UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
RM BAKERY LLC, *et al.*,[1] Debtors.	Case No. 20-11422 (MG) Jointly Administered

FINAL ORDER (I) AUTHORIZING THE USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION, (III) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (IV) GRANTING THE LIENS AND SUPERPRIORITY CLAIMS TO THE DIP LENDER, AND (V) MODIFYING THE AUTOMATIC STAY

This matter is before the Court on the motion (the "Motion")[2] of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors" or the "Company") for entry of an interim order (the "Interim DIP Order"), and a final order (the "Final DIP Order"), pursuant to sections 105(a), 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et. seq.* (the Bankruptcy Code"), (i) authorizing the Debtors' continued use of cash collateral pursuant to section 363 of the Bankruptcy Code; (ii) granting adequate protection for such use of cash collateral pursuant to sections 361 and 363 of the Bankruptcy Code; (iii) authorizing the Debtors to obtain secured postpetition financing from FS Lender 2015 LLC (the "DIP Lender" or "Lender"), consisting of a credit facility in the aggregate principal amount of up to $1.0 million (the "DIP Financing" or the "DIP Facility") for the purpose of funding the Debtors' general operating and working capital needs in the administration of the Debtors' chapter 11 cases, in

[1] The Debtors in these Chapter 11 Cases and the last four digits of each Debtor's taxpayer identification number are as follows: RM Bakery LLC (7954) and BKD Group LLC (0624).

[2] Capitalized terms used but not otherwise defined herein shall have the same meaning ascribed to them in the Motion.

accordance with (a) that certain Debtor in Possession Credit and Security Agreement, (the "DIP Credit Agreement"), as amended and recirculated prior to this hearing and as may be amended from time to time, substantially in the form filed with this Court as Docket No. 54, among the Debtors, the DIP Lender, and Mayrich Capital LLC ("Mayrich") (b) the revised budget (the "Budget") attached hereto as Exhibit A; (iv) authorizing and approving the Debtors' entry into the DIP Credit Agreement and any other documents, certificates or instruments ancillary thereto, and performance of such other acts as may be necessary or appropriate in connection therewith; (v) granting to the DIP Lender valid, fully perfected, and enforceable security interests and liens (collectively, the "DIP Liens") in and upon the DIP Collateral (as defined in the DIP Credit Agreement) pursuant to sections 364(c)(2) of the Bankruptcy Code; (vi) granting an allowed superpriority administrative expense claim (the "DIP Superpriority Claim") to the DIP Lender pursuant to section 364(c)(1) of the Bankruptcy Code; and (vii) vacating and modifying the automatic stay to the extent necessary to effectuate the terms and provisions of the DIP Credit Agreement and the DIP Orders; among other things. The Court considered the Motion on an interim basis at the hearing held on June 23, 2020, and entered the Interim DIP Order [Dkt. No. 33] on June 26, 2020, and after a Final Hearing on July 16, 2020, due deliberation and good and sufficient cause appearing for the entry of the within order,

IT IS HEREBY FOUND, DETERMINED, ORDERED AND ADJUDGED, that[3]

1. The Motion is granted in accordance with the terms of this Final Order.

[3] The findings and the conclusions set forth herein constitute this Court's finding of fact and conclusions of law are, pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact as appropriate.

2. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Debtors' Chapter 11 Cases and the Motion is proper under 28 U.S.C. §§ 1408 and 1409.

3. The Statutory predicates for the relief sought in the Motion are Bankruptcy Code §§ 105, 361, 362, 363, 364, Rule 4001 of the Bankruptcy Rules and Rule 4001–2 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the "Local Rules").

4. Notice of the Motion for the Final Hearing on the Debtors' proposed Financing and use of cash collateral has been served in accordance with section 102(1) of the Bankruptcy Code and Bankruptcy Rule 4001(b), which notices are appropriate and sufficient for all purposes under the Bankruptcy Code and applicable Bankruptcy Rules with respect to the relief requested.

