' insurance policies or is the secured party under any loan document, financing statement, deed of trust, mortgage, account control agreement, or other instrument or document which may otherwise be required under the law of any jurisdiction to create, validate, attach, perfect, or prioritize liens (any such instrument or document, a "Security Document"), then (i) such Prepetition Lender shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Lender, and such Prepetition Lender shall comply with the instructions of

the DIP Lender with respect to the exercise of such control and (ii) the DIP Lender is also hereby deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such Security Document, and shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Interim Order and the other DIP Loan Documents (including the DIP Credit Agreement).

11. **Reservation of Certain Third-Party Rights and Bar of Challenges and Claims**.

(a) The Debtors' stipulations, admissions, agreements, Releases, and waivers contained in this Interim Order, including the Stipulations, are and shall be irrevocably binding upon the Debtors and any and all of the Debtors' successors in interest and assigns (subject to the Challenge Period, including, without limitation, any chapter 7 or chapter 11 trustee, responsible person, examiner with expanded powers, or other estate representative) in all circumstances and for all purposes.

(b) The Stipulations and all other admissions, agreements, releases, and waivers set forth in this Interim Order also are and shall be binding upon all other persons and entities (including any Committee) and each of their respective successors in interest and assigns in all circumstances and for all purposes, unless, and solely to the extent that (i) such parties in interest (including any Committee) in each case with standing and requisite authority to do so (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so) have timely filed the proper pleadings, and timely commenced the appropriate proceedings under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set

forth below in this paragraph 11), (x) objecting to or challenging any of the Stipulations or (y) otherwise asserting or prosecuting any claims or causes of action against the Prepetition Lender or any of its respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees in connection with or related to the matters covered by the Stipulations (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge"), by the earlier of (i) the date that the Court sets as the deadline for the submission of bids related to the Asset Sale, and (ii) seventy-five (75) calendar days after the date of entry of this Interim Order for any party in interest with requisite standing (such period, the "Challenge Period" and the date that is the next calendar day after the termination of the Challenge Period shall be referred to as the "Challenge Period Termination Date"), as such date may be extended to any such party in interest by the Prepetition Lender or by any such later date as has been ordered by the Court for cause upon a motion filed and served within the Challenge Period (before giving effect to such extension) and (ii) the Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding, and any such judgment has become final and is not subject to any further review or appeal.

(c) Any Challenge not asserted by the timely and proper filing of a pleading by a party in interest with the requisite standing and authority as contemplated herein prior to the Challenge Period Termination Date (or any extension thereto) shall be deemed forever waived, released, and barred with respect to such party in interest, provided that the timely filing of a motion seeking standing to file a Challenge before the expiration of the Challenge Period, which attaches a draft complaint setting forth the legal and factual bases of the proposed Challenge, shall toll the Challenge Period only as to the party that timely filed such standing motion until such motion is resolved or adjudicated by the Court. If a chapter 7 trustee or chapter 11 trustee is appointed or

elected during the Challenge Period, then the Challenge Period Termination Date with respect to such trustee only, shall be the later of (i) the last day of the Challenge Period and (ii) the date that is twenty (20) calendar days after the date on which such trustee is appointed or elected. To the extent a party in interest with requisite standing and authority timely and properly commences a Challenge prior to the Challenge Period Termination Date, all claims, causes of action and other matters not specifically set forth in such Challenge shall be deemed forever waived, released, and barred with respect to such party in interest.

(d) To the extent any Stipulations are (i) not subject to a Challenge timely and properly commenced prior to the Challenge Period Termination Date or (ii) subject to a Challenge timely and properly commenced prior to the Challenge Period Termination Date, to the extent any such Challenge does not result in a final and non-appealable judgment or order of the Court that is inconsistent with such Stipulations, then, in each case, without further notice, motion or application to, or order of, or hearing before this Court and without the need or requirement to file any proof of claim: (1) any and all such Challenges by any Committee or any other party in interest shall be deemed to be forever waived, released, and barred (including in any Successor Case), and (2) the Prepetition Obligations shall be deemed to be an allowed secured claim within the meaning of sections 502 and 506 of the Bankruptcy Code for all purposes in connection with these Chapter 11 Cases, and all of the Stipulations and all other waivers, releases, and affirmations set forth in this Interim Order (or any not properly and timely challenged) shall be in full force and effect and shall be binding, conclusive, and final on any person, entity, or party in interest, including any Committee, (in each case, and their successors and assigns) in these Chapter 11 Cases and in any Successor Case for all purposes, without any further order of the Court, and shall not be subject to challenge or objection by the Committee or any other party in interest, including, without

limitation, any other statutory committee, any trustee, responsible individual, examiner with expanded powers or other representative of the Debtors' estates.

(e) If any Challenge is timely and properly filed during the Challenge Period, the Stipulations and all other waivers, releases, and affirmations contained in this Interim Order shall nonetheless remain binding and preclusive, as provided in this paragraph 11, on all other parties in interest (including any Committee) and on any other person or entity, except for the plaintiff or movant timely and successfully asserting such Challenge, as set forth in a final, non-appealable order of a court of competent jurisdiction. Notwithstanding anything to the contrary herein, the right to commence any Challenge under this Interim Order is preserved only as against any particular Prepetition Obligation or against the Prepetition Lender to the extent such Challenge is commenced timely and properly prior to the Challenge Period Termination Date and, in respect of such Prepetition Obligation or Prepetition Lender, is otherwise waived as set forth in this paragraph 11.

(f) All remedies or defenses of any party with respect to any Challenge are hereby preserved. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including any Committee (if any) appointed in these Chapter 11 Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any Challenges with respect to the Prepetition Obligations, and an order of the Court (or any other court of competent jurisdiction) conferring such standing on a Committee or other party in interest shall be a prerequisite for the prosecution of a Challenge by the Committee or such other party in interest.

12. **Limitations on Use of DIP Facility and Cash Collateral**. Notwithstanding anything herein to the contrary, no portion of the proceeds of the DIP Facility, the DIP Collateral,

the Prepetition Collateral, any Cash Collateral, and no disbursements set forth in the Budget may be used, in any way, directly or indirectly (a) for any investigation, adversary action, suit, arbitration, proceeding, application, motion, objection, defense, other contested matter, or other litigation of any type, including any Challenge, adverse to the interests of the DIP Lender, the Prepetition Lender, or their respective rights and remedies under the DIP Facility, this Interim Order, the Final Order, the DIP Credit Agreement, or the Prepetition Loan Documents and other documents and instruments in respect of the Prepetition Obligations, including without limitation (i) any action arising under the Bankruptcy Code, (ii) any so-called "lender liability" claims and causes of action, (iii) any action with respect to the validity and extent of the DIP Obligations or Prepetition Obligations or the validity, extent, perfection and priority of the DIP Liens or Prepetition Liens, (iv) any action seeking to invalidate, set aside, avoid, reduce, set off, offset, recharacterize, subordinate (whether equitable, contractual, or otherwise), recoup against, disallow, impair, raise any defenses, cross-claims, or counterclaims, or raise any other challenges under the Bankruptcy Code or any other applicable domestic or foreign law or regulation against or with respect to the DIP Liens or the Prepetition Liens, in whole or in part, or (v) appeal or otherwise challenge this Interim Order or the Final Order; *provided* that no more than $25,000 in the aggregate of the proceeds of the DIP Facility, the DIP Collateral, the Prepetition Collateral, and the Cash Collateral (including any proceeds of the DIP Facility, the DIP Collateral, the Prepetition Collateral, or the Cash Collateral used to fund the Carve-Out) may be used by a Committee (if any) appointed in these Chapter 11 Cases to investigate (but not prosecute or Challenge, or commence, or initiate the prosecution of, any Challenge, including the preparation of any complaint or motion on account of, or objection to (a) the Stipulations before termination of the Challenge Period, (b) for any other action, which with the giving of notice or passing of

time, would result in an Event of Default under the DIP Facility, (c) for any purpose that is prohibited under the Bankruptcy Code, DIP Loan Documents, this Interim Order, or the Final Order or that is not in accordance with the Budget (subject to the Permitted Variance), (d) to make any payment, advance, intercompany advance or transfer, or any other remittance or transfer whatsoever (including any intercompany loans and investments) that is not in accordance with the express terms of the Budget, (e) to make any payment in settlement of any cause of action without Bankruptcy Court approval and the prior written consent of the DIP Lender, which consent shall not be unreasonably withheld or delayed, (f) to prevent, hinder, impede, or delay the DIP Lender's or Prepetition Lender's enforcement or realization upon or exercise of rights in respect of any of the DIP Collateral or Prepetition Collateral in accordance with the DIP Credit Agreement and this Interim Order, or (g) to seek to amend or modify any of the rights or interests granted to the DIP Lender or Prepetition Lender under this Interim Order, the DIP Credit Agreement, or the Prepetition Loan Documents, in a manner adverse to the DIP Lender or Prepetition Lender, including seeking to use Cash Collateral on a contested basis, without the prior written consent of the DIP Lender.

13. **Carve-Out**. As used in this Interim Order, the "Carve-Out" means the sum of (a) all statutory fees payable to the U.S. Trustee pursuant to section 1930(a)(6) of title 28 of the United States Code ("U.S. Trustee Fees"), and (b) for all reasonable fees and disbursements incurred by the Debtors and any Committee for any attorneys and financial advisors for the Debtors and the Committee, respectively, and a single investment banker for the Debtors (collectively, the "Estate Professionals"), retained by final order of the Bankruptcy Court (which order has not been reversed, vacated, or stayed, unless such stay has been vacated) pursuant to sections 327 or 1103(a) of the Bankruptcy Code as applicable to the extent allowed by order of the Bankruptcy Court

(which order has not been reversed, vacated, or stayed, unless such stay has been vacated) under sections 328, 330 and/or 331 of the Bankruptcy Code and any interim compensation procedures order, and a claims agent retained by Debtors (the "Allowed Professional Fees"), but solely to the extent such fees and disbursements are within the corresponding amounts set forth in the line-items in the Budget, or the Wind-Down Budget, as applicable ("Budgeted Fees & Expenses") *provided*, that after written notice delivered by email (or other electronic means) to the Debtors from the DIP Lender of the occurrence of an Event of Default ("Carve-Out Trigger Notice"), the amount of the Carve-Out shall not exceed $185,000 (the "Post-Trigger Carve-Out Cap") plus the Budgeted Fees & Expenses incurred prior to the date of the Carve-Out Trigger Notice (the "Carve-Out Trigger Date") and U.S. Trustee Fees.

(a) Carve Out Reserves. On the business day following entry of this Interim Order (or as soon as reasonably practicable thereafter) and then on the fourth business day of each week thereafter, Debtors will remit to Epiq Corporate Restructuring LLC ("Epiq"), the amount equal to, but not to exceed, the Budgeted Fees & Expenses for each such week to be held in an escrow account (such account, the "Professional Fee Reserve") for the benefit of the Estate Professionals. From such funds held in the Professional Fee Reserve, Epiq shall release to the Estate Professionals such amounts as are payable pursuant to an applicable order of the Bankruptcy Court, including an order approving interim compensation procedures in the Chapter 11 Cases and any order granting interim or final fee applications for Estate Professionals (each, a "Fee Payment"). For avoidance of doubt, (a) in making payments from the Professional Fee Reserve, Epiq shall be entitled to rely upon written certifications of each Estate Professional as to the amount such Estate Professional is due and owing from the Professional Fee Reserve; and (b) in no circumstances shall Epiq be obligated to pay any Estate Professional other than from the funds held, from time to time,

in the Professional Fee Reserve. Funds held in the Professional Fee Reserve shall be applied to Allowed Professional Fees that have been incurred following the Petition Date in accordance with the procedures established in the Chapter 11 Cases (the "Interim Fee Procedures"). Payments and reimbursements made to an Estate Professional prior to delivery of the Carve-Out Trigger Notice shall reduce the amounts available to such Estate Professional under section (b) of the Carve-Out, and neither the Professional Fee Reserve nor payments therefrom shall in any way increase the Carve-Out. All amounts payable to Estate Professionals pursuant to an order of the Bankruptcy Court shall be paid first from funds remaining in the Professional Fee Reserve, if any, and, upon exhaustion thereof, from the Carve-Out as such fees are payable pursuant to the Interim Fee Procedures, and, upon exhaustion thereof from the funds of the Estate in accordance with the priority scheme of the Bankruptcy Code. Nothing herein constitutes consent by any party to the allowance of any fees or expenses of Estate Professionals. Notwithstanding anything in this Interim Order to the contrary, on the Carve-Out Trigger Date, the Debtors shall remit Cash Collateral, pursuant to the terms and conditions set forth herein, in the amount of the Post-Trigger Carve-Out Cap into the Professional Fee Reserve; the remittance by the Debtors of such Cash Collateral into the Professional Fee Reserve shall be deemed to have the consent of the DIP Lender and shall be deemed to satisfy and discharge any and all obligations of the DIP Lender with respect to the Post-Trigger Carve-Out Cap.

(b) Carve-Out Priority. Notwithstanding anything to the contrary in this Interim Order or any Prepetition Loan Document or the DIP Loan Documents, the Carve-Out shall be senior to all liens and claims securing the Adequate Protection Liens, the DIP Liens, the DIP Superpriority Claims, and the Adequate Protection Claims and any and all other forms of adequate protection provided to the DIP Lender hereunder. For the avoidance of doubt, the DIP Liens, Prepetition

Liens, and Adequate Protection Liens shall attach to any excess funds in the Professional Fee Reserve Account, after satisfaction of the Carve-Out in respect of Allowed Professional Fees, and such funds shall be used to satisfy the DIP Obligations.

14. **Payment of Compensation**. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any of the Debtors or the Committee (if any) or shall limit or otherwise affect the right of the DIP Lender, the Prepetition Lender or any other party in interest to object to the allowance and payment of any such fees and expenses. No professional fees shall be paid absent a Court order allowing such payment, pursuant to a fee application or fee statement on notice, or other procedure permitted by any Court order allowing interim compensation or the payment of fees of ordinary course professionals.

15. **Section 506(c) Claims**. As a further condition of the DIP Facility, any obligation of the DIP Lender to make DIP Loans, and the Debtors' authorization to use the Cash Collateral and the consent of the DIP Lender and the Prepetition Lender to the payment of the Carve-Out to the extent provided herein, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Chapter 11 Cases or any Successor Case) shall be deemed to have waived any rights, benefits, or causes of action under section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the DIP Lender, the DIP Liens, and the DIP Collateral and, subject to the entry of a Final Order granting such relief, the Prepetition Lender, the Adequate Protection Liens, the Prepetition Liens, and the Prepetition Collateral, and except to the extent of the Carve-Out, nothing contained in this Interim Order, the Final Order, or the DIP Credit Agreement shall be deemed a consent by the Prepetition Lender or the DIP Lender to any charge, lien, assessment, or claim against or in respect of the DIP Collateral or the Prepetition

Collateral under sections 105 or 506(c) of the Bankruptcy Code or otherwise, and no such consent shall be implied from any other action, inaction, or acquiescence by any by any such parties.