5. Without prejudice to the rights of any other party, including the right of this Court to make contrary findings of fact or conclusions of law (but subject to the limitations of certain parties' rights contained in paragraph 29 below), the Debtors admit, stipulate and agree (provided that no such stipulation or agreement shall limit, impair or modify in any way the rights, protections or remedies of the DIP Lender, including with respect to any material default or Event of Default under any of the DIP Credit Documents), to the facts contained in this Section 5:

(a) Pacific Western Bank Credit Documents

A. On or about May 2, 2013, the predecessor-in-interest to Pacific Western Bank ("Pac West"), Square 1 Bank ("Square 1"), made a loan to one of the Debtors, RM Bakery LLC ("RMB"), in the original principal amount of $5,000,000 (the "Pac West Loan"). The Pac West Loan was authorized and approved by the U.S. Small Business

Administration (the "SBA"). The loan is evidenced by, among other things, a loan agreement, an SBA note (both dated May 2, 2013), an SBA authorization dated April 10, 2013, and a security agreement dated May 2, 2013. The loan was guaranteed by BKD Group LLC ("BKD"), a Chapter 11 Debtor herein, as well as certain affiliates of RMB, evidenced by certain guarantees, dated May 2, 2013. The Debtors have been advised by Pac West that as of June 15, 2020 (the "Petition Date"), approximately $3,301,753.22 (excluding attorneys' fees and costs) remains outstanding under the PAC West Loan (the "Pac West Obligations"). To secure the PAC West Obligations, RMB granted Square 1 a security interest in certain equipment, assets and property of RMB as set forth in the security agreement, including RMB's Accounts, Chattel Paper, Instruments, Documents, Inventory, General Intangibles, Equipment, furniture, and Proceeds and Products thereof (collectively the "Pac West Collateral"). Pac West asserts that beginning in or about June 2018, RMB defaulted under the Pac West Obligations. The Debtors are in default under the Pac West Loan as of the Petition Date.

B. Effective October 6, 2015, Square 1 merged with and into Pac West, by which Pac West became the successor, by merger, of Square 1's rights as original lender under the Pac West Loan. Accordingly, Pac West is now the holder and owner of the Pac West Loan.

(b) The Mayrich Capital LLC Credit Documents

C. In June 2017, RMB had the opportunity to enter into a revolving line of credit with the predecessor-in-interest of Mayrich Capital LLC ('Mayrich"), North Mill Capital ("NMC"), in the original maximum amount of $1,250,000 (the "Mayrich Loan").

The loan is evidenced by a certain promissory note and security agreement dated May 7, 2017. To secure the Mayrich Loan, RMB granted to NMC a security interest in RMB's Accounts, Inventory, Deposit Accounts related thereto, General Intangibles related thereto, and products and proceeds thereof (the "Mayrich First Lien Collateral"). The foregoing sentence is without prejudice to Pac West's right to contest the collateral description. In addition, certain subsidiaries of RMB guaranteed the loan and granted a security interest in their Equipment.

D. On June 8, 2017, NMC and Pac West entered into an inter-creditor agreement (the "Intercreditor Agreement"). Pursuant to the Intercreditor Agreement, Pac West agreed to subordinate their liens against the Mayrich First Lien Collateral to NMC, provided the first priority of NMC's security interest in such assets is limited to secure the aggregate amount not to exceed $1,500,000.

E. The Mayrich Loan has subsequently been sold and assigned to Mayrich, subject to the Intercreditor Agreement. Accordingly, Mayrich has a valid and perfected first lien on the Mayrich First Lien Collateral.

F. As of the Petition Date, approximately $1,379,500 is outstanding under the Mayrich Loan. The Debtors assert that, as of the Petition Date, the amount Mayrich is owed is not fully covered by the Mayrich First Lien Collateral. As a result, the Debtors assert that to the extent that Pac West has a second lien on the Mayrich First Lien Collateral, on the Petition Date, such lien was of no value. Pac West disputes the Debtors' assertions.

(c) The DIP Lender

G. FS Lender 2015 LLC is a limited liability company in the business of making investments. It is owned 75% by Mark Rimer and 25% by Sang Cho. Mark Rimer is the managing member of the limited liability company. Sang Cho has no direct or beneficial interest in the Debtors. As disclosed in the First Day Declaration [Dkt No. 4], Mark Rimer, through investment entities controlled by him, has made investments in Kuzari Investor 27323 LLC. ("KI"). In turn, KI owns approximately 90.76% of the outstanding equity in Debtor BKD Group LLC ("BKD"), which in turn owns 100% of the outstanding equity in Debtor RM Bakery LLC. As a result of these investments in KI, Mark Rimer has an indirect beneficial interest in BKD of approximately 17.39% of the outstanding equity. In addition, entities controlled by Mark Rimer have provided funds to KI to loan to BKD on an unsecured basis. Of the amounts owed to KI by BKD in repayment of the loans as of the Petition Date, $1.6 million is owed to Mark Rimer.

6. The Court finds that the Debtors do not have sufficient unencumbered cash or other assets to continue to operate their business during these Chapter 11 Cases or to effectuate a reorganization absent approval of the proposed DIP Loan and use of cash collateral. The Debtors will be immediately and irreparably harmed if they are not immediately granted the authority to use cash collateral and to obtain postpetition financing from the DIP Lender in accordance with the terms of the DIP Credit Agreement in order to permit, among other things, the orderly continuation of its business, the ability to fund payroll, and payroll taxes, the maintenance of its relations with vendors and suppliers, satisfaction of its working capital needs, as well as the ability to pay taxes, inventory, supplies, overhead, insurance and other necessary expenses. The access of the Debtors to sufficient working capital and liquidity made available through the use of cash collateral, incurrence of new indebtedness for borrowed money, and other financial

accommodations is vital to the preservation and maintenance of the going concern value of the Debtors and a successful reorganization of the Debtors.

7. Despite reasonable efforts, the Debtors have been unable to obtain financing on more favorable terms from sources other than the DIP Lender under the DIP Credit Agreement and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting the DIP Lender, subject to the Carve-out (defined below), the DIP Liens and the DIP Superpriority Claim under the terms and conditions set forth in this Final Order and in the DIP Credit Agreement.

8. The terms of the DIP Facility proposed by the DIP Lender are fair and reasonable, and the best available under the present circumstances; reflect the Debtors' exercise of prudent business judgment consistent with its fiduciary duties; and are supported by reasonably equivalent value and consideration. The postpetition financing under the DIP Facility has been entered into in good faith by and among the Debtors and the DIP Lender; and the postpetition financing to be provided by the DIP Lender has been extended in good faith as such term is used in section 364(e) of the Bankruptcy Code.

9. Based on the record before the Court, the terms of the use of cash collateral and the adequate protection granted in this Order have been proposed in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and are in the best interest of the Debtors, their estates, and creditors, and are consistent with the Debtors' fiduciary duties.

10. The DIP Lender is willing to provide the DIP Facility subject to the conditions set forth herein and in the DIP Credit Documents[4], including, without limitation, the provisions of this Final Order which grant the DIP Superpriority Claim, Adequate Protection Superpriority Claims (defined below), Adequate Protection Lien (defined below), and other protections granted pursuant to this Final Order and provides that such protections will not be affected by any subsequent reversal or modification of this Final Order or any other order which is applicable to the DIP Facility, to the extent provided in section 364(e) of the Bankruptcy Code.

11. The Debtors have requested the immediate entry of this order pursuant to Bankruptcy Rule 4001(b) and (c), and Local Rule 4001-2. Absent the entry of this Order, the Debtors and their estates will be immediately and irreparably harmed.

12. Subject to the terms and conditions contained in this Final Order, the Debtors are hereby expressly authorized and directed to execute and deliver to the DIP Lender any DIP Credit Documents including the DIP Credit Agreement and such additional documents, instruments and agreements as may be reasonably required by the DIP Lender to implement the terms and effectuate the purpose of this Final Order. The terms and conditions of the DIP Credit Agreement as modified by this Final Order are hereby approved and ratified, and the Debtors are authorized and directed to comply with and perform all the terms and conditions contained therein. The failure to reference or discuss any particular provision of the DIP Credit Agreement in this Final Order shall not affect the validity or the enforceability of any such provision. In the event of a conflict between this Final Order and the DIP Credit Agreement, the terms of this Final Order shall govern.

[4] Notwithstanding anything to the contrary in the Motion or the DIP Credit Documents, if there is any inconsistency among the Motion, the DIP Credit Documents in this Final Order, the terms of this Final Order will govern.

13. The Debtors are hereby authorized to obtain postpetition financing from the DIP Lender in accordance with the terms of this Final Order, the DIP Facility, and the Budget up to the principal amount of $1,000,000 pursuant to section 364(c) of the Bankruptcy Code.

14. In accordance with sections 364(c)(1) and 507(b) of the Bankruptcy Code and subject to the Adequate Protection Superpriority Claims (defined below), all obligations under the DIP Facility (the "DIP Obligations") shall constitute claims (the "DIP Superpriority Claims") with priority in payment over any and all administrative expense of the kind specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(b), 546(c), 1113 and 1114 of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtors, any successor trustee to the extent permitted by law, or any other creditor in the Chapter 11 Cases, except for the valid, enforceable pre-existing secured claims, including any valid, enforceable secured claims of Pac West and Mayrich, the Adequate Protection Lien (defined below), the Replacement Lien (defined below), and the Carve-out (defined below). The DIP Superpriority Claims are *pari passu* in priority with the Adequate Protection Superpriority Claims.