16. **Collateral Rights; Limitations in Respect of Subsequent Court Orders**. Without limiting any other provisions of this Interim Order, unless the DIP Lender and the Prepetition Lender have provided their prior written consent, no credit shall be obtained, or indebtedness incurred that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral or entitled to priority administrative status which is superior to or *pari passu* with those granted pursuant to this Interim Order to or for the benefit of the DIP Lender or the Prepetition Lender. Further, the proceeds of the DIP Facility and the Cash Collateral shall not be used for any purpose other than as permitted under the DIP Credit Agreement and consistent with this Interim Order and the Budget.

17. **Proceeds of Subsequent Financing**. Without limiting the provisions and protections of paragraph 16 hereof, if at any time prior to the Maturity Date, the Debtors, the Debtors' estates, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed shall obtain credit or incur debt in violation of this Interim Order and the other DIP Loan Documents (including the DIP Credit Agreement), then all of the cash proceeds derived from such credit or debt and all Cash Collateral in the amount necessary to satisfy all DIP Obligations then outstanding shall immediately be turned over to the DIP Lender for the indefeasible repayment and satisfaction in full in cash of all DIP Obligations then outstanding. For the avoidance of doubt, if the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Case shall obtain credit or incur debt pursuant to section 364(d) of the Bankruptcy Code at any time prior to

the Maturity Date, the Prepetition Lender's rights to object to the Debtors' use of Cash Collateral and assert a lack of adequate protection shall be fully preserved.

18. **Cash Management**. From and after the date of the entry of this Interim Order, the Debtors shall maintain a cash management system that is the same as or substantially similar to their prepetition cash management system or as otherwise agreed by the DIP Lender and authorized by DIP Lender (in their sole discretion) and the Court. The Debtors shall maintain no accounts except those identified in any order of this Court approving the maintenance of the Debtors' cash management system (the "Cash Management Order") or that may be subsequently opened pursuant to the Cash Management Order. It shall constitute an Event of Default (as defined in the DIP Credit Agreement) if the Debtors' cash management system shall not at all times be maintained in accordance with the terms of the DIP Credit Agreement, the Cash Management Order, and this Interim Order in all material respects, and otherwise in a manner which shall be reasonably satisfactory to the DIP Lender in accordance with the terms of the DIP Loan Documents (including the DIP Credit Agreement). The Debtors and the financial institutions where the Debtors maintain deposit accounts (as identified in the Cash Management Order) are authorized to remit, without offset or deduction, funds in such deposit accounts upon receipt of any direction to that effect from the DIP Lender.

19. **Disposition of DIP Collateral**. It shall constitute an Event of Default (as defined in the DIP Credit Agreement) if the Debtors sell (including, without limitation, any sale and leaseback transaction), transfer (including any assignment of rights), lease, encumber or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business, except as permitted under the DIP Credit Agreement.

20. **Survival of Certain Provisions**. In the event of the entry of any order converting any of these Chapter 11 Cases into a Successor Case, the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, the Adequate Protection Superpriority Claim, and the Carve-Out shall continue in this proceeding and in any Successor Case, and such DIP Liens, DIP Superpriority Claim, Adequate Protection Liens, Adequate Protection Superpriority Claim, and Carve-Out shall maintain their respective priorities as provided by this Interim Order.

21. **Events of Default; Maturity Date; Rights and Remedies Upon Event of Default**.

(a) Any automatic stay otherwise applicable to Tillou, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, is hereby modified so that, upon the occurrence and during the continuance of an Event of Default, the DIP Lender, in its sole and absolute discretion, but subject to the terms and conditions of this Interim Order (and the Default Notice Period), may immediately deliver a Termination Notice (as defined below). Immediately following the delivery of a Termination Notice by the DIP Lender to counsel to the Debtors, the U.S. Trustee, and counsel to the Committee, if any, of the occurrence of an Event of Default under the DIP Loan Documents (the "Termination Notice") (i) all Commitments of the DIP Lender to provide any DIP Loans shall immediately be suspended; and (ii) the Debtors shall not have the right to request any DIP Loans; *provided that*, during the Default Notice Period (as defined below), the Debtors shall be permitted solely to continue to use drawn proceeds of the DIP Facility and any Cash Collateral, in accordance with the Budget.

(b) The Debtors and the Committee (if any), and any other party in interest shall be entitled to an emergency hearing before this Court within five (5) calendar days after the Termination Notice is sent by the DIP Lender to the Debtors, the U.S. Trustee, and counsel to the

Committee (if any) (such 5-calendar-day period, the "Default Notice Period"). If an emergency hearing is requested to be heard prior to the expiration of the Default Notice Period but is scheduled for a later date by the Court, the Default Notice Period shall be automatically extended for a maximum period of three (3) days. If the Debtors, the Committee (if any), or any other party in interest does not contest the occurrence of the Event of Default within the Default Notice Period or if there is a timely contest of the occurrence of an Event of Default and the Court after notice and a hearing declines to stay the enforcement thereof, the Termination Date (as defined below) shall be deemed to have occurred for all purposes and the automatic stay shall be modified to permit the DIP Lender to exercise all remedies under this Interim Order, the Final Order, the other DIP Loan Documents (including the DIP Credit Agreement), and applicable law, including, without limitation, to (i) set-off any and all amounts in accounts maintained by the Debtors with the DIP Lender against the DIP Obligations; (ii) to otherwise enforce any and all rights against the DIP Collateral, including, without limitation, disposition of the DIP Collateral solely for application towards the DIP Obligations (until such time as the DIP Obligations are paid in full); and (iii) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the Final Order, the other DIP Loan Documents (including the DIP Credit Agreement), or applicable law to effect the repayment of the DIP Obligations. Nothing herein shall preclude the DIP Lender or the Prepetition Lender from seeking an order from the Court upon written notice (which may be sent by e-mail) to the U.S. Trustee, counsel to the Debtors, and counsel to the Committee (if any) authorizing the DIP Lender or the Prepetition Lender to exercise any enforcement rights or remedies with respect to the DIP Collateral on less than five (5) calendar days' notice or the Debtors' right to contest such relief.

(c) After delivery of a Termination Notice and expiration of the Default Notice Period, the DIP Lender, in its sole and absolute discretion, may immediately (i) (x) terminate any pending DIP Loans and use of Cash Collateral; (y) sweep all cash in any of the Debtors' accounts and apply such proceeds in accordance with the terms of this Interim Order and the other DIP Loan Documents (including the DIP Credit Agreement), and (z) terminate the DIP Facility and all commitments thereunder and (ii) upon and after the occurrence of the Termination Date, the DIP Lender and the Prepetition Lender shall, without further notice to, hearing of, or order from this Court, to the extent necessary to permit the DIP Lender to take any or all of the foregoing actions, at the same time or different times, unless the Court orders otherwise, and subject only to subparagraph (b) of this paragraph 21, as applicable, exercise all of its rights and remedies in respect of the DIP Collateral and the Prepetition Collateral, in accordance with this Interim Order, the DIP Loan Documents, and/or the Prepetition Loan Documents (until such time as all Prepetition Obligations are rolled up pursuant to the terms and conditions of the DIP Orders and the DIP Credit Agreement).

(d) The term "Termination Date" shall mean the date which is the earliest of (a) the Maturity Date (as defined in the DIP Credit Agreement), (b) the date on which (i) a sale of all or substantially all of the Borrowers' assets has been consummated and (ii) the Bankruptcy Court has authorized payment the sale proceeds to the DIP Lender pursuant to Section 363 of the Bankruptcy Code, (c) forty-five (45) days after the Petition Date, in the event that the Final Order shall not have been entered on or before such date, (d) the date of dismissal of any Case or conversion of any of the Chapter 11 Cases to a Chapter 7 case, (e) the effective date of a Plan of Reorganization or liquidation for the Debtors confirmed in the Chapter 11 Cases, and (f) the occurrence of any

Event of Default (as defined in the DIP Credit Agreement), after delivery of a Termination Notice and expiration of the Default Notice Period.

(e) The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified pursuant to this Interim Order and the DIP Loan Documents as necessary to (i) permit the Debtors to grant the Adequate Protection Liens and the DIP Liens and to incur all DIP Obligations and all liabilities and obligations to the DIP Lender and Prepetition Lender hereunder and under the DIP Credit Agreement, as the case may be, and (ii) authorize the DIP Lender and Prepetition Lender to retain and apply payments and otherwise enforce their respective rights and remedies hereunder, subject to the provisions of paragraphs 21(a), (b) and (c) hereof.

(f) The Debtors shall reasonably cooperate with the DIP Lender and/or the Prepetition Lender in their efforts to enforce their liens and security interests in the DIP Collateral or the Prepetition Collateral, as applicable, in accordance with this Interim Order and (other than the right to contest whether a DIP Termination Event has occurred and is continuing) the Debtors shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such party from enforcing its rights or remedies in the DIP Collateral or the Prepetition Collateral, as applicable.

(g) Nothing included herein shall prejudice, impair, or otherwise affect the Prepetition Lender's or the DIP Lender's rights to seek any other or supplemental relief in respect of the Debtors (including, as the case may be, other or additional adequate protection).

22. **Applications of Proceeds of Collateral, Payments and Collections**.

(a) As a condition to the DIP Loans and the authorization to use Cash Collateral, the Debtors have agreed that proceeds of any DIP Collateral and Prepetition Collateral, any amounts held on account of the DIP Collateral or Prepetition Collateral, and all payments and collections

received by the Debtors with respect to all proceeds of DIP Collateral and Prepetition Collateral shall be used and applied in accordance with the DIP Loan Documents (including repayment and reduction of the DIP Obligations), the Budget (subject to variances permitted under the DIP Loan Documents) and this Interim Order.

(b) Subject to the Debtors' rights under paragraph 21(c) hereof and the funding of the Carve-Out, if applicable, upon and after the occurrence of the Termination Date, all proceeds of DIP Collateral and Prepetition Collateral, whenever received, shall be paid and applied as follows: (i) *first*, to permanently and indefeasibly repay and reduce the DIP Obligations then due and owing in accordance with the DIP Loan Documents, until paid and satisfied in full in cash; and (ii) *second*, to the Debtors' estates. For avoidance of doubt, nothing in this Interim Order shall be construed to limit the voluntary and mandatory repayment provisions set forth in the DIP Loan Documents.

23. **Proofs of Claim, etc**. Neither of the DIP Lender nor the Prepetition Lender shall be required to file proofs of claim in the Chapter 11 Cases or any Successor Case for any claim described herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in the Chapter 11 Cases or any Successor Case to the contrary, the DIP Lender and the Prepetition Lender, respectively, are hereby authorized and entitled, in each of their sole and absolute discretion but not required to file (and amend or supplement, as each sees fit) a proof of claim or aggregate proofs of claim in the Chapter 11 Cases or any Successor Case for any claim described herein. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in the Chapter 11 Cases or any Successor Case shall not apply to the DIP Lender or the Prepetition Lender.

24. **Payments Free and Clear**. Any and all payments or proceeds remitted to the DIP Lender or, except as otherwise provided herein, subject to paragraph 11 hereof, the Prepetition

Lender, pursuant to the provisions of this Interim Order, the DIP Loan Documents (including the DIP Credit Agreement) or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability.

25. **Other Rights and Obligations**.

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order**. The DIP Lender and the Prepetition Lender have acted in good faith in connection with the DIP Facility, the DIP Loans, the DIP Loan Documents (including the DIP Credit Agreement), the Prepetition Loan Documents, and this Interim Order and are entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility as approved by this Interim Order, and notwithstanding any modification or reversal of any or all of this Interim Order by a subsequent order of the Court or any other court, the DIP Lender and the Prepetition Lender are entitled to the protections provided in section 364(e) of the Bankruptcy Code, and no such modification, or reversal shall affect the validity and enforceability of any DIP Obligation, DIP Lien, Adequate Protection Superpriority Claim, or Adequate Protection Lien, or any other advances made hereunder or the claims, liens, security interest, or priority authorized or created hereby or pursuant to the DIP Loan Documents (including the DIP Credit Agreement). Notwithstanding any such modification or reversal, any claim granted to the DIP Lender hereunder arising prior to the effective date of such modification or reversal of any DIP Liens or of the DIP Superpriority Claim granted to or for the benefit of the DIP Lender shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender shall be entitled to all of the rights, remedies,

privileges, and benefits, including the DIP Liens and the DIP Superpriority Claim granted herein, with respect to any such claim.

(b) **Credit Bid**. Subject to the provisions of section 363(k) of the Bankruptcy Code and the entry of a Final Order granting such relief, Tillou shall have the right to credit bid (either directly or through one or more acquisition vehicles) up to the full amount of the DIP Obligations in connection with any sale of all or any portion of the DIP Collateral and/or Prepetition Collateral, including (without limitation) any sale occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code, by the Debtors, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise, without the need for further court order authorizing the same. The Debtors shall not object to any such credit bidding up to the full amount of the DIP Obligations, including any accrued interest, fees, and expenses, in any sale of any DIP Collateral or Prepetition Collateral, as applicable, whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. If Tillou (either directly or through one or more acquisition vehicles) makes a credit bid in connection with any auction or other sale process relating to the sale or other disposition of any Prepetition Collateral or DIP Collateral, then for purposes of such auction or sale process or any applicable order of this Court, Tillou (or one or more of its acquisition vehicles) shall be deemed to be a "qualified bidder" and its bid shall be a "qualified bid" regardless of whether any qualified bidder or qualified bid requirements are satisfied. In connection with the foregoing, Tillou shall have the right to assign its respective rights to "credit bid" all or any portion of the applicable outstanding DIP Obligations (including any Adequate Protection Superpriority Claims) to a newly formed acquisition vehicle.

(c) **Lenders Not Responsible Persons**. In (i) making the decision to make the DIP Loans and consent to the use of Cash Collateral, (ii) administering the DIP Facility and the DIP Loans, (iii) extending other financial accommodations to the Debtors under the DIP Documents, and (iv) making the decision to collect the indebtedness and obligations of the Debtors, neither the DIP Lender nor the Prepetition Lender shall be considered to (x) owe any fiduciary obligation to the Debtors or any other party with respect to their exercise of any consent or other rights afforded them under the DIP Documents or this Interim Order or (y) be exercising control over any operations of the Debtors or acting in any way as a responsible person, or as an owner or operator under any applicable law, including without limitation, any environmental law (including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*, as either may be amended from time to time, or any similar federal or state statute).