15. As security for the Debtors' DIP Obligations arising under or in connection with the DIP Credit Agreement, the DIP Lender is hereby granted a first priority lien and security interest pursuant to section 364(c)(2) of the Bankruptcy Code on all of the DIP Collateral (as described in the DIP Credit Agreement) of the Debtors that is made subject to the security interest granted to the DIP Lender under the DIP Facility that is not encumbered as of the Petition Date or which becomes unencumbered during the course of these Chapter 11 Cases, but subject to (i) the "Carve-out" (ii) the valid, perfected and enforceable security liens or security interest held by Pac

West, Mayrich and certain equipment lenders, (iii) the Replacement Lien (defined below), and (iv) the Adequate Protection Lien (defined below). Notwithstanding the foregoing, the DIP Lender is not granted a security interest in avoidance actions pursuant to chapter 5 of the Bankruptcy Code.

16. In the event the adequate protection provided to Mayrich and/or Pac West does not preserve the value of their respective collateral securing valid, enforceable, perfected liens as of the Petition Date, then Mayrich and/or Pac West, whichever is so affected, shall have a superpriority claim pursuant to section 507(b) of the Bankruptcy Code, having priority over all claims allowed under section 507(a) of the Bankruptcy Code, which shall be *pari passu* to the DIP Superpriority Claim of the DIP Lender, only to the extent of the failure to preserve such value (the "Adequate Protection Superpriority Claims").

17. Additionally, as security for the Debtors' DIP Obligations arising under or in connection with the DIP Credit Documents, the DIP Lender is hereby granted, pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected lien and security interest in all of the DIP Collateral (as defined in the DIP Credit Agreement) of the Debtors, junior in priority only to any valid, enforceable and perfected liens and security interests already existing on the Petition Date held by Pac West, Mayrich and certain equipment lenders, the Adequate Protection Lien (defined below) and the Replacement Lien (defined below). Notwithstanding the foregoing, the DIP Lender is not granted a security interest in avoidance actions pursuant to chapter 5 of the Bankruptcy Code.

18. The Court has been apprised that as additional security for the Debtors' DIP Obligations arising under or in connection with the DIP Credit Documents, simultaneously with entry of this Order, a non-debtor party, Kuzari Investor 27323 LLC, is providing a guarantee of the Debtors' DIP Obligations secured by substantially all of its assets, which consists solely of its

equity interest in Debtor BKD Group. The Court authorizes the DIP Lender's receipt of this additional security from a non-debtor party.

19. The DIP Liens granted to the DIP Lender pursuant to this Final Order and the DIP Facility are deemed valid and perfected upon the entry of this Final Order without the necessity of the DIP Lender taking possession or control of any collateral, or filing financing statements, mortgages, or other documents. Upon the request of the DIP Lender, the Debtors shall execute and deliver to the DIP Lender any and all UCC financing statements, mortgages, notes, assignments, or other instruments or documents considered by the DIP Lender necessary in order to perfect the DIP Liens; and the DIP Lender is hereby granted relief from the automatic stay embodied in section 362(a) of the Bankruptcy Code to receive, file, and record the foregoing.

20. The Debtors are hereby authorized to use cash collateral of Mayrich pursuant to and in accordance with the terms of this Final Order and the Budget and Permitted Variances. As adequate protection for the Debtors' use of same, Mayrich is hereby granted a replacement security interest in the postpetition Mayrich First Lien Collateral solely in the same amounts and priority of the valid, perfected and enforceable liens Mayrich had as of the Petition Date (the "Replacement Lien").

21. The Debtors are hereby authorized to use the Debtors' Equipment in the ordinary course of business. As adequate protection, Pac West is granted a replacement lien in the Debtors' Equipment, in the same amounts and priority of the valid, perfected and enforceable liens Pac West had as of the Petition Date, to the extent of any diminution in the value of the Pac West Collateral securing its valid, perfected and enforceable liens as of the Petition Date (the "Adequate Protection Lien").

22. Upon entry of this Final Order, the Replacement Lien, the Adequate Protection Lien, and all security interests and priorities granted Pac West and Mayrich herein, are deemed valid and perfected without the necessity of Pac West or Mayrich taking possession of any collateral, filing financing statements, mortgages or other documents. Upon the request of Pac West or Mayrich, the Debtors shall execute and deliver to Pac West and/or Mayrich, any and all UCC financing statements, mortgages, notes, assignments, or the other instruments or documents considered by Pac West or Mayrich as necessary in order to perfect the Adequate Protection Lien and the Replacement Lien; and Pac West and Mayrich are hereby granted relief from the automatic stay embodied in 362(a) of the Bankruptcy Code to receive, file, and record the foregoing.

23. As additional adequate protection for Pac West, the Debtors shall pay Pac West an adequate protection payment of $2,500 per month each month, in arrears, on the first day of each month, with the first payment due on August 1, 2020. To the extent there is no diminution in the value of Pac West collateral, such adequate protection payments will be disgorged to the Debtor.

24. Furthermore, the Debtors shall provide the Office of the U.S. Trustee and counsel to Pac West and Mayrich all reports that are submitted to the DIP Lender pursuant to section 10 of the DIP Credit Agreement, at or about the same time that such reports are provided to the DIP Lender, with a courtesy copy email to Chambers.

25. Neither the Debtors nor any other person shall assert a claim under section 506(c) of the Bankruptcy Code for any costs and expenses incurred in connection with the preservation, protection or enhancement of or realization by the DIP Lender, Mayrich and Pac West upon their collateral or for any expense of administration of the estate.

26. Except as noted in the following paragraph, no cost or expense of administration under sections 105, 364(c)(1), 503(b), 506(c), 507(b), 726 (to the extent permitted by law), 1113, 1114 or otherwise of the Bankruptcy Code, shall be senior to, equal to or *pari passu* with the Adequate Protection Superpriority Claims of Mayrich and Pac West and the DIP Superpriority Claim granted hereunder.

27. Notwithstanding anything to the contrary contained anywhere in this Final Order and/or the DIP Credit Agreement, all of the prepetition collateral and the postpetition collateral which is made subject to the security interests and liens granted herein pursuant to the terms of this Final Order shall be subject to a carve-out (the "Carve-out") for the sum of (i) allowed statutory expenses payable pursuant to 28 U.S.C. § 1930(a)(6) and interest thereon, (ii) Priority Professional Expenses, and (iii) the Allowed fees and expenses of a subsequent chapter 7 trustee up to a maximum of $40,000. "Priority Professional Expenses" as used herein means allowed fees, costs and reasonable expenses allowed or permitted pursuant to sections 330 and 331 of the Bankruptcy Code of (a) lawyers and financial advisors retained by the Debtors, and (b) lawyers and financial advisors retained by any Committee that may be appointed in these Chapter 11 Cases, up to the amount of $100,000 in the aggregate for both Debtors' and Committee's Priority Professional Expenses on a pro rata basis.

28. Upon the occurrence of an Event of Default contained in the DIP Credit Agreement, the DIP Lender may declare all DIP Obligations owing under the DIP Facility to be immediately due and payable and may declare a termination of any further obligation to extend credit to the Debtors and exercise all other remedies as set forth in section 13 of the DIP Credit Agreement. Upon the occurrence of an Event of Default and following the giving of seven (7) business days'

notice to counsel for the Debtors, counsel for any Committee appointed in these Chapter 11 Cases, and the United States Trustee, the DIP Lender shall have immediate relief from the automatic stay and foreclose on all or any portion of the DIP Collateral, or otherwise exercise remedies against the DIP Collateral, as permitted by applicable non-bankruptcy law, and the Debtors' right to use cash collateral shall cease. Promptly upon receipt of such seven-business-days' notice from the DIP Lender, the Debtors shall post such notice on ECF, and the Debtor and any party-in-interest shall be entitled to an emergency hearing with this Court for the sole purpose of contesting whether an Event of Default has occurred.

29. Pursuant to 364(e) of the of the Bankruptcy Code, if any or all of the provisions of this Final Order are hereinafter modified, vacated or stayed, such stay, modification or vacatur shall not affect the validity of any obligation, indebtedness, security interest, or liens granted by the Debtors to the DIP Lender, Pac West, or Mayrich, prior to the effective date of any such stay, modification or vacatur, or the validity and enforceability or priority of any Lien or security interest authorized, granted or created pursuant to this Final Order.