(d) **Binding Effect**. The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Lender, the Prepetition Lender, the Debtors, and their successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether in the Chapter 11 Cases, in any Successor Case, or upon dismissal of any such Chapter 11 or Chapter 7 case.

(e) **No Waiver**.

(i) The failure of the DIP Lender or the Prepetition Lender to seek relief or otherwise exercise their rights and remedies under this Interim Order, the other DIP Loan Documents, or the Prepetition Loan Documents or otherwise, as applicable, shall not constitute a waiver of any of the DIP Lender's or the Prepetition Lender's rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice

to and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses, or remedies of the DIP Lender or the Prepetition Lender under the Bankruptcy Code or under non-bankruptcy law against any other person or entity in any court, including without limitation, the rights of the DIP Lender or the Prepetition Lender (1) to request conversion of the Chapter 11 Cases to a case under Chapter 7, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases, (2) to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Plan, or (3) to exercise any of the rights, claims or privileges (whether legal, equitable, or otherwise).

(ii) The failure or delay on the part of either the DIP Lender or the Prepetition Lender to seek relief or otherwise exercise their rights and remedies under this Interim Order, the other DIP Loan Documents (including the DIP Credit Agreement), the Prepetition Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any of their respective rights hereunder, thereunder, or otherwise. No delay on the part of any party in the exercise of any right or remedy under this Interim Order shall preclude any other or further exercise of any such right or remedy or the exercise of any other right or remedy. None of the rights or remedies of any party under this Interim Order shall be deemed to have been amended, modified, suspended, or waived unless such amendment, modification, suspension, or waiver is express, in writing and signed by the party against whom such amendment, modification, suspension, or waiver is sought. No consents required hereunder by the DIP Lender, or the Prepetition Lender shall be implied by any inaction or acquiescence by either of the DIP Lender or the Prepetition Lender, respectively.

(f) **No Third-Party Rights**. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, third party, or incidental beneficiary.

(g) **Limitation on Surcharge**. Without limiting the terms of the Carve-Out and subject to the entry of a Final Order granting such relief, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any Successor Case at any time shall be surcharged against, and no person may seek to surcharge any costs or expenses of administration against the DIP Lender, the Carve-Out (other than parties entitled to assert a right to be paid under the Carve-Out), the DIP Collateral or the Prepetition Collateral, pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Lender or the Prepetition Lender (and the beneficiaries of the Carve-Out in the case of a surcharge against the Carve-Out). No action, inaction or acquiescence by the DIP Lender or the Prepetition Lender shall be deemed to be or shall be considered evidence of any alleged consent to a surcharge against the DIP Lender, the DIP Collateral, the Prepetition Lender or the Prepetition Collateral.

(h) **No Marshaling**. Subject to entry of a Final Order granting such relief, Tillou shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable.

(i) **Section 552(b)**. Tillou shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code; and, subject to the entry of a Final Order granting such relief, to the extent provided therein, the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Lender or the Prepetition Lender with respect to proceeds, product, offspring, or profits of any of the DIP Collateral or Prepetition Collateral.

(j) **Amendment**. The Debtors and the DIP Lender may amend, modify, supplement, or waive any provision of the DIP Credit Agreement (a "DIP Loan Amendment") without further approval of the Court; *provided* that (i) such DIP Loan Amendment is not material (for purposes hereof, a "Material DIP Loan Amendment" shall mean any modification or amendment that (1) increases the interest rate (other than as a result of the imposition of the default rate) or fees charged in connection with the DIP Facility, (2) increases the commitments of the DIP Lender to make DIP Loans under the DIP Credit Agreement, or (3) changes the Termination Date) and is undertaken in good faith by the DIP Lender and (ii) the Debtors provide written notice of the DIP Loan Amendment on the docket. Any Material DIP Loan Amendment to the DIP Credit Agreement must be set forth in writing, signed by, or on behalf of the Debtors and the DIP Lender and approved by the Court on five (5) days' notice to parties in interest in order to be effective, *provided* that the DIP Lender and the Debtors reserve the right to seek approval of any Material DIP Loan Amendment on an expedited basis.

(k) **Priority of Terms**. To the extent of any conflict between or among (i) the express terms or provisions of any of the DIP Loan Documents, the Motion, or any other agreements, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, unless such term or provision herein is phrased in terms of "defined in" or "as set forth in" the DIP Loan Documents, the terms and provisions of this Interim Order prevail.

(l) **Survival of Interim Order**. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any plan in the Chapter 11 Cases, (ii) converting of the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code, (iii) to the extent authorized by applicable law, dismissing the Chapter 11 Cases, (iv) withdrawing of the reference of the Chapter 11 Cases from this Court, or (v) providing

for abstention from handling or retaining of jurisdiction of the Chapter 11 Cases in this Court. The terms and provisions of this Interim Order and the Prepetition Loan Documents, including the DIP Liens and DIP Superpriority Claim granted pursuant to this Interim Order, the DIP Credit Agreement, and the Prepetition Loan Documents and any priorities and protections granted to or for the benefit of the DIP Lender or the Prepetition Lender (including the Adequate Protection Liens and the Adequate Protection Superpriority Claim) hereunder and thereunder shall continue in full force and effect to the fullest extent provided by section 364(e) of the Bankruptcy Code.

(m) **Enforceability**. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

(n) **No Waivers or Modification of Interim Order**. The Debtors irrevocably waive any right to seek any modification or extension of this Interim Order without the prior written consent of the DIP Lender or the Prepetition Lender, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Lender or the Prepetition Lender. The Debtors may not seek to modify or to alter relative lien priority of the DIP Liens, the Prepetition Liens and the Adequate Protection Liens set forth in this Interim Order.

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

26. **Reservations to Final Order**. Notwithstanding language in this Interim Order that provides that certain relief is subject to or conditioned upon entry of a Final Order, such provisions are without prejudice to rights of parties in interest to object to the relief on a final basis and the Court's authority to determine the final relief.

27. **Final Hearing**.

(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for [●], 2024 at [●] (prevailing Eastern Time) at the United States Bankruptcy Court for the District of Delaware.

(b) On or before two (2) business days after entry of this Interim Order, the Debtors shall cause to be served, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the Motion, on any known party affected by the terms of this Interim Order, and to any other party that has filed a request for notices with this Court prior thereto. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than [●] at [●] (prevailing Eastern Time), which objections shall be served on (i) proposed counsel for the Debtors, Foley & Lardner LLP, 500 Woodward Avenue, Suite 2700, Detroit, MI 48226, Attn: John A. Simon (jsimon@foley.com) and Jake W. Gordon (jake.gordon@foley.com) and (b) Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899, Attn: Ricardo Palacio (rpalacio@ashbygeddes.com) and Gregory A. Taylor (gtaylor@ashbygeddes.com); (ii) counsel to the DIP Lender, Faegre Drinker Biddle & Reath LLP, 600 Campus Drive, Florham Park, New Jersey 07932, Attn: Frank F. Velocci (frank.velocci@faegredrinker.com) and Michael P. Pompeo (Michael.pompeo@faegredrinker.com); (iii) counsel to any statutory committee appointed in these Chapter 11 Cases; and (iv) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Joseph Cudia, joseph.cudia@usdoj.gov).

28. **Retention of Jurisdiction**. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

EXHIBIT 1

DIP CREDIT AGREEMENT

EXECUTION VERSION

SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION LOAN AGREEMENT

This **SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION LOAN AGREEMENT** (this "Agreement") is made as of December 4, 2024, by and among Ideanomics, Inc., a Nevada corporation ("Ideanomics"), Solectrac, Inc., a California corporation ("Solectrac"), Wireless Advanced Vehicle Electrification, LLC, a Delaware limited liability company ("WAVE"), Via Motors International, Inc., a Delaware corporation ("Via International"), Via Motors, Inc., a Delaware corporation ("Via Motors"), Justly Holdings Inc., a Delaware corporation ("Justly Holdings"), Justly Markets LLC, a Delaware limited liability company ("Justly Markets"), and Timios Holdings Corp., a Delaware corporation ("Timios", and together with Ideanomics, Solectrac, WAVE, Via International, Via Motors, Justly Holdings, and Justly Markets, the "Borrowers"), and Tillou Management and Consulting LLC, a New Jersey limited liability company (the "Lender").

RECITALS

WHEREAS, on December 4, 2024 (the "Petition Date"), each of the Borrowers filed a petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the District of Delaware (the "Chapter 11 Cases"). The Borrowers have requested the Lender to provide post-petition financing, as more fully described herein. Subject to the terms and conditions set forth herein, the Lender has agreed to provide such post-petition financing.

WHEREAS, each Borrower's business is a mutual and collective enterprise, and the Borrowers believe that the loans and other financial accommodations to the Borrowers under this Agreement will enhance the aggregate borrowing powers of the Borrowers and facilitate the administration of the Chapter 11 Cases and their loan relationship with the Lender, all to the mutual advantage of the Borrowers;

WHEREAS, the Borrowers believe that the loans and other financial accommodations provided to the Borrowers under this Agreement will preserve the value of the Borrowers' businesses and assets during the Chapter 11 Cases;

WHEREAS, the Borrowers have asked the Lender to provide them with a superpriority senior secured debtor-in-possession credit facility comprised of term loans, which consist of (a) $11,619,000 of "new money" loans that will be made available to the Borrowers pursuant to Section 2.1(a) in accordance with the Interim DIP Order or Final DIP Order, as applicable, and (b) the Prepetition Obligations, which will be deemed "rolled up" as Loans on a dollar-for-dollar basis concurrently with the making of "new money" loans during the Interim Period following entry of (and subject to) the Interim DIP Order and all of which will be deemed "rolled up" as Loans following entry of (and subject to) the Final DIP Order, in accordance with Section 2.1(a)(ii); and

WHEREAS, to provide for the repayment of the Loan (as hereinafter defined), and the payment of the other Obligations (as hereinafter defined) of the Borrowers hereunder and under the Financing Documents (as hereinafter defined), the Borrowers will provide and grant to the Lender certain rights and protections pursuant to the terms hereof, security interests and liens pursuant to sections 364(c) and 364(d) of the Bankruptcy Code and superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code, in each case having the relative priorities as set forth in the DIP Orders, and other rights and protections as more fully described herein and in the DIP Orders.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
Definitions

Certain capitalized terms are defined below:

"Actual Variance" has the meaning specified in Section 6.2(o).

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" has the meaning set forth in the preamble, which term shall include this Agreement as amended and in effect from time to time.

"Asset Sale" means the sale by any Borrower or any Subsidiary of any Borrower to any Person of any assets outside of the ordinary course of business.

"Bankruptcy Code" has the meaning set forth in the recitals.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Chapter 11 Cases.

"Base Rate" has the meaning set forth in Section 2.2.

"Borrowers" has the meaning set forth in the preamble, which term shall include the Borrowers as debtors and debtors-in-possession as contemplated by this Agreement.

"Budget" means the budget projecting operations of the Borrowers (including without limitation projected cash receipts and disbursements) in form, detail and substance acceptable to the Lender in its sole discretion, as such budget is updated and delivered to the Lender on Friday of each week for the thirteen (13) weeks following the date of such budget in substantially the same form as the previous budget, which upon written acceptance by the Lender in its sole discretion shall become the new Budget.

"Business Day" means a day other than a Saturday, Sunday, or other day on which commercial banks in New York are authorized or required by law to close.

"Carve Out" has the meaning assigned to the term "Carve Out" in paragraph 13 of the Interim DIP Order, or, upon entry, the Final DIP Order.

"Carve Out Notice" means a written notice delivered by the Lender to the Borrowers, counsel to the Borrowers, counsel to any Committee, and the United States Trustee.

"Casualty Event" means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any assets of any Borrower or any Subsidiary of any Borrower.

"Chapter 11 Cases" has the meaning set forth in the preamble.

"Collateral" means all of the assets (tangible, intangible, real, personal or mixed) of each Borrower, whether now existing or hereafter acquired or arising, including, without limitation, accounts, inventory, equipment, equity interests, money, deposit accounts, securities accounts and other investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks, causes

of action (including avoidance actions), and other general intangibles, and all products and proceeds thereof, including without limitation (x) all unencumbered assets of each Borrower, (y) any collateral in which the Lender has been granted a security interest pursuant to the Prepetition Financing Agreements and (z) any other collateral in which the Lender is granted a security interest under the Orders.

"Committee" means an official committee of unsecured creditors appointed by the United States Trustee for the District of Delaware pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Cases, if any.

"Consent" means, in respect of any Person, any permit, license or exemption from, approval, consent of, registration or filing with any governmental or regulatory agency or authority (whether local, state, federal, or pertaining to the government of any other nation) required under applicable law.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote five percent (5%) or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

"Default" means an event or act which, with the giving of notice and/or the lapse of time, would become an Event of Default.

"DIP Loan" has the meaning set forth in Section 2.1(a)(i).

"DIP Orders" means the Interim DIP Order and the Final DIP Order.

"Environmental Laws" means all laws pertaining to environmental matters, including without limitation the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Acts of 1986, the Federal Clean Water Act, the Federal Clean Air Act, the Federal Oil Pollution Act, the Toxic Substances Control Act or equivalent laws in non-U.S. jurisdictions, in each case as amended, and all rules, regulations, judgments, decrees, orders and licenses arising under all such laws.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and all rules, regulations, judgments, decrees, and orders arising thereunder.

"Event of Default" means any of the events listed in Article VII.

"Final DIP Order" means the order of the Bankruptcy Court in the Chapter 11 Cases approving this Agreement on a final basis in form and substance satisfactory to the Lender in its sole discretion, as the same may be amended, modified or supplemented from time to time with, the consent of the Lender.

"Financing Documents" means this Agreement, the Orders, and the Security Documents, in each case as from time to time amended or supplemented, and all of the instruments, agreements and documents executed in connection therewith.

"GAAP" means generally accepted accounting principles consistent with those adopted by the Financial Accounting Standards Board and its predecessor, as in effect from time to time, consistently applied.

"Ideanomics" has the meaning set forth in the preamble.

"Indebtedness" means in respect of any entity, all obligations, contingent and otherwise, that in accordance with GAAP should be classified as liabilities, including without limitation (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all obligations under any title retention agreement (but excluding trade accounts payable and other accrued liabilities arising in the ordinary course of business), (d) guarantees and other obligations in respect of Indebtedness referred to in clauses (a)-(c) of this definition; and (e) all obligations of any Person of the type referred to in clauses (a)-(d) of this definition that are secured by any Lien on any property or asset of such Person.

"Indemnified Party" has the meaning specified in Section 9.2.

"Intellectual Property" means domestic and foreign patents, patent applications, invention disclosures, trade secrets, proprietary information including software and computer models used to predict properties of the technology known as catalytic extraction processing, trade names, registered and unregistered trademarks and service marks and related applications for registration, copyrights, franchises, licenses and other intellectual property rights.

"Interim DIP Order" means the order of the Bankruptcy Court in the Chapter 11 Cases approving this Agreement on an interim basis, in the form of Exhibit A hereto or otherwise satisfactory to the Lender in its sole discretion, as the same may be amended, modified or supplemented from time to time with the consent of the Lender.

"Interim Period" means the period of time beginning upon the entry of the Interim DIP Order by the Bankruptcy Court and ending upon entry of the Final DIP Order.

"Lender" has the meaning set forth in the preamble.

"Liens" means any lien, encumbrance, mortgage, pledge, hypothecation, charge, restriction or other security interest of any kind securing any obligation of any Person.

"Loan" means, collectively and individually, each of the DIP Loan and the Prepetition Obligations "rolled up" in accordance with Section 2.1(a)(ii).

"Material Adverse Effect" means any material adverse effect on either the Lender's first priority, perfected security interest in the Collateral, or the financial condition or business operations of the Borrowers, taken as a whole, or any material impairment of the ability of the Borrowers to perform their obligations hereunder or under any of the other Financing Documents (excluding (i) any matters publicly disclosed prior to the filing of the Chapter 11 Cases, (ii) any matters disclosed in the schedules hereto, (iii) any matters disclosed in any "first day" pleadings or declarations, and (iv) the effect of filing the Chapter 11 Cases, the events and conditions related and/or leading up thereto and the effects thereof and any action required to be taken under the Loan Documents or under the Orders).

"Material Indebtedness" means, with respect to any Person, Indebtedness of such Person incurred under or evidenced by a single agreement or instrument or a series of related agreements and instruments, in each case in a principal outstanding amount in excess of $100,000 other than Indebtedness incurred under this Agreement and the other Financing Documents.

"Maturity Date" means the date which is the earliest of (a) the first Business Day following the date that is eight (8) months following the date hereof, (b) the date on which (i) a sale of all or substantially all of the Borrowers' assets has been consummated and (ii) the Bankruptcy Court has authorized payment the sale proceeds to the Lender pursuant to section 363 of the Bankruptcy Code, (c) forty-five (45) days

after the Petition Date, in the event that the Final DIP Order shall not have been entered on or before such date, (d) the date of dismissal of any Case or conversion of any of the Chapter 11 Cases to a Chapter 7 case, (e) the effective date of a Plan, and (f) the date on which payment of the Obligations is accelerated by the Lender as provided in Article VII.

"Net Cash Proceeds" means with respect to any Asset Sale or Casualty Event, cash (freely convertible into U.S. dollars) received by any Borrower or any Subsidiary of any Borrower from such Asset Sale or as proceeds from such Casualty Event (including (x) any cash received by way of deferred payment pursuant to a promissory note or otherwise, but only as and when received, and (y) any purchase price adjustment or earn-out in respect of such Asset Sale), after (a) deduction of an amount equal to estimated federal, state, and local taxes in connection with such Asset Sale or Casualty Event, and determined in good faith by the Borrowers, (b) payment of all usual and customary brokerage commissions and all other reasonable fees and expenses related to such Asset Sale (including reasonable attorneys' fees and closing costs incurred in connection with such Asset Sale), and (c) deduction of appropriate amounts to be provided by the Borrowers as a reserve, in accordance with GAAP, against any liabilities retained by the Borrowers after such Asset Sale (provided that such liabilities are permitted hereunder), which liabilities are associated with the asset or assets being sold, including, without limitation, post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations or purchase price adjustments associated with such Asset Sale.

"Notice of Default" has the meaning set forth in Article VII.

"Obligations" means all indebtedness, obligations and liabilities of the Borrowers to the Lender, arising or incurred under this Agreement or any other Financing Document, existing on the date of this Agreement or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, including, without limitation, principal, interest, indemnification obligations, fees, and expenses.

"Organizational Documents" means, in respect of any entity, the certificate or articles of incorporation or organization and the by-laws of such entity, partnership agreement or other constitutive documents of such entity.

"Permitted Liens" has the meaning set forth in Section 6.2(c).

"Permitted Prior Liens" means Liens existing as of the Petition Date listed on Schedule 1 hereto to the extent valid, perfected and enforceable and which are not avoided or subordinated by order of the Bankruptcy Court or consent of the Borrowers in any of the Chapter 11 Cases; provided that (i) the principal amount secured thereby is not hereafter increased, (ii) no additional assets become subject to such Lien, (iii) the direct or contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefitted thereby is permitted under this Agreement.

"Permitted Variance" means, with respect to period of calculation, any aggregate variance of actual cash receipts and disbursements of the Borrowers (excluding Term Loan Advances and repayments thereof), as measured on a cumulative basis, (a) that is positive, or (b) that is negative and in an amount not more than the greater of (i) 15% and (ii) $250,000, in each case from those set forth in the Budget for such period (excluding Term Loan Advances and repayments thereof), as measured on a cumulative basis.

"Person" means any natural person, corporation, limited liability company, trust, business trust, joint venture, association, company, partnership, governmental or regulatory authority, or other entity.

"Petition Date" has the meaning set forth in the recitals.

"Plan" means a plan of reorganization or liquidation filed by any Borrower with the Bankruptcy Court that provides for payment in full in cash of the Obligations on the effective date of such plan.

"Prepetition Financing Agreements" means (a) the Amended and Restated Promissory Note dated as of November 5, 2024 by Ideanomics in favor of the Lender, as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, (b) the Debenture Documents, as defined in the Assignment and Assumption Agreement dated as of October 29, 2024 by and among YA II PN, Ltd., the Lender and Ideanomics, and (c) all instruments, agreements and documents executed in connection with any of the foregoing, in each case as amended, restated, supplemented or otherwise modified from time to time.

"Prepetition Obligations" shall mean all indebtedness, obligations and liabilities of the Borrowers to the Lender, arising or incurred under the Prepetition Financing Agreements, existing on the date of this Agreement or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, including, without limitation, principal, interest, indemnification obligations, fees, and expenses.

"Requirement of Law" means, in respect of any Person, any law, treaty, rule, regulation or determination of an arbitrator, court, or other governmental authority, in each case applicable to or binding upon such Person or affecting any of its property.

"Security Documents" means all security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, assignments, financing statements, or other instruments or documents, in form and substance satisfactory to the Lender, which shall grant or confirm to the Lender first priority security interests in all of the Collateral.

"Solectrac" has the meaning set forth in the preamble.

"Subsidiary" means, in respect of any Person, any business entity of which such Person at any time owns or controls directly or indirectly more than fifty percent (50%) of the outstanding shares of stock or other beneficial interests or having more than fifty percent (50%) of the voting power, regardless of whether such right to vote depends upon the occurrence of a contingency.

"Superpriority Claim" means a claim against any of the Borrowers or any of their estates in any of the Chapter 11 Cases which is, in accordance with section 364(c)(1) of the Bankruptcy Code, an administrative expense claim having priority over (a) any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and (b) all claims and administrative expense claims now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552(b), 726, 1113, 1114 and any other provision of the Bankruptcy Code, subject only to the Carve Out.

"Term Loan Advance" and "Term Loan Advances" have the meanings set forth in Section 2.1(b).

"Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"Via Motors" has the meaning set forth in the preamble.

"WAVE" has the meaning set forth in the preamble.

ARTICLE II
Post-Petition Financing

2.1 **Term Loans.**

(a) Term Loans; Roll-Up Loan.

(i) Term Loans. Upon the terms and subject to the conditions of this Agreement, and further subject to the terms of and to any limitations on borrowing or other extensions of credit contained in the Interim DIP Order or the Final DIP Order, whichever is then in effect, the Lender agrees to make a loan to the Borrowers by making advances in an aggregate amount not to exceed (i) from the date that the Bankruptcy Court enters the Interim DIP Order until the date the Bankruptcy Court enters the Final DIP Order, $6,957,000.00, and (ii) from the date that the Bankruptcy Court enters the Final DIP Order, $11,619,000.00 (collectively, the "DIP Loan"). The obligation of the Borrowers to repay the aggregate unpaid principal amount of the Loan, together with interest thereon, shall, at the request of the Lender, be evidenced by a Note payable to the order of the Lender.

(ii) Roll-Up Loan. Upon entry of (and subject to) the Interim DIP Order, the Prepetition Obligations, (1) on a dollar for dollar basis, shall be automatically (and without any further action by any party to this Agreement, the Bankruptcy Court or any other Person) rolled up and converted into Obligations on a final basis and (2) all remaining Prepetition Obligations shall be rolled up and converted into Obligations upon entry of the Final DIP Order. For the avoidance of doubt, the Prepetition Obligations shall be reduced on a dollar-for-dollar basis for each dollar of the Prepetition Obligations which are rolled-up as Loans under this Agreement. Following the roll-up of all Prepetition Obligations approved by the Final DIP Order, the Prepetition Financing Documents shall no longer be in force and effect.

(b) Subject to the satisfaction of all conditions precedent herein, the Loan shall be made by Lender to the Borrowers by making advances of the principal thereof (each a "Term Loan Advance" and collectively, the "Term Loan Advances"). In no event shall the Lender be required to make more than one Term Loan Advance in any seven-day period. Term Loan Advances, once repaid, may not be reborrowed.

(c) The Borrowers acknowledge and agree that amounts of the Loan advanced are security for payment in full in cash of the Obligations. The Borrowers shall use best efforts to maintain amounts of the Loan advanced and all other cash of the Borrowers in deposit accounts or securities accounts in the United States, in compliance with section 345 of the Bankruptcy Code.

2.2 **Interest**. So long as no Event of Default has occurred and is continuing, the Borrowers shall pay interest on the aggregate outstanding and unpaid principal balance of the Term Loan Advances and on any other amounts payable under the Financing Documents at a rate per annum equal to twelve percent (12%) per annum (the "Base Rate"). Following the occurrence and during the continuation of an Event of Default, the Borrowers shall pay interest on the aggregate outstanding and unpaid principal balance of the Term Loan Advances and on any other amounts payable under the Financing Documents (including any overdue amounts) at a rate per annum equal to the Base Rate plus four percent (4%) per annum. Interest will be calculated on the basis of a year of 360 days and will be payable for the actual number of days

elapsed (including the first day but excluding the last day). Accrued interest shall be payable in immediately available funds in arrears on the first Business Day of each calendar month and on the Maturity Date.

2.3 **Repayments**. The Borrowers hereby jointly and severally agree to pay the Lender on the Maturity Date the entire unpaid amount of the Obligations and all accrued and unpaid interest thereon.

2.4 **Prepayments**.

(a) Voluntary Prepayments. The Borrowers may, upon prior written or telephonic notice given to the Lender by 12:00 Noon (New York, New York time) on the date of the proposed prepayment and, if given by telephone, promptly confirmed in writing to the Lender, at any time and from time to time prepay, without premium or penalty, the Loan on any Business Day. Notice of prepayment having been given as aforesaid, the principal amount of the Loan specified in such notice and all accrued and unpaid interest thereon shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied to reduce the outstanding principal balance of the Loan and may not be reborrowed.

(b) Mandatory Prepayments. Until such time as the Obligations have been repaid in full in cash and the termination of all commitments of the Lender to make the Loan, the Obligations shall be permanently prepaid in an amount equal to (i) 100% of the Net Cash Proceeds of any Asset Sale (in one or a series of related transactions) (other than Asset Sales permitted under Section 6.2(f)(ii)), after payment of Indebtedness to the extent secured by Permitted Prior Liens, (ii) 100% of the Net Cash Proceeds of any Casualty Event and (iii) 100% of any proceeds received from China or deposited in any accounts maintained in China immediately upon receipt of governmental approval of the release of such proceeds. All mandatory prepayments of the Loan shall be made immediately upon receipt by the Borrowers of such Net Cash Proceeds. All mandatory prepayments of the Loan shall be applied (i) *first*, to accrued and unpaid fees and expenses under the Financing Documents, (ii) *second*, to any accrued and unpaid interest on the Obligations through the date of such prepayment, and (iii) *third*, to the outstanding principal balance of the Loan. Any such mandatory prepayment may not be reborrowed.

2.5 **Costs and Payments.**

All payments to be made by the Borrowers hereunder or under any of the other Financing Documents shall be made in U.S. dollars in immediately available funds to such account as the Lender may designate from time to time in writing to the Borrowers not later than 12:00 Noon (New York, New York time) on the date when due without setoff or counterclaim and without any withholding or deduction whatsoever. If any payment hereunder is required to be made on a day which is not a Business Day, it shall be paid on the immediately succeeding Business Day, with interest and any applicable fees adjusted accordingly. All computations of interest shall be made by the Lender on the basis of actual days elapsed over a 360 day year and actual days elapsed.

ARTICLE III
Priority and Liens

3.1 **Superpriority Claims and Collateral Security**. Each of the Borrowers hereby represents, warrants and covenants that, upon entry of the Interim DIP Order or the Final DIP Order, whichever first occurs, (i) the Obligations shall at all times constitute a Superpriority Claim, pursuant to Section 364(c)(1) of the Bankruptcy Code, subject only to the Carve Out, and (ii) pursuant to Section 364(c)(2) and (3) of the Bankruptcy Code, the DIP Orders, and the Security Documents, the Obligations shall at all times be secured by a first priority perfected Lien upon the Collateral, subject, however, only to (A) Permitted Prior Liens, and (B) the Carve Out. So long as no Default or Event of Default shall have occurred and be continuing,

the Borrowers shall be permitted to pay, as and when the same become due and payable, administrative expenses of the kind specified in 11 U.S.C. § 503(b) incurred in the ordinary course of business of the Borrowers or otherwise approved by the Bankruptcy Court after notice and hearing, and compensation and reimbursement expenses allowed and payable under 11 U.S.C. § 330 and 11 U.S.C. § 331, including periodic payments on account thereof as permitted by the Bankruptcy Court; in each case to the extent set forth in the Budget and to the extent that such payment is otherwise not prohibited by any of the terms of this Agreement. The Borrowers agree that the Lender shall have the right to contest the amount of such expenses.

3.2 **Collateral Security Perfection**. Each of the Borrowers agrees to take all action that the Lender may reasonably request to perfect and protect the Lender's Liens upon the Collateral and for such Liens to obtain the priority contemplated hereby, including, without limitation, executing and delivering such financing statements, providing such notices and assents of third parties, obtaining such governmental approvals and providing such other instruments and documents in recordable form as the Lender may reasonably request.

3.3 **No Discharge; Survival of Claims**. Each of the Borrowers agrees that, except as agreed in writing by the Lender in its sole discretion, (i) the Obligations shall not be discharged by the entry of an order confirming a plan of reorganization or liquidation (and each of the Borrowers pursuant to section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge), (ii) the Superpriority Claim granted to the Lender pursuant to the DIP Orders and the Liens granted to the Lender pursuant to the DIP Orders and the Security Documents shall not be affected in any manner by the entry of an order confirming a plan of reorganization or liquidation, (iii) the Borrowers shall not propose or enter into any credit facility pursuant to which a lender, other than the Lender, is granted a priority claim or Lien pursuant to section 364 of the Bankruptcy Code, except simultaneously with and subject to payment in full in cash of the Obligations and the termination of all commitments of the Lender to make the Loan, and (iv) the Borrowers shall not propose or support any plan of reorganization or liquidation that is not conditioned upon the payment in full in cash, on or prior to the earlier to occur of (A) the effective date of such plan and (B) thirty (30) days following the confirmation date of such plan, of all of the Obligations.

3.4 **Joint & Several Obligation; Borrowers' Waivers**. All obligations of the Borrowers under the Financing Documents (including without limitation the Obligations) hereunder are joint and several. Each of the Borrowers hereby (i) waives any and all suretyship defenses relating to any action or omission to act by the Lender with respect to any of the other Borrowers, and (ii) until the final and indefeasible payment in full in cash of all of the Obligations (whether contingent or otherwise) and the termination of all commitments of the Lender to make the Loan, (A) subordinates all rights of such Borrower to contribution from any other Borrower and (B) agrees that such Borrower shall not be entitled to be subrogated to any claim, interest, right or remedy of the Lender against any other Borrower or its property.

3.5 **Credit Bidding**. Subject to entry of the Final DIP Order, the Lender will be entitled to credit bid up to the full amount Obligations outstanding under this Agreement and the full amount outstanding (if any) under the Prepetition Financing Agreements in accordance with the Bankruptcy Code in any purchase and sale of assets of the Borrowers including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any plan subject to confirmation under section 1129(b)(2)(A)(ii)–(iii) of the Bankruptcy Code. In connection with the foregoing, the Lender shall have the right to assign its respective rights to "credit bid" all or any portion of the amount outstanding under the Financing Documents and the amount outstanding under the Prepetition Financing Agreements to a newly formed acquisition vehicle.

ARTICLE IV
Representations and Warranties

Each of the Borrowers represents and warrants to the Lender on the date hereof and on the date of any Term Loan Advance:

(a) Each of the Borrowers is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization and is duly qualified and in good standing in every other jurisdiction where it is doing business, and the execution, delivery and performance by each of the Borrowers each of the Financing Documents to which it is a party (i) are within its corporate or limited liability company authority, (ii) have been duly authorized by all necessary corporate or limited liability company action, and (iii) do not conflict with or contravene its Organizational Documents.

(b) Upon entry of the Interim DIP Order or the Final DIP Order, as applicable, and the execution and delivery of the Financing Documents by the respective parties thereto, each Financing Document shall constitute the legal, valid and binding obligation of the Borrowers party thereto, subject bankruptcy and insolvency laws and general principles of equity.

(c) Each of the Borrowers has good and marketable title to all its assets, subject only to the Permitted Prior Liens, and possesses all assets, including Intellectual Property and Consents, adequate for the conduct of its business as now conducted, without known conflict with any rights of others. The Borrowers maintain insurance from financially responsible insurers covering such risks, in such amounts and with such deductibles as are customary in the Borrowers' businesses and are adequate.

(d) Except for the commencement of the Chapter 11 Cases or as set forth on Schedule 4(d), there are no legal or other proceedings or investigations pending or to Borrowers' knowledge threatened in writing against any Borrower or any Subsidiary of a Borrower before any court, tribunal or regulatory or legislative authority. Except as set forth on Schedule 4(d), the Borrowers and each Subsidiary of a Borrower have paid all post-petition taxes as are due and payable (except those being contested in good faith by appropriate proceedings and for which adequate reserves have been taken) and have funded all employee payrolls (including all required withholdings) on a periodic basis in the ordinary course of their businesses and as required by law.

(e) Except for entry of the Interim DIP Order or the Final DIP Order, whichever occurs first, the execution, delivery, performance of its obligations, and exercise of its rights under the Financing Documents by each Borrower, including borrowing under this Agreement, (i) do not require any Consents; and (ii) are not and will not be in conflict with or prohibited or prevented by (A) any Requirement of Law, or (B) any of its Organizational Documents or any provision of any post-petition instrument, post-petition agreement or assumed executory contract, in each case binding on such Borrower or affecting the property of the Borrowers, in each case unless failure to comply could not reasonably be expected to have a Material Adverse Effect.

(f) Except as specifically disclosed in Schedule 4(f), no Borrower or Subsidiary of any Borrower is in violation of (A) any of its Organizational Documents, (B) any post-petition instrument, post-petition agreement or assumed executory contract, in each case binding on it or affecting its property, or (C) any Requirement of Law, including, without limitation, all applicable federal and state tax laws, ERISA and Environmental Laws, in each case, unless failure to comply could not reasonably be expected

to have a Material Adverse Effect. No Borrower or Subsidiary of any Borrower is a party to a collective bargaining agreement.

(g) Upon execution and delivery of this Agreement and the other Financing Documents and entry of the Interim DIP Order or Final DIP Order, whichever occurs first, the Lender shall have first-priority perfected Liens in the Collateral, subject only to (A) Permitted Prior Liens, and (B) the Carve Out, with no financing statements, mortgages or similar filings on record anywhere which conflict with such first-priority Liens after taking into account the provisions of the Interim DIP Order or the Final DIP Order, whichever is then in effect.

ARTICLE V
Conditions Precedent

5.1 **Conditions Precedent.** The first Term Loan Advance is subject to satisfaction by the Borrowers or waiver by the Lender of the following conditions precedent, in addition to those set forth in Section 5.2:

(a) This Agreement shall have been duly executed and delivered by the respective parties thereto, and all Financing Documents shall be in full force and effect and shall be in form and substance reasonably satisfactory to the Lender.

(b) All corporate or limited liability company action and all third-party or governmental consents and approvals necessary for the valid execution, delivery and performance by each of the Borrowers of each of the Financing Documents to which it is a party shall have been duly and effectively taken or obtained (as the case may be) and remain in effect as of the date hereof and evidence thereof satisfactory to the Lender shall have been provided to the Lender.

(c) To the extent requested by the Lender, all Uniform Commercial Code financing statements, releases except with respect to Permitted Liens and notices and assents shall have been executed and delivered (in recordable form where applicable) to the Lender, all relevant insurances shall have been modified to include the Lender, as assignee, additional insured or lender loss payee as applicable, all Collateral in which a security interest may be perfected only by the secured party's possession shall, if so requested by the Lender, have been delivered to the Lender or its nominee, and all other actions necessary or in the reasonable opinion of the Lender desirable for the perfection and protection and to achieve the priority contemplated hereby, of all Liens in favor of the Lender shall have been taken to the satisfaction of the Lender.

(d) The Interim DIP Order and all other interim and final orders, as applicable, entered in respect of cash management, adequate protection and other "first day" motions and documents filed or to be filed with, or submitted to, the Bankruptcy Court in connection therewith shall have been entered by the Bankruptcy Court and such orders and all related pleadings shall be in form and substance reasonably satisfactory to the Lender and consistent with the Budget, and shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay and shall not have been modified or amended other than as acceptable to the Lender in its sole discretion. The Interim DIP Order shall, among other things, (a) have been entered by the Bankruptcy Court in the Chapter 11 Cases, and (b) provide that the Liens are automatically perfected upon the entry of the Interim DIP Order and also grant to the Lender relief from the automatic stay of section 362(a) of the Bankruptcy Code to enable the Lender, if it elects to do so in its sole discretion, to make all filings and recordings and to take all other actions considered necessary or advisable by the Lender to perfect, protect and insure the priority of its Liens upon the Collateral and to exercise its rights and remedies to enforce its claims and liens under the Financing Documents after an expedited hearing.

(e) The Borrowers shall have paid to the Lender the fees, costs and expenses earned, due and payable on the date hereof under the Financing Documents (including, without limitation, the fees, costs and expenses of counsel to the Lender incurred in connection with the Chapter 11 Cases and the negotiation, preparation, execution and delivery of the Financing Documents) in accordance with the Budget.

(f) The Borrowers shall have delivered to the Lender the Budget for the thirteen (13) weeks following the date hereof in form and substance satisfactory to the Lender in its sole discretion, a summary of which is attached to the Interim DIP Order.

5.2 **Conditions to Advances**. Each Term Loan Advance is subject to the satisfaction by Borrowers or waiver by the Lender of the following further conditions precedent:

(a) Each of the representations and warranties of each of the Borrowers to the Lender herein or in any of the other Financing Documents or any document, certificate or other paper or notice in connection herewith shall be true and correct in all material respects immediately prior to, and after giving effect to, such Term Loan Advance, except (i) to the extent that any such representation or warranty expressly relates only to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects, on such earlier date, or (ii) to the extent that any such representation or warranty is no longer true and correct solely due to the filing of the Chapter 11 Cases.

(b) The making of such Term Loan Advance shall not violate any requirement of applicable law and shall not be enjoined, temporarily, preliminarily or permanently by any governmental authority.

(c) The Bankruptcy Court shall have entered the Interim DIP Order or the Final DIP Order, as applicable, which shall be in full force and effect and shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Lender (i) authorizing and approving the transactions contemplated hereby, including, without limitation, the granting of the Superpriority Claim status and Liens described in Section 3.1 of this Agreement, and the payment of all fees referred to herein, and (ii) modifying the automatic stay to permit the Borrowers to perform their obligations under the Financing Documents and the its rights and remedies to enforce its claims and liens under the Financing Documents. If either the Interim DIP Order or the Final DIP Order is the subject of a pending appeal in any respect, none of such Order, the disbursement of any portion of the proceeds of the Loan or the performance by any of the Borrowers of any of their obligations under any of the Financing Documents shall be the subject of a stay pending appeal. The Borrowers and the Lender shall be entitled to rely in good faith upon the DIP Orders notwithstanding objection thereto or appeal therefrom by any interested party. The Borrowers and the Lender shall be permitted and required to perform their respective obligations in compliance with this Agreement notwithstanding any such objection or appeal unless the relevant Order has been stayed by a court of competent jurisdiction.

(d) No Default or Event of Default shall have occurred and be continuing or result from the making of such Term Loan Advance.

(e) The Borrowers shall be in compliance with the Budget subject only to the Permitted Variance.

(f) The Lender shall have received all other documentation and information reasonably requested by the Lender, in form and substance reasonably acceptable to the Lender.

Any request for a Term Loan Advance by any Borrower shall be deemed to be a representation and warranty by each Borrower that each condition set forth in this Article V has been satisfied.

ARTICLE VI
Covenants

6.1 **Affirmative Covenants**. Each of the Borrowers agrees that until the payment and satisfaction in full in cash of all of the Obligations and the termination of all commitments of the Lender to make the Loan, each Borrower will, and will cause each of its Subsidiaries to, comply with its obligations as set forth throughout this Agreement and:

(a) the Borrowers shall furnish to the Lender:

(i) as soon as reasonably available copies of all reports or other documents required to be filed with the Office of the United States Trustee;

(ii) on Friday of each week, an updated Budget for the thirteen (13) weeks following the date of such budget in substantially the same form as the previous budget, in form, detail and substance acceptable to the Lender in its sole discretion;

(iii) on Friday of each week, a variance report reflecting the actual cash receipts and disbursements for the one-week period ending on the immediately preceding Friday, and showing the variance (as a dollar amount and a percentage) of actual receipts and disbursements from those set forth in the Budget for such period, in form, detail and substance acceptable to the Lender in its sole discretion;

(iv) on Friday of each week, a list of current customers and key vendors and a report of weekly sales activity for the one-week period ending on the immediately preceding Friday, in form, detail and substance reasonably acceptable to the Lender; and

(v) from time to time such other information concerning any Borrower, any Subsidiary of any Borrower, any assets of the foregoing, or any of the Chapter 11 Cases as the Lender may reasonably request.

(b) each Borrower shall, and shall cause each of its Subsidiaries to, keep true and accurate (in all material respects) books of account in accordance with GAAP, maintain its current fiscal year, provide reasonable access to the Lender to the Borrowers' financial advisors, management team and books and records and other information (including historical information), in all cases, including with respect to strategic planning, cash, and liquidity management, and operational and restructuring activities during normal business hours and upon reasonable notice, and permit the Lender or its designated representatives during normal business hours and upon reasonable notice to inspect such Borrower's or Subsidiary's premises and to examine and be advised as to such Borrower's or Subsidiary's business records upon the request of the Lender;

(c) each Borrower and each of its Subsidiaries shall maintain its corporate or limited liability company existence (as applicable), business and assets, operate in the ordinary course of business, keep its business and assets adequately insured by responsible insurers, periodically in the ordinary course of its business consistent with past practices, on a current basis (including all withholdings), pay all post-petition taxes as and when due and payable (except where contested in good faith by appropriate proceedings and for which adequate reserves have been taken) and comply with all other Requirements of Law (including without limitation the DIP Orders and each other order entered by the Bankruptcy Court in

the Chapter 11 Cases), including Environmental Laws, except to the extent that failure to comply could not reasonably be expected to have a Material Adverse Effect;

(d) the Borrowers shall notify the Lender promptly in writing of (i) the occurrence of any Default or Event of Default, (ii) any noncompliance with or obligation under any Requirement of Law or any Environmental Law or proceeding in respect thereof of any Borrower or any Subsidiary of any Borrower, (iii) any change of address, (iv) any pending or, to the knowledge of the Borrowers, threatened litigation or similar proceeding affecting any Borrower or any Subsidiary of a Borrower or any material change in any such litigation or proceeding previously reported, (v) any post-petition claims against any assets or properties of the Borrowers constituting Collateral and (vi) any testing or environmental site assessments conducted at any real properties of any Borrower or any Subsidiary of any Borrower as a result of a release of hazardous materials or an investigation by governmental authorities pursuant to any Environmental Law, together with copies of all laboratory results and consulting reports with respect thereto;

(e) the Borrowers shall comply with all of the requirements of sections 1113 and 1114 of the Bankruptcy Code;

(f) the Borrowers shall use the proceeds of the Loan in accordance with the Budget for post-petition and other operating expenses of the Borrowers and to pay other costs and expenses of administration of the Chapter 11 Cases in accordance with the Budget subject to the Permitted Variance;

(g) the Borrowers shall, and shall cause each Subsidiary of a Borrower to, cooperate with the Lender, take such action, execute such documents (including security documents), and provide such information as the Lender may from time to time reasonably request in order further to effect the transactions contemplated by and the purposes of the Financing Documents and, if requested by the Lender for regulatory reasons or following the occurrence of an Event of Default, deliver to the Lender, at the Borrowers' expense, appraisals, title insurance, surveys or environmental assessments relating to any real estate of any Borrower or any Subsidiary of a Borrower;

(h) the Bankruptcy Court shall enter the DIP Orders in form and substance reasonably satisfactory to the Lender, approving the transactions contemplated hereunder pursuant to Section 364 of the Bankruptcy Code;

(i) not later than 10 days after the Petition Date, the Borrowers shall file a motion to establish bid procedures and approve the sale of assets to the Lender as a stalking horse bidder pursuant to the terms of an asset purchase agreement among the Borrowers and the Lender, free and clear of liens, claims and encumbrances, subject to higher and better offers in an auction process pursuant to Section 363 of the Bankruptcy Code;

(j) not later than 45 days after the Petition Date, (i) a hearing shall occur with respect to the motion to establish bid procedures and approve the sale of assets to the Lender as a stalking horse bidder, free and clear of all Liens and other claims, subject to higher and better offers in an auction process pursuant to Section 363 of the Bankruptcy Code provided that it shall not be required that an order be entered by such date finally approving a sale to the stalking horse bidder or any other transaction counterparty, and (ii) the Bankruptcy Court shall have entered the Final DIP Order (x) authorizing and approving this Agreement pursuant to Section 364(c) of the Bankruptcy Code and Bankruptcy Rule 4001, and (y) providing that the Obligations are secured by a first priority perfected Lien on the Collateral, subject only to Permitted Prior Liens and the Carve Out, in form and substance satisfactory to the Lender in its sole discretion, which Final DIP Order shall be in full force and effect, and shall not have been reversed, modified or amended in any respect without the prior written consent of the Lender;

(k) not later than eight (8) months after the Petition Date, the Borrowers shall have confirmed a Plan, unless otherwise agreed by the Lender; and

(l) the Borrowers shall at all times comply with the Budget subject only to Permitted Variances.

6.2 **Negative Covenants**. Each of the Borrowers agrees that until the payment and satisfaction in full of all the Obligations and the termination of all commitments of the Lender to make the Loan, the Borrowers will not:

(a) seek, consent or suffer to exist (i) any modification, stay, vacation or amendment to the DIP Orders; (ii) a priority claim for any administrative expense or unsecured claim against the Borrowers (now existing or hereafter arising of any kind or nature whatsoever, including without limitation any administrative expense of the kind specified in Section 503(b), 506(c) or 507(b) of the Bankruptcy Code) equal or superior to the priority claim of the Lender in respect of the Obligations, except for the Carve Out; (iii) a priority claim pursuant to Section 364 of the Bankruptcy Code equal or superior to the priority claim of the Lender in respect of the Obligations; and (iv) any Lien on any Collateral, having a priority equal or superior to the Liens in favor of the Lender in respect of the Obligations, except for Permitted Prior Liens;

(b) create, incur, assume or suffer to exist any Indebtedness of any Borrower or any Subsidiary of any Borrower other than (i) Indebtedness to the Lender arising under the Financing Documents and the Prepetition Financing Agreements, (ii) Indebtedness in respect of taxes or other governmental charges contested in good faith and by appropriate proceedings and for which adequate reserves have been taken, and (iii) Indebtedness set forth on Schedule 6.2(b) hereto;

(c) create, incur or suffer to exist any Liens on any of or assets of any Borrower or any Subsidiary of any Borrower except (collectively, "Permitted Liens") (i) Liens securing the Obligations; (ii) Liens in favor of the Lender securing Indebtedness pursuant to the Prepetition Financing Agreements, (iii) Permitted Prior Liens; (iv) Liens securing taxes or other governmental charges not yet due; (v) deposits for utilities, reasonable retainers to professionals, deposits or pledges made in connection with workmen's compensation, unemployment insurance or other social security obligations in the ordinary course of business of any of the Borrowers consistent with past practices; and (vi) easements, rights-of-way, zoning restrictions and similar minor and immaterial Liens;

(d) purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with a Person that is not a wholly owned Subsidiary immediately prior to such merger, consolidation or amalgamation) any securities or equity interests, make loans, issue guaranties or other financial accommodations or make any other investments other than investments in (i) any other Borrower or any Subsidiary in existence as of the Petition Date, or (ii) operating bank accounts, bank certificates of deposit, bank deposits, bank money market funds, government securities, commercial paper, repos and other cash equivalent securities, in each case having maturities of thirty days or less and reasonably acceptable to the Lender;

(e) effect any sale, lease or other disposition of material assets (other than (i) sales of inventory in the ordinary course; (ii) in accordance with the Budget, or (iii) with prior approval of the Bankruptcy Court and prior written consent of the Lender), or purchase, lease or otherwise acquire assets, other than in the ordinary course of business;

(f) merge into, or consolidate or amalgamate with, any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, license, lease or otherwise dispose of (in

one transaction or in a series of transactions) all or any part of its assets, or issue, sell, transfer or otherwise dispose of any equity interests of any Borrower or any Subsidiary of any Borrower, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other Person or any division, unit or business of any other Person, other than (i) asset sales approved by an order of the Bankruptcy Court that is in form and substance acceptable to the Lender in its sole discretion or is otherwise in accordance with the Budget, (ii) asset sales in the ordinary course of business and consistent with past practice and (iii) dispositions of obsolete, worn out, used or surplus property in the ordinary course of business and consistent with past practice;

(g) without the prior written consent of the Lender, use any portion of the Loan or the Collateral (including, for the avoidance of doubt, the Carve Out or any "cash collateral" as defined in section 363(a) of the Bankruptcy Code) (i) for any purpose that is prohibited under the Bankruptcy Code or the DIP Orders; (ii) to make any payment, advance, intercompany advance, or any other remittance or transfer whatsoever (including any intercompany loans and investments) that is not in accordance with the Budget; (iii) to make any payment to any board member, in such Person's capacity as such, or shareholder of any Borrower or any Affiliate or Subsidiary of a Borrower; (iv) to make any payment in settlement of any claim requiring Bankruptcy Court approval under Bankruptcy Rule 9019 without obtaining a Bankruptcy Court order; or (v) to finance in any way: (x) any adversary action, suit, arbitration, proceeding, application, motion, contested matter or other litigation or challenge of any type (or any investigation of the foregoing) adverse to the interests of Lender or its rights and remedies under the Financing Documents, the Interim DIP Order, and the Final DIP Order (including without limitation for payment of any fees or expenses incurred at any time in connection with any action which seeks to invalidate, avoid, subordinate or otherwise impair the claims of the Lender under any of the Prepetition Financing Agreements or otherwise in connection with the Loan, or any liens or priorities created in favor of the Lender under the Prepetition Financing Agreements or otherwise in connection with the Loan, or which seeks to recover on any claims against or transfers made to the Lender), or (y) any other action which with the giving of notice or passing of time would result in an Event of Default hereunder or under any of the Financing Documents;

(h) seek any other debtor-in-possession financing with Liens senior or pari passu to any Lien in favor of the Lender during the pendency of the Chapter 11 Cases unless such financing is sufficient in amount and is actually used to fully repay all Obligations, all obligations under the Prepetition Financing Agreements and all other post-petition Indebtedness of each Borrower to the Lender;

(i) use any Term Loan Advance or any proceeds of the Loan in a manner or for a purpose other than in accordance the Budget or on such other terms as the Lender may agree;

(j) open any new deposit or securities accounts; provided however, the Borrowers may open deposit or securities accounts if such account is pledged to the Lender and the Lender has received an account control agreement in form and substance reasonably acceptable to the Lender and duly executed by the parties thereto;

(k) incur or make any dividend or distribution (whether in cash, property, securities or otherwise), investment, loan or other payment without the prior written consent of the Lender, other than as expressly contemplated under the Budget;

(l) modify or alter (i) in any material manner the nature and type of its business or the manner in which such business is conducted or (ii) its Organizational Documents, except as required by the Bankruptcy Code or a Plan and otherwise acceptable to the Lender;

(m) without the prior written consent of the Lender, assume or reject any executory contract or unexpired lease;

(n) engage in any activities that would result in any Borrower becoming an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940;

(o) permit or suffer to exist at any time any variance of actual cash receipts and disbursements (excluding Term Loan Advances and repayments thereof) for any one-week period ending on a Friday from cash receipts and disbursements set forth in the Budget (excluding Term Loan Advances and repayments thereof) for such period other than a Permitted Variance (the "Actual Variance"), as calculated as of each Friday commencing with the Friday of the third full calendar week following the Petition Date; and

(p) transfer any cash or cash equivalents that constitute Collateral to a Subsidiary of any Borrower without the prior written approval of the Lender, other than as expressly contemplated under the Budget.

ARTICLE VII
Events of Default: Acceleration

If any of the following events ("Events of Default") shall occur:

(a) the Borrowers shall fail to pay any principal or interest within two days of the date due and payable under this Agreement (whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment, or otherwise), or any other Obligation due under any of the Financing Documents, when the same becomes due and payable hereunder or thereunder;

(b) the Borrowers shall default in the observance or performance of any covenant, agreement, obligation, or restriction set forth in Section 6.2 of this Agreement;

(c) the Borrowers shall default in the observance or performance of any other covenant, agreement, obligation or restriction set forth in this Agreement or any of the other Financing Documents after a period of twenty (20) calendar days has passed without such failure having been cured or remedied;

(d) any representation or warranty of the Borrowers in any of the Financing Documents or in any document, certificate or other paper or notice given in connection therewith shall have been false or misleading in any material respect at any time made or deemed to have been made or repeated;

(e) except for the Indebtedness related to the financing arrangements listed on Schedule 7(e) and all documents related thereto, any Borrower shall (i) fail to pay any principal or interest under any Material Indebtedness that is not otherwise subject to the automatic stay under section 362 of the Bankruptcy Code, when due and payable, and after giving effect to any applicable grace period in the agreement or instrument evidencing such Material Indebtedness or under which such Material Indebtedness has been incurred, or (ii) any event or condition occurs that results in any Material Indebtedness becoming due and payable or required to be prepaid, redeemed, purchased or defeased, in each case prior to its stated maturity by reason of any default, event of default or the like (however described);

(f) any of the Financing Documents executed and delivered shall cease to be in full force and effect, or the Lender's Liens on any Collateral shall fail to be perfected in any material respect at any time, or shall fail to have the priority contemplated hereby at any time after such date;

(g) the Bankruptcy Court shall enter any order (i) amending, supplementing, altering, staying, vacating, rescinding, reversing or otherwise modifying any DIP Order without the consent of the

Lender, (ii) appointing a Chapter 11 trustee or appointing an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) in any of the Chapter 11 Cases; (iii) dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a Chapter 7 case or (iv) granting relief from the automatic stay to any creditor holding or asserting a Lien or reclamation claim on a material portion of the assets of the Borrowers taken as a whole or where the deprivation of the Borrowers of such assets will, in the reasonable opinion of the Lender, have a Material Adverse Effect;

(h) the Bankruptcy Court shall grant an application filed by the Borrowers or any other interested party for the approval of any other Superpriority Claim or Lien in any of the Chapter 11 Cases which is pari passu with or senior to the claims or Liens of the Lender against the Borrowers hereunder or under any of the other Financing Documents (unless substantially concurrently with the transactions contemplated by such application, all Obligations (whether contingent or otherwise) shall be paid in full in cash), or there shall arise any such Superpriority Claim or Lien;

(i) any Borrower shall be unable to pay their post-petition debts as they mature;

(j) except as provided in the Budget, the Borrowers shall pay or discharge any pre-petition Indebtedness, exclusive of (i) Indebtedness required to be paid and in fact paid in connection with the assumption of executory contracts which are not financial accommodations, and (ii) payments effected by involuntary set-offs;

(k) a plan of reorganization shall be proposed by the Borrowers or approved by the Bankruptcy Court in any of the Chapter 11 Cases which does not satisfy the requirements of Section 3.3 of this Agreement;

(l) the Bankruptcy Court shall not have entered the Interim DIP Order, in form and substance reasonably satisfactory to Lender, on or before seven (7) Business Days after the Petition Date;

(m) the Bankruptcy Court shall not have entered the Final DIP Order, in form and substance reasonably satisfactory to Lender, on or before forty-five (45) days after the Petition Date;

(n) the Bankruptcy Court shall not have entered an order approving bid procedures, in form and substance reasonably satisfactory to Lender, on or before forty-five (45) days after the Petition Date;

(o) any Borrower shall fail to comply with the terms of the Interim DIP Order or the Final DIP Order, if any;

(p) any Borrower shall (i) challenge or contest the validity or enforceability of any DIP Orders or deny that it has further liability thereunder, (ii) challenge or contest the nature, extent, amount, enforceability, validity, priority or perfection of the Obligations or any portion thereof, the Liens on the Collateral securing the Obligations, the Superpriority Claim in respect of the Obligations, the adequate protection Liens in favor of the Lender, the adequate protection amount, the adequate protection superpriority claims in favor of the Lender, the Prepetition Financing Agreements, or any Liens in favor of the Lender securing the Prepetition Financing Agreements, (iii) assert any claim, defense or cause of action that seeks to avoid, recharacterize, subordinate (whether equitable subordination or otherwise), disgorge, disallow, impair or offset all or any portion of the Obligations, the Liens on the Collateral securing the Obligations, the Superpriority Claim in respect of the Obligations, the adequate protection Liens in favor of the Lender, adequate protection amount, the adequate protection superpriority claims, the Prepetition Financing Agreements, or the Liens in favor of the Lender securing the Prepetition Financing Agreements,

or (iv) investigate, join or file any motion, application or other pleading in support of, or publicly support any other Person that has asserted any of the claims, challenges or other requested relief contemplated in clauses (i) – (iii) above;

(q) any Borrower shall materially modify or consent to any material modification of (i) any order approving bid procedures or (ii) any definitive documentation pursuant to a sale term sheet with the Lender that is materially adverse to the Lender, in each case without the prior written consent of the Lender;

(r) any Borrower uses proceeds of the Loan for any purpose other than as permitted hereunder;

(s) within 5 Business Days after the termination or resignation of the Borrowers' Chief Restructuring Officer, the Borrowers shall fail to appoint and install a replacement Chief Restructuring Officer reasonably acceptable to the Lender and/or such replacement Chief Restructuring Officer shall fail to accept such appointment and installation; or

(t) any Borrower shall be enjoined from conducting any part of its business as a debtor-in-possession, or there shall occur any disruption to such business, which could reasonably be expected to have a Material Adverse Effect.

THEN, or at any time thereafter the Lender may deliver a Carve Out Notice and, by written notice (a "Notice of Default") to the Borrowers (and to the Bankruptcy Court to the extent required by the DIP Orders), declare and require (i) the unpaid principal amount of the Loan and all interest accrued and unpaid thereon forthwith to be due and payable, and (ii) all Obligations and other amounts payable hereunder and under the other Financing Documents to be forthwith due and payable, in each case without further order of or application to the Bankruptcy Court, presentment, demand, protest or further notice of any kind all of which are hereby expressly waived by each Borrower. Upon issuance of a Notice of Default, all obligations of Lender to extend credit under this Agreement shall immediately terminate.

If an Event of Default occurs and notwithstanding anything in section 362 of the Bankruptcy Code, the Lender may, subject to the provisions of the DIP Orders, exercise the rights and remedies which the Lender may have hereunder or under any of the other Financing Documents or at law (including but not limited to the Bankruptcy Code and the Uniform Commercial Code) or in equity or otherwise. No remedy herein conferred upon the Lender is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and in addition to every other remedy hereunder, now or hereafter existing at law or in equity or otherwise.

ARTICLE VIII
Lender as Party in Interest

The Borrowers hereby stipulate and agree that the Lender is and shall remain a party in interest in the Chapter 11 Cases and shall have the right to participate, object and be heard in any motion or proceeding in connection therewith and to appeal therefrom. Neither the failure to so participate, object or be heard nor anything in this Agreement or any other Financing Document shall be deemed to be a waiver of the Lender's rights or remedies thereunder or under applicable law. Without limitation of the foregoing, the Lender shall have the right to make any motion or raise any objection which it deems to be in its interest (specifically including but not limited to objections to use of proceeds of the Loan, payment of professional fees and expenses or the amount thereof, sales or other transactions outside the ordinary course of business or assumption or rejection of any executory contract or lease) whether or not the action or inaction by the

Borrowers which is the subject of such motion or objection violates or is expressly permitted by any covenant or provisions of this Agreement or any other Financing Document.

ARTICLE IX
Miscellaneous

9.1 **Costs and Expenses**. To the extent allowed by applicable law (including without limitation the DIP Orders), the Borrowers agree to pay, on demand, all reasonable and documented out of pocket costs and expenses of the Lender (including all reasonable fees, expenses and disbursements of counsel, financial advisors and consultants) incurred in connection with the Chapter 11 Cases, including, without limitation in connection with the preparation, execution and delivery of this Agreement and the other Financing Documents and the funding of the Loan, any amendment or waiver of any provision of this Agreement and the other Financing Documents, and/or in connection with the enforcement or protection of any rights and remedies of the Lender under this Agreement or any other Financing Document.

9.2 **Indemnification**. The Borrowers shall indemnify and hold harmless the Lender and each of its Affiliates and each of the respective officers, directors, members, partners, employees, agents, advisors, attorneys and representatives of each (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and reasonable expenses including, without limitation, reasonable fees and disbursements of counsel (including the reasonable allocated costs, expenses and disbursements of in-house counsel of the Lender, financial advisors and consultants), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party (including, without limitation, in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense in connection therewith), in each case arising out of or in connection with or by reason of the Loan, this Agreement, any other Financing Document or any of the transactions contemplated hereby or thereby, or any actual or proposed use of the proceeds of the Loan, except to the extent such claim, damage, loss, liability or expense is found by a court of competent jurisdiction to have resulted solely from such Indemnified Party's gross negligence or willful misconduct as determined by the final non-appealable judgment of a court of competent jurisdiction. In the case of an investigation, litigation or other proceedings to which the indemnity in this Section 9.2 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Borrower, any of their directors, security holders or creditors, an Indemnified Party or any other person, or an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Borrowers further agree that no Indemnified Party shall have any liability (whether direct or indirect, in contract, tort, or otherwise) to the Borrowers or any of their Affiliates, Subsidiaries, security holders or creditors for or in connection with the transactions contemplated hereby, except for direct damages (as opposed to special, indirect, consequential or punitive damages including, without limitation, any loss of profits, business or anticipated savings) which are hereby expressly waived) determined by the final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from such Indemnified Party's gross negligence or willful misconduct. The foregoing indemnity shall survive the occurrence of the Maturity Date, the termination of the Financing Documents, the termination of the commitments of the Lender to make credit extensions hereunder and the repayment, satisfaction or discharge of all Obligations.

9.3 **Notices**. Any communication to be made hereunder shall (i) be made in writing and by email, and (ii) be made or delivered to the address (and email address) of the party receiving notice which is identified below (unless such party has by written notice specified another address), and shall be deemed made or delivered, when dispatched, delivered, or five (5) days after being mailed, postage prepaid, to such address.

Address of the Borrowers:

Wireless Advanced Vehicle Electrification, LLC
4752 W. California Avenue, Building B, Suite 400
Salt Lake City, UT
Attn: Ben Wu
(bwu@ideanomics.com)

Address of counsel to the Borrowers:

Foley & Lardner LLP
500 Woodward Ave Ste. 2700
Detroit, MI 48226
Attn: John A. Simon and Jake W Gordon
(jsimon@foley.com; jake.gordon@foley.com)

Address of the Lender:

Tillou Management and Consulting LLC
c/o Faegre Drinker Biddle & Reath LLP
600 Campus Drive
Florham Park, NJ 07932
Attn: Bryan Bloom, Esq. and Frank Velocci, Esq.
(bryan.bloom@faegredrinker.com; frank.velocci@faegredrinker.com)

9.4 **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of each party hereto and its successors and assigns, but no Borrower may sell, assign or transfer any of its rights or obligations' hereunder or under any other Financing Document, or any portion thereof, including such Borrower's rights, title, interests, remedies, powers, and duties hereunder or thereunder, without the Lender's prior written consent, which consent can be withheld for any reason or no reason whatsoever. The Lender may assign any or all of the Obligations or any participation therein.

9.5 **No Waiver; Severability; Entire Agreement; Counterparts; Governing Law; Jury Waiver**. This Agreement may not be amended or waived except by a written instrument signed by the Borrowers and the Lender, and any such amendment or waiver shall be effective only for the specific purpose given. No failure or delay by the Lender to exercise any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other right, power or privilege. The provisions of this Agreement are severable and if any one provision hereof shall be held invalid or unenforceable in whole or in part in any jurisdiction, such invalidity or unenforceability shall affect only such provisions in such jurisdiction. This Agreement, together with all Schedules hereto, expresses the entire understanding of the parties with respect to the transactions contemplated hereby. This Agreement and any amendment hereof may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one agreement. In proving this Agreement, it shall not be necessary to produce more than one such counterpart executed by the party to be charged. Delivery of any executed counterpart of a signature page hereto by email or other electronic means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart. **THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS (EXCEPT, AS TO ANY OTHER FINANCING DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY CODE). EACH OF THE BORROWERS, AS AN INDUCEMENT TO THE LENDER TO ENTER INTO THIS AGREEMENT, HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY**

ACTION ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT.

[Remainder of Page Left Intentionally Blank]

Each of the undersigned has caused this Agreement to be executed and delivered as of the date first written above.

BORROWERS

IDEANOMICS, INC.

By: DocuSigned by: Alfred Poor 3E662BE0137F4B2...
Name: Alfred Poor
Title: Chief Executive Officer

SOLECTRAC, INC.

By: DocuSigned by: Alfred Poor 3E662BE0137F4B2...
Name: Alfred Poor
Title: Chief Executive Officer

WIRELESS ADVANCED VEHICLE ELECTRIFICATION, LLC

By: DocuSigned by: Alfred Poor 3E662BE0137F4B2...
Name: Alfred Poor
Title: Chief Executive Officer

VIA MOTORS INTERNATIONAL, INC.

By: DocuSigned by: Alfred Poor 3E662BE0137F4B2...
Name: Alfred Poor
Title: Chief Executive Officer

TIMIOS HOLDINGS CORP.

By: DocuSigned by: Alfred Poor 3E662BE0137F4B2...
Name: Alfred Poor
Title: Chief Executive Officer

VIA MOTORS, INC.

By: DocuSigned by: Alfred Poor 3E662BE0137F4B2...
Name: Alfred Poor

Title: Chief Executive Officer

JUSTLY MARKETS LLC

By: DocuSigned by: Alfred Poor 3E662BE0137F4B2...
Name: Alfred Poor
Title: Chief Executive Officer

JUSTLY HOLDINGS INC.

By: DocuSigned by: Alfred Poor 3E662BE0137F4B2...
Name: Alfred Poor
Title: Chief Executive Officer

LENDER

TILLOU MANAGEMENT AND CONSULTING LLC

By: DocuSigned by: Stephen Skoller 2C83E2024B6849D...
Name: Stephen Skoller
Title:Manager

EXHIBIT 2

INITIAL BUDGET

Ideanomics - Consolidated
SUBJECT TO MATERIAL CHANGE
($ in 000s)

		WE 12/6	WE 12/13	WE 12/20	WE 12/27	WE 1/3	WE 1/10	WE 1/17	WE 1/24	WE 1/31	WE 2/7	WE 2/14	WE 2/21	TOTAL DIP Budget
	Week #	1	2	3	4	5	6	7	8	9	10	11	12	
	Collections													
1	Cash Receipts	$ -	$ 68	$ -	$ 46	$ 164	$ 323	$ 102	$ 278	$ -	$ -	$ -	$ -	$ 979
2	**TOTAL COLLECTIONS**	**-**	**68**	**-**	**46**	**164**	**323**	**102**	**278**	**-**	**-**	**-**	**-**	**979**
3	**Operating Disbursements**													
4	Payroll & Benefits	(76)	(99)	(55)	(99)	(116)	-	(99)	(55)	(99)	(116)	(99)	(105)	(1,017)
5	Rent/Monthly Maintenance	(73)	(15)	(11)	(11)	(39)	(15)	(11)	(23)	(11)	(39)	(15)	(11)	(275)
6	General Insurance	-	-	(22)	-	-	-	(22)	-	-	-	(22)	-	(66)
7	Operating Expenses	(874)	(148)	(150)	(241)	(194)	(183)	(198)	(301)	(174)	(28)	(23)	(23)	(2,537)
8	Other Disbursements	(151)	(63)	(53)	(38)	(38)	(63)	(53)	(38)	(38)	(63)	(53)	(338)	(983)
9	**TOTAL DISBURSEMENTS**	**(1,174)**	**(324)**	**(291)**	**(388)**	**(387)**	**(260)**	**(382)**	**(417)**	**(321)**	**(246)**	**(211)**	**(476)**	**(4,878)**
10	**NET OPERATING CASH FLOW**	**(1,174)**	**(256)**	**(291)**	**(342)**	**(223)**	**62**	**(280)**	**(139)**	**(321)**	**(246)**	**(211)**	**(476)**	**(3,898)**
11	**NON-OPERATING RECEIPTS / DISBURSEMENTS**													
12	Foley & Lardner (Debtors Counsel)	(250)	(250)	(250)	(200)	(150)	(150)	(150)	(100)	(100)	(50)	(50)	(16)	(1,716)
13	Foley & Lardner (Litigation Support)	(31)	(31)	(31)	(31)	(31)	(31)	(31)	(31)	(31)	(31)	(31)	(31)	(375)
14	Ashby & Geddes (Delaware Counsel)	(60)	(60)	(60)	(30)	(30)	(30)	(30)	(30)	(20)	(20)	(20)	(10)	(400)
15	SSG (Investment Banker)	(13)	(13)	(13)	(13)	(10)	(10)	(10)	(10)	(10)	(13)	(13)	(13)	(138)
16	Riveron (CRO)	(139)	(139)	(139)	(114)	(109)	(109)	(109)	(109)	(109)	(64)	(64)	(64)	(1,266)
17	Epiq (Claims Agent)	(20)	(20)	(20)	(20)	(20)	(20)	(10)	(10)	(10)	(10)	(10)	(5)	(175)
18	UCC	(13)	(13)	(13)	(13)	(13)	(13)	(13)	(13)	(13)	(13)	(13)	(13)	(150)
19	Faeger & Drinker (DIP Lender Counsel)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(300)
20	B Riley (DIP Lender FA)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(300)
21	US Trustee Fees	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(14)	(14)	(14)	(14)	(133)
22	KERP	-	-	-	-	-	-	-	-	-	-	-	(275)	(275)
23	Roll-up Interest	-	-	-	-	(199)	-	-	-	-	(278)	-	(201)	(678)
24	Wind-down Expenses	-	-	-	-	(1,816)	-	-	-	-	-	-	-	(1,816)
24	**TOTAL NON-OPERATING DISBURSEMENTS**	**(585)**	**(585)**	**(585)**	**(480)**	**(2,437)**	**(422)**	**(412)**	**(362)**	**(357)**	**(542)**	**(264)**	**(691)**	**(7,721)**
25	**Total Cash Flow**	**$ (1,759)**	**$ (841)**	**$ (876)**	**$ (822)**	**$ (2,660)**	**$ (360)**	**$ (693)**	**$ (502)**	**$ (677)**	**$ (788)**	**$ (475)**	**$ (1,167)**	**$ (11,619)**

EXHIBIT 3

WIND-DOWN BUDGET

Ideanomics
Wind Down Analysis
($ in 000's)

SUBJECT TO MATERIAL CHANGE

363 Sale + Ch. 11 Plan + Wind Down

	Post Sale - Plan Confirmation			Wind-Down (Post Effective Date)						
Company Advisors	**Feb-25**	**Mar-25**	**Total**	**Apr-25**	**May-25**	**Jun-25**	**Jul-25**	**Aug-25**	**Total**	**Total**
Foley & Lardner (Debtors Counsel)	$ 175.0	$ 130.0	$ 305.0	$ 35.0	$ 20.0	$ 15.0	$ -	$ -	70.0	$ 375.0
Foley & Lardner (Litigation Support)		-	-	-	-	-	-	-	-	-
Ashby & Geddes (Delaware Counsel)	50.0	50.0	100.0	50.0	50.0	25.0	25.0	25.0	175.0	275.0
SSG (Investment Banker)	431.3	-	431.3	-	-	-	-	-	-	431.3
Riveron (CRO)	100.0	100.0	200.0	50.0	30.0	20.0	10.0	10.0	120.0	320.0
Epiq (Claims Agent)	25.0	25.0	50.0	10.0	10.0	10.0	10.0	10.0	50.0	100.0
Debtor Subtotal	$ 781.3	$ 305.0	$ 1,086.3	$ 145.0	$ 110.0	$ 70.0	$ 45.0	$ 45.0	$ 415.0	$ 1,501.3
Other										
US Trustee Fees	-	-	-	9.7	-	-	3.4	1.3	14.4	14.4
Tax and Audit Professionals	10.0	10.0	20.0	5.0	5.0	5.0	5.0	5.0	25.0	45.0
Other Subtotal	$ 10.0	$ 10.0	$ 20.0	$ 14.7	$ 5.0	$ 5.0	$ 8.4	$ 6.3	$ 39.4	$ 59.4
Total Professional Cost	**$ 791.3**	**$ 315.0**	**$ 1,106.3**	**$ 159.7**	**$ 115.0**	**$ 75.0**	**$ 53.4**	**$ 51.3**	**$ 454.4**	**$ 1,560.7**
Wind Down										
Administrative + Back Office	25.0	25.0	50.0	15.0	15.0	15.0	15.0	15.0	75.0	125.0
Priority Claims	-	-	-	-	-	-	-	-	-	-
Other	20.0	20.0	40.0	5.0	5.0	5.0	5.0	5.0	25.0	65.0
IT systems and data storage	-	10.0	10.0	5.0	5.0	5.0	5.0	5.0	25.0	35.0
Various Taxes Payable	-	5.0	5.0	5.0	5.0	5.0	5.0	5.0	25.0	30.0
Post-Petition Administrative Expenses[2]	-	-	-	-	-	-	-	-	-	-
503(b)(9) Claims	-	-	-	-	-	-	-	-	-	-
Tax on Gain / Sale of Assets	-	-	-	-	-	-	-	-	-	-
Total Wind Down Costs	**$ 45.0**	**$ 60.0**	**$ 105.0**	**$ 30.0**	**$ 30.0**	**$ 30.0**	**$ 30.0**	**$ 30.0**	**$ 150.0**	**$ 255.0**
Total Costs	**$ 836.3**	**$ 375.0**	**$ 1,211.3**	**$ 189.7**	**$ 145.0**	**$ 105.0**	**$ 83.4**	**$ 81.3**	**$ 604.4**	**$ 1,815.7**

EXHIBIT B

DIP Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
IDEANOMICS, INC., *et al.*,[1]	Case No. 24-12728 (CTG)
Debtors.	(Joint Administration Requested)

DECLARATION OF ALPESH AMIN IN SUPPORT OF THE DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS, PURSUANT TO SECTIONS 105, 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULES 2002, 4001, 6003, 6004, AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (I) AUTHORIZING THE DEBTORS TO (A) USE CASH COLLATERAL, (B) OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING AND GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE CLAIMS, AND (C) PROVIDE ADEQUATE PROTECTION, (II) MODIFYING THE AUTOMATIC STAY, (III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF

I, Alpesh Amin, make this declaration pursuant to 28 U.S.C. § 1746:

1. I am a Senior Managing Director at Riveron Consulting ("Riveron") with principal offices located at 2515 McKinney Ave., Dallas, TX 75201. Riveron is the financial consultant for the above-captioned debtors and debtors in possession (collectively, the "Debtors") in each of the above-captioned chapter 11 cases (the "Chapter 11 Cases").

2. I submit this declaration (the "Declaration") in support of the *Debtors' Motion for Entry of Interim Motion for Entry of Interim and Final Orders, Pursuant to Sections 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code and Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedures (I) Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Senior Secured Superpriority Postpetition Financing and Granting Liens*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or state identification number are, are: Ideanomics, Inc. (8374); Wireless Advanced Vehicle Electrification, LLC (6793); Solectrac, Inc. (4653); Timios Holdings Corp. (0190); Justly Holdings Inc. (3657); Justly Markets LLC f/k/a Delaware Board of Trade Holdings, Inc. (5107); VIA Motors International, Inc. (7063); and VIA Motors, Inc. (0185). The headquarters for the above-captioned Debtors is located at 1441 Broadway, 5th Floor, Suite 5116, New York, New York 10018.

and Superpriority Administrative Claims, and (C) Provide Adequate Protection (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing and (IV) Granting Related Relief (the "DIP Motion"),[2] which, as noted in the DIP Motion, seeks approval to obtain a senior secured superpriority debtor-in-possession facility.

3. Although Riveron is expected to be compensated for its work as the Debtors' financial advisor in the Chapter 11 Cases, I am not compensated separately for this Declaration or testimony. Except as otherwise indicated herein, all of the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, the information provided to me by Riveron professionals involved in advising the Debtors in the Chapter 11 Cases, or information provided to me by the Debtors. If called upon to testify, I could and would testify to the facts set forth herein on that basis. I am over the age of 18 years and am authorized to submit this Declaration.

Qualifications

4. I have been employed at Riveron since 2020. Prior to joining Riveron, I was a Senior Managing Director at Conway MacKenzie, Inc. for four years, where I was responsible for sourcing, selling, and providing restructuring and turnaround services to private and public companies in complex transformational phases, including business model redesign, profit enhancement, partial or entire company sale, and capital raises/balance sheet restructurings. Prior to Conway Mackenzie, Inc., I spent approximately eight years as a managing director at MorrisAnderson, where I also specialized in working with underperforming companies and their stakeholders. Prior to MorrisAnderson, I held management consulting positions with Huron

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Documents (as defined herein), the *Declaration of Alpesh Admin in Support of the Chapter 11 Proceedings and First Day Pleadings* (the "First Day Declaration") or the DIP Motion filed contemporaneously herewith, as applicable.

Consulting Group and Bridge Associates, LLC, where I specialized in turnaround and interim management services. I graduated with a Bachelors in Business Administration with concentrations in finance and management information systems from Miami University.

5. I personally have more than 25 years of experience advising companies in connection with restructuring transactions and chapter 11 cases, including with respect to financings and mergers and acquisitions. My areas of expertise include, among other things, (a) advising on financial restructuring strategies, (b) analyzing business plans and related financial projections, (c) advising on liquidity alternatives, and (d) sizing, structuring, raising, and executing all aspects of financing transactions, including distressed and debtor-in-possession financings.

The Retention of Riveron

6. Riveron has been engaged as financial advisors to the Debtors, and members of my team and I have been working closely with the Debtors, since August 2024. Since being engaged by the Debtors, Riveron has rendered investment banking advisory services to the Debtors in connection with the Debtors' evaluation of financing and strategic alternatives in light of their financial position. Additionally, Riveron has worked with the Debtors' management and other professionals retained by the Debtors, and has become familiar with the Debtors' capital structure, financial condition, liquidity needs, and business operations.

The Debtors' Need for Post-Petition Financing

7. The Debtors require uninterrupted access to their cash and an immediate capital infusion to fund the Chapter 11 Cases, and to preserve the value of the estates as a going concern. As further described in the DIP Motion, without the DIP Facility, the Debtors will be unable to cover the projected restructuring costs of the Chapter 11 Cases, their ability to run a sale process would be jeopardized, and there would be a rapid deterioration of the value of the Debtors' estates.

The Debtors' Efforts to Obtain Post-Petition Financing

8. The Debtors have recently faced a number of headwinds that have negatively impacted its businesses.

9. Since Fall 2023 and through the Petition Date, the Debtors, with the assistance of its advisors, considered a range of strategic options to address its liquidity needs and right-size its balance sheet, including: (i) seeking financing from new financing sources and existing stakeholders; (ii) soliciting interest in strategic transactions with third parties; (iii) attempting to market and sell all or a portion of its assets and/or operations to third parties; and (iv) negotiating with its stakeholders around potential in- and out-of-court restructuring options that would enable the Company to continue as an operating business. Unfortunately, as further described in the DIP Motion, despite these comprehensive efforts, during July 2024, the Debtors concluded that, based on recent performance trends, the only viable pathway to maintain its business as a going concern and preserve liquidity was to sell substantially all of its operating assets for the highest and otherwise best offer pursuant to section 363 of the Bankruptcy Code.

10. To fund the sale process, the Company, with the assistance of Riveron contacted approximately eleven parties. Several parties entered discussions with the Company's advisors to obtain debtor-in-possession financing, but only one party executed a non-disclosure agreement. No lenders were willing to provide postpetition financing to meet the Debtors' immediate cash needs.

11. Eventually the Company was successful in finding and negotiating the necessary DIP financing and is in the process of negotiating a going concern sale transaction for certain of its core business lines with Tillou Management and Consulting, LLC (the "DIP Lender"). Since the DIP Lender's prepetition loans are secured by perfected liens on substantially all of the

Debtors' assets, the DIP Lender was unwilling to offer consent for any alternative DIP proposal that would prime the DIP Lender's liens.

12. The Debtors were able to negotiate for certain features of the DIP Facility that seek to preserve their liquidity during the pendency of the Chapter 11 Cases and fund the wind down of the Estates following a sale of substantially all assets. The Debtors and the DIP Lenders ultimately came to a consensual agreement on terms and conditions of the proposed DIP Facility, including on the use of Cash Collateral.

The Proposed DIP Facility

13. The proposed DIP Facility consists of (a) a term loan in the aggregate principal amount of $11,619,000 of "new money" loans (the "New Money Term Loans") that will be made available to the Borrowers pursuant to the terms of the DIP Credit Agreement and the DIP Orders and (b) a "creeping roll up" of the Prepetition Obligations (the "Roll Up DIP Loans") upon entry of the Final DIP Order. The DIP Credit Agreement and the Interim DIP Order contemplate that the Prepetition Obligations will be "rolled up" on a dollar-for-dollar basis concurrently with the making of Term Loan Advances (as defined in the DIP Credit Agreement), which will be made weekly, during the Interim Period. Upon entry of the Final DIP Order, the remaining Prepetition Obligations will be "rolled up" and the DIP Obligations shall be increased on a dollar-for-dollar basis by such amount. In exchange for consenting to the Roll Up, the DIP Lender has permitted the Debtor to place $1,815,700 into a segregated account to facilitate the wind-down of the Debtors as contemplated in the Wind-Down Budget.

14. The economic terms of the proposed DIP Facility are more fully described in the DIP Motion. Certain key terms of the DIP Facility include: (i) the Debtors are obligated to pay professional fees for the DIP Lender, and (ii) the DIP Obligations are (a) guaranteed by each of

the Debtors and (b) secured by superpriority liens on substantially all of the Debtors' assets. Under the DIP Facility interest accrues at a rate of 12% *per annum* with respect to the loans. The Debtors are required to comply with certain reasonable case and sale milestones during the Chapter 11 Cases, including with respect to filing and obtaining entry of orders with regard to the conduct and consummation of marketing and sale processes for certain of the Debtors' assets. The DIP Facility mature up to 8 months after the Petition Date, and all amounts outstanding under the DIP Facility becoming due and payable in full on the Maturity Date.

15. In the accordance with the DIP Orders and Budget, proceeds of the DIP Facility will be used (i) to pay certain costs, fees and expenses related to the Chapter 11 Cases, (ii) to pay certain adequate protection payments permitted by the Orders, (iii) to fund the Carve-Out and to make payments under the Carve-Out in accordance with the terms of the Orders and (iv) to fund the working capital needs and expenditures of the Debtors during the Chapter 11 Cases.

The Proposed DIP Facility is the Best Postpetition Financing Arrangement Presently Available to the Debtors

16. Based on my experience with debtor-in-possession financing transactions as well as my involvement in the efforts to secure post-petition financing for the Debtors, I believe the DIP Facility, taken as a whole, is the best presently available financing option under the facts and circumstances of the Chapter 11 Cases.

17. *First*, the proposed DIP Facility is expected to provide the Debtors with access to the amount of capital that the Debtors, in consultation with their advisors, believe is necessary to effectively and efficiently administer these Chapter 11 Cases.

18. *Second*, the terms of the proposed DIP Facility are the result of the negotiations, and the DIP marketing process described above. The Debtors, with the assistance of their advisors, solicited other sources of postpetition financing to determine whether the Debtors could obtain

such postpetition financing on better terms, seeking financing from multiple market sources to try and obtain financing on terms more favorable than the DIP Facility. Notwithstanding these efforts, the process did not yield any actionable proposals.

19. *Third*, I believe that the principal economic terms proposed under the DIP Facility, such as the contemplated pricing, the fees (more specifically, the lack thereof), interest rate, and default rate, are customary and usual, if not superior to the current market, for debtor-in-possession financings of this type. Moreover, I believe the proposed roll up of the Prepetition Obligations owed to the DIP Lender are justified under the circumstances and indispensable part of the DIP Facility. The DIP Lender specifically negotiated for the Roll Up in the context of their commitment to provide the DIP Facility on the terms described herein including the funding of the Wind Down Budget. The Debtors, on the one hand, and the DIP Lender, on the other, engaged in arms' length negotiations and ultimately agreed to the Roll Up as consideration for, among other things, the DIP Lender making available $11.6 million in new money to fund the Chapter 11 Cases as well as fund the Wind-Down Budget. Indeed, without the Roll-Up, the DIP Lender has indicated that it would not have agreed to provide the DIP Facility, which is critical to the Debtors' ongoing ordinary course operations, the success of these Chapter 11 Cases, and maximizing the value of the bankruptcy estates for the benefit of the creditors and all parties in interest.

20. Additionally, based on discussions I participated in, and the case and sale milestones were required by the DIP Lender, who viewed these as integral components of the overall terms of the DIP Facility. In my view, based on the discussions I participated in, the economic terms of the DIP Facility were negotiated at arm's length and are, in the aggregate, generally consistent with the overall cost profile of debtor-in-possession financings in comparable circumstances.

The Proposed DIP Facility was Negotiated at Arm's Length

21. Negotiations around the proposed DIP Facility and their terms, including the Roll Up, interest rates and fees, extended for several weeks. In my view, based on the discussions I participated in during the course of these negotiations, and my experience negotiating other debtor-in-possession financings, these negotiations were conducted at arm's length.

Conclusion

22. In sum, for the reasons stated above, and based on my experience with debtor-in-possession financing transactions as well as my participation and involvement in the marketing of the post-petition financing alternatives for the Debtors, I believe that the proposed DIP Facility, taken as a whole, offer the best presently available financing option for the Debtors under the facts and circumstances of the Chapter 11 Cases. Additionally, I believe that the principal economic terms proposed under the DIP Facility (such as the pricing, DIP Fees, interest rate, and default rate), are customary and usual for DIP financings of this type, were negotiated at arm's length, and are, in the aggregate, generally consistent with terms of DIP financings in comparable circumstances.

I, the undersigned, declare under penalty of perjury that the foregoing statements are true and correct.

Dated: December 4, 2024

/s/ Alpesh Amin
Alpesh Amin
Chief Restructuring Officer