30. The entry of this Final Order is without prejudice to the rights of any party in interest, including the Debtors and the Official Committee of Unsecured Creditors (the "Committee"), if any, appointed in these Chapter 11 Cases, to challenge the prepetition liens of Mayrich, Pac West, or any other party to the extent such a right exists; provided, however, that the Debtors cannot challenge the extent, validity or priority of the prepetition liens of Mayrich which they have asserted herein, and any challenges to the validity, extent or priority of the liens or claims of Mayrich, Pac West, or any other party, including the assertion of any claim under sections 510, 544, 547, or 548 of the Bankruptcy Code (collectively, "Challenges") must be commenced, subject

to obtaining standing, by October 31, 2020 (the "Challenge Deadline"). Any and all Challenges by any party (including any Chapter 11 or Chapter 7 trustee) shall be forever barred unless brought on or before the Challenge Deadline. Notwithstanding anything to contrary herein, no party shall be permitted to use cash collateral for the purpose of conducting any investigation or litigation with respect to the validity, extent, or priority of Mayrich's liens or claims. Notwithstanding the foregoing, nothing in this Final Order shall be deemed to be a determination as to the value of any Party's liens or collateral. Notwithstanding Section 364(e) of the Bankruptcy Code and the preceding paragraph, should any party's prepetition liens be finally determined to be invalid or unenforceable, then any Superpriority Claim, Adequate Protection Lien or Replacement Lien granted hereunder on account of such prepetition liens will immediately cease and become null and void.

31. The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Lender, Pac West, Mayrich, and the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as legal representative of the Debtors or with respect to the property of the estate of the Debtors) whether in these Chapter 11 Cases, in any subsequent cases under chapter 7 of the Bankruptcy Code, or upon dismissal of any such Chapter 11 or chapter 7 case.

32. The provisions of this Final Order shall be immediately effective upon its entry by the Bankruptcy Court as provided for in Bankruptcy Rule 6004(g) and 7062.

33. The provisions of this Final Order are non-severable and mutually dependent.

34. The definition of "Excess Cash" in the DIP Credit Agreement is hereby revised to mean "any cash in the amount of more than ten percent (10%) of the cash that is projected to be spent during the next thirty day period in the DIP Budget."

35. The DIP Credit Agreement's event of default that “The Secured Claim of Pac West is allowed by final order in an amount exceeding $448,500” is hereby deleted. The DIP Credit Agreement’s condition precedent to advances that “The Secured Claim of Pac West shall not have been allowed in an amount exceeding $448,500” is hereby revised as follows: “The Secured Claim of Pac West shall not have been allowed, prior to the draw, in an amount which the DIP Lender believes in good faith to make reorganization not feasible.”

36. Professionals for the DIP Lender shall not be required to comply with the United States Trustee fee guidelines or submit invoices to this Court. Copies of summary invoices shall be submitted to the Debtors by such professional and the Debtors shall forward same to the United States Trustee, counsel to the Committee, Pac West and Mayrich and such other parties as this Court may direct (collectively, the “Lender Fee Notice Parties”). The invoices shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses and, upon the request of any Lender Fee Notice Party, shall include time detail; provided, however, that such invoices may be redacted 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 or other applicable privilege. If the Lender Fee Notice Parties object to the reasonableness of the fees and expenses of any of the Lender's professionals and cannot resolve such objection within fifteen (15) days of

receipt of such invoices by the Debtors, then the Lender Fee Notice Parties, as the case may be, shall file with this Court and serve on such professional an objection (the "Fee Objection") limited to the issue of the reasonableness of such fees and expenses, and any failure by any such party to file a Fee Objection within such fifteen (15) day period shall constitute a waiver of any right of such party to object to the applicable invoice; provided that the Committee may waive its right to object prior to the expiration of the fifteen (15) day period if the Committee affirmatively agrees in writing that the fees are reasonable prior to such expiration. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees, costs, and expenses set forth in a professional fee invoice in respect of the Lender's professionals shall be limited to the reasonableness of the particular items or categories of the fees, costs, and expenses that are the subject of such objection. The Debtors shall timely pay in accordance with the terms and conditions of this Final Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs and expenses on any invoice to which no Fee Objection has been timely filed. All such unpaid fees, costs, expenses, and charges of the DIP Lender that have not been disallowed by this Court on the basis of an objection filed by Lender Fee Notice Parties in accordance with the terms hereof shall constitute DIP Obligations and shall be secured as specified in this Final Order.

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37. "Counsel to Pac West" will be added as a notice party for all purposes pursuant to section 10(c) of the revised Credit Agreement.

IT IS SO ORDERED.

Dated: July 16, 2020
New York, New York

/s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge