

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	}	Chapter 11
WATER GREMLIN COMPANY, et al., ¹	}	
	}	Case No. 23-11775 (LSS)
Debtors.	}	
	}	(Joint Administration Requested)

**DEBTORS' MOTION SEEKING ENTRY OF INTERIM AND FINAL ORDERS (I)
AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II)
GRANTING LIENS, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING
A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:

Preliminary Statement

1. After months of evaluating restructuring options and marketing their assets, the Debtors have commenced these chapter 11 cases, expecting to soon have a stalking horse purchaser ready to purchase substantially all the Debtors’ assets and a proposed plan of liquidation contemplating the distribution of proceeds to creditors. The Debtors intend to proceed efficiently through these cases as they complete the marketing and sale of their assets and confirmation of their plan.

2. The Debtors have no prepetition secured debt or other encumbrances on cash. Nonetheless, the Debtors, in consultation with their proposed financial advisor Riveron, have determined that they do not have sufficient cash to fund their business operations without a risk of material and irreparable harm to the Debtors’ estates. The proposed DIP Facility will provide the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: WG Sub, LLC (“WG Sub”) (0781), Water Gremlin Holdings, Inc. (“Holdings”) (9250), and Water Gremlin Company (“Water Gremlin”) (6396).

Debtors with needed liquidity to see these chapter 11 cases through. Importantly, the DIP Facility will assure the Debtors' employees and bidders for the Debtors' assets that the Debtors have the financial resources to complete a sale transaction and confirm a plan in these chapter 11 cases.

Relief Requested

3. The Debtors seek entry of an interim order, substantially in the form attached hereto as Exhibit A (the "Interim Order"), and a final order (the "Final Order" and, together with the Interim Order, the "DIP Orders"): (a) authorizing the Debtors to incur the secured DIP Facility pursuant to the terms of the Senior Secured, Super-Priority Debtor-In-Possession Loan and Security Agreement (the "DIP Loan and Security Agreement"), by and among the Debtors and SG Credit Partners, Inc., a Delaware corporation (the "Lender"), attached as Exhibit A (the "DIP Loan and Security Agreement") to the Interim Order; (b) granting liens; (c) modifying the automatic stay imposed by Bankruptcy Code section 362 to the extent necessary to implement and effectuate the terms of the DIP Orders; (d) scheduling a final hearing (the "Final Hearing") to consider approval of this motion on a final basis; and (e) granting related relief.

4. In support of this motion, the Debtors respectfully submit the declaration of Lori Beers (the "Beers Declaration") attached hereto as Exhibit B and rely on the *Declaration of Bradley J. Hartsell in Support of Debtors' Chapter 11 Petitions and First Day Relief* [Docket No. 11] (the "First Day Declaration").

Jurisdiction and Venue

5. 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. The Debtors confirm their consent, 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"), 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.

6. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, 506, 507, and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1(b), 4001-2, 9006-1, and 9013-1(m).

Background

8. The Debtors are a leading provider of lead battery terminals and fishing sinkers with over 70 years of industry experience. The Debtors are the leading supplier of lead-acid battery terminals in the United States, providing terminals to nearly all major battery manufacturers. The terminals manufactured by Water Gremlin serve a broad range of end markets, including light automotive, trucking, marine, recreational vehicles, golf carts, energy storage, tractors, and motorcycles. The Debtors also manufacture fishing sinker products to the recreational fishing market. Headquartered in White Bear Lake, Minnesota, the Debtors employ a workforce of approximately 178 employees and approximately 14 temporary workers.

9. Until 2019, Water Gremlin used a chemical compound called trichloroethylene (“TCE”) as a solvent to degrease metal parts as part of its battery terminal coating process. In 2018, Water Gremlin voluntarily self-disclosed a miscalculation of the TCE emissions from its facility and shortly thereafter voluntarily ceased using TCE. Water Gremlin subsequently paid a fine as a result of those emissions and embarked on an ambitious program to address the emissions issue and guard against its reoccurrence.

10. After voluntarily ceasing use of TCE in 2019, Water Gremlin developed its “Gremlin Green™” program to eliminate the use of hazardous solvents in its manufacturing process. In pursuit of that goal, Water Gremlin developed and patented an award-winning UV-cure method of coating its battery terminals that eliminates volatile organic compounds and significantly reduces manufacturing costs. Water Gremlin’s goal is to reduce its solvent usage by more than 80% by 2025. In addition to the Gremlin Green program, the Debtors’ new leadership, put in place in January 2022, has embarked on a reemphasis and restructuring of the safety processes and procedures at the Debtors’ facility. As reflected in multiple testimonials, the Debtors’ operate one of the cleanest and best-kept facilities of its type, with an emphasis on safety and environmental sustainability.

11. Despite Water Gremlin’s quick and aggressive response following the self-disclosure, the sensationalized headlines and media reports that followed led to a significant drop in the market share that the Debtors’ products previously enjoyed. The Debtors and certain of their non-debtor affiliates are also defendants in 91 lawsuits asserting various tort causes of action based on plaintiffs’ alleged exposure to TCE emissions from the Debtors’ manufacturing facility. The Debtors strenuously dispute the validity of these tort claims and maintain there are numerous facts that prove that there is no causal connection between the Debtors’ emissions and the plaintiffs’ alleged damages. Detailed descriptions of the Debtors’ environmental and operational issues and the tort litigation are set forth in the First Day Declaration.

12. Prior to October 27, 2023 (the “Petition Date”), the Debtors attempted to engage in mediation with the tort claimants, all of whom are represented by the same law firm. A scheduled mediation was canceled at the request of the tort claimants’ counsel and has not been rescheduled. Through these chapter 11 cases, the Debtors seek to achieve a fair and efficient resolution of the

litigation and reduce costs and uncertainty related to the litigation that imperil the Debtors' going concern businesses. The Debtors will pursue an asset sale and confirmation of a plan that provides fair compensation for all creditors who are determined to be entitled to compensation.

13. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

Interim Relief is Necessary

14. The Debtors will not be able to meet their ordinary course obligations without access to the DIP Facility during these cases, including during the interim period following the Petition Date. The DIP Facility is needed to pay wages and benefits, taxes and fees, invoices for goods and services, and other obligations that will come due during the interim period. Failure to meet these obligations will cause a material disruption to the Debtors' business. Therefore, entering into the DIP Facility and accessing the DIP Loan, including during the interim period, is necessary to ensure that the Debtors' businesses remain unharmed while pursuing a value maximizing transaction and plan confirmation in these cases.

Concise Statement Pursuant to Bankruptcy Rules 4001(b) and 4001(c)
and Local Rule 4001-2²

15. By this motion, the Debtors seek entry of the Interim Order and Final Order:
- (i) authorizing the Debtors to obtain postpetition financing and other financial accommodations in connection with the debtor in possession financing in the initial amount of up to \$7,000,000 (of which \$3,000,000 of borrowing authority is sought on an interim basis) plus, if the Incremental Facility Conditions are satisfied, \$3,000,000;
 - (ii) authorizing the Debtors to (a) enter into the DIP Loan and Security Agreement by and among the Debtors and the Lender. The DIP Loan and Security Agreement, together with the Interim Order, the Final Order, and all agreements, documents, and instruments delivered or executed in connection therewith, as such documents may be amended, restated, supplemented, or otherwise modified from time to time, shall be referred to herein collectively as the “DIP Loan Documents”),³ and (b) to perform their obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP Loan Documents;
 - (iii) authorizing the Debtors to use the proceeds of the DIP Loans in accordance with the terms hereof and the Approved Budget in the form of Annex A to the DIP Loan and Security Agreement as the same may be updated from time to time in accordance with the DIP Loan and Security Agreement (the “Approved Budget”), after giving effect to the budgeted variances contemplated by the DIP Loan and Security Agreement as further described herein, to pay for the Debtors’ working capital needs in the ordinary course of business and for the costs and expenses of administering their bankruptcy cases;
 - (iv) authorizing the Debtors, on the terms set forth in the Interim Order, to pay, on a final and irrevocable basis, the principal, interest, fees, expenses, and other amounts payable under the DIP Loan Documents as such amounts become earned, due, and payable;
 - (v) granting valid, enforceable, non-avoidable, and fully perfected liens and security interests pursuant to Bankruptcy Code sections 364(c)(2) and (c)(3) on the DIP Collateral and all proceeds thereof, including, any Avoidance Proceeds subject only to the Carveout and entry of a Final Order, on the terms and conditions set forth herein and in the DIP Loan Documents, to secure principal of and accrued interest on the DIP Loan, and all other fees, costs, expenses, indemnification obligations,

² The summary of the Interim Order and the terms and conditions for the DIP Facility set forth in this motion is qualified in its entirety by the Interim Order. In the event that there is any conflict between this motion and the Interim Order, the Interim Order will control in all respects.

³ Capitalized terms used in the following summary chart but not otherwise defined have the meanings ascribed to them in the DIP Loan and Security Agreement or the Interim Order, as applicable.

reimbursement obligations, charges, premiums, if any, additional interest, any other Obligations (as defined in the DIP Loan and Security Agreement);

- (vi) granting superpriority administrative expense claims pursuant to Bankruptcy Code section 364(c)(1) against the Debtors' estate to the Lender with respect to the Obligations with priority over any and all administrative expenses of any kind or nature subject and subordinate only to the Carveout on the terms and conditions set forth herein and in the DIP Loan Documents;
- (vii) authorizing the Lender to exercise remedies under the DIP Loan Documents on the terms described herein upon the occurrence and during the continuation of a DIP Termination Event (as defined below);
- (viii) waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of the Interim Order;
- (ix) scheduling a Final Hearing approximately 21 days after the Petition Date to consider the relief requested herein and approving the form of notice with respect to the Final Hearing; and
- (x) granting related relief.

16. The below chart contains a summary of the material terms of the proposed DIP Loan, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2(a)(i).

Summary of Material Terms	
Debtor Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)(J)	Water Gremlin Company, WG Sub, LLC, and Water Gremlin Holdings, Inc. <i>See</i> DIP Loan and Security Agreement, p.1
Lender Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)	SG Credit Partners, Inc. <i>See</i> DIP Loan and Security Agreement, preamble at p. 1

Summary of Material Terms	
Term Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)	The DIP Facility Obligations must be fully and indefeasibly paid in full upon the “Maturity Date,” which means the earliest of (a) closing of the Sale, (b) the Termination Date at Lender’s election in its sole discretion, and either (c) 150 days after the Petition Date, or (d) 180 days after the Petition Date (but only if the Lender agrees in writing, in its sole discretion, to a 30-day extension of the term of the DIP Facility). See DIP Loan and Security Agreement, p. 3.
Commitment Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)(A)	\$10,000,000, comprised of an initial \$7,000,000 (the “Initial Facility Amount”) to be made available in multiple funding tranches subject to the achievement of certain milestones set forth in the definitive loan documents and related orders, which Initial Facility Amount will be increased by \$3,000,000 (the “Incremental Facility Amount”) if the Incremental Facility Conditions are satisfied and access to such amounts is requested by Debtors, in each case subject to the Borrowing Base (as defined below). The Borrowing Base will be equal to the sum of: - Up to 80.00% of Eligible Accounts; <u>plus</u> - Up to 50.00% of the cost of Eligible Inventory; <u>less</u> - the aggregate amount of the Reserves. Eligible accounts will include accounts receivable as specified in the DIP Loan Documents, generally eligible accounts receivable are within 90 days of their respective invoice dates, less typical ineligible items (e.g., affiliates, co-manufacturers, foreign, consumer, cross-age, concentrations, contras, and credits) and other dilutive items. Eligibility will be finalized in diligence. Eligible inventory is as specified in the DIP Loan Documents, and will consist of non-slow moving and non-obsolete finished goods and raw materials (excluding packaging, labels, and other similar items) stored in locations with at least \$500,000 of eligible inventory. Eligibility will be finalized in diligence. See DIP Loan and Security Agreement, pp. 1-2

Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)(E)	<u>Conditions Precedent to Funding</u> The obligation of Lender to fund the initial Advance under the DIP Loan and Security Agreement is subject to the satisfaction or waiver of the following conditions precedent, each in a manner satisfactory to Lender: (a) Lender shall have received each of the agreements, reports, approvals, consents, certificates or other information set forth on <u>Schedule 1 to Addendum 3</u> to the DIP Loan and Security Agreement in each case properly executed by the appropriate party and otherwise in form and substance satisfactory to Lender; (b) Lender shall have received and approved the Approved Budget; (c) the Bankruptcy Court shall have entered the Interim Order; (d) Lender shall have received payment in full of all fees and expenses payable to it by Debtors or any other Person in connection herewith; (e) Debtors shall have executed and delivered to Lender all such other documents, instruments and agreements which Lender determines are reasonably necessary to consummate the transactions contemplated hereby. 2. <u>Additional Conditions.</u> The obligation of Lender to make each Advance (including the initial Advance) shall be subject to the further conditions precedent that: (a) the representations and warranties contained in <u>Section 7</u> of the DIP Loan and Security Agreement are correct on and as of the date of such Advance as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date; (b) no event has occurred and is continuing, or would result from such Advance, which constitutes a Default or Event of Default; (c) except with respect to the initial Advance to be made on the Effective Date, the completion of Lender's initial field examination with results satisfactory to Lender in its sole discretion; (d) satisfaction of the Specified Borrowing Conditions (as defined in the DIP Loan and Security Agreement); (e) with respect to any Advance in excess of the Initial Facility Amount; satisfaction of the Incremental Facility Conditions; (f) after giving effect to such Advance, the aggregate original principal amount of all Advances does not exceed the lesser of (i) the Borrowing Base and (ii) the then-applicable Commitment. See DIP Loan and Security Agreement, at Addendum 3, Page 1.
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Summary of Material Terms	
	<u>Incremental Facility Conditions:</u> Means each of the following conditions: (a) Borrower's obtaining, no later than 120 days after the Petition Date, entry of an order of the Court, in form and substance satisfactory to Lender in its sole discretion, approving the Sale Motion and the Sale, and (b) Debtors pay the Incremental Commitment Fee to Lender in immediately available funds (which may be accomplished by deducting from the first Advance of the Incremental Facility Amount (and Lender retaining for its own account) the amount of the Incremental Facility Fee). <i>See</i> DIP Loan and Security Agreement at Addendum 5, Page 6. For purposes of the foregoing, the "Sale Milestones" are as follows: <i>See</i> DIP Loan and Security Agreement, Addendum 4, Page 1.
Interest Rates Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)(B)	Base Rate plus 5.00% per annum, where the Base Rate is defined as the greater of (i) the per annum WSJ Prime Rate and (ii) 7.50%. Such interest shall be due and payable monthly in cash in arrears to the Lender on the last business day of each calendar month (or such earlier date if the Maturity Date falls prior to the end of a month). Interest shall be <i>calculated</i> on the actual days elapsed for each period of a 360-day year. <i>See</i> DIP Loan and Security Agreement, Loan Chart, Page 2. While any Event of Default (as set forth below) has occurred and is continuing, the outstanding principal amount of the DIP Loans shall accrue an additional 3% in interest per year, payable monthly <i>See</i> DIP Loan and Security Agreement, at Section 2.3(a)(ii), Page 5.
Use of DIP Financing Facility Del. Bankr. L.R. 4001-2(a)(iii)	Under the DIP Facility, the Debtor shall incur the DIP Loans and use the proceeds (a) to fund the working capital needs of the Debtor, (b) to fund the Carveout in a segregated account on a weekly basis, based on the Approved Budget, (c) to pay interest, fees, costs, and expenses of the Lender, and (d) and to pay other amounts as enumerated in the Approved Budget. <i>See</i> DIP Loan and Security Agreement, Section 4.4, Page 8.
Repayment Features / Provisions Limiting Repayment Bankruptcy Rule 4001(b)(1)(B)(ii) Del. Bankr. L.R. 4001-2(a)(i)(I)	<u>Voluntary Prepayments.</u> No Limits on Voluntary Prepayments. <i>See</i> DIP Loan and Security Agreement, Section 2.2, Page 5. <u>Mandatory Repayments.</u> In the event the aggregate outstanding principal balance of the Loan exceeds the lesser of the Borrowing Base or the then-applicable Commitment, the Debtor shall at such time or times immediately pre-pay the Obligations in an amount necessary to eliminate such excess or provide additional Qualified Cash as collateral to increase the Borrowing Base with the same effect. <i>See</i> DIP Loan and Security Agreement, Section 2.2, Page 5.
Approved Budget Bankruptcy Rule 4001(c)(1)(B)	The use of proceeds of the DIP Facility is subject to the Approved Budget attached to the Interim Order as <u>Exhibit C</u>. The Approved Budget shall be updated, modified or supplemented by Debtors with the written consent of Lender, and upon the request of Lender from time to time, but in any event the

Summary of Material Terms	
Del. Bankr. L.R. 4001-2(a)(i)(E) and 4001-2(a)(iii)	Approved Budget shall be updated by Debtors not less than one time in each four (4) consecutive week period, and each such updated, modified or supplemented budget shall be approved in writing by, and shall be in form and substance reasonably satisfactory to, Lender and no such updated, modified or supplemented budget shall be effective until so approved and once so approved shall be deemed an Approved Budget; provided, however, that in the event Lender, on the one hand, and Debtors, on the other hand, cannot agree as to an updated, modified or supplemented budget, Debtors shall continue to be subject to and governed by the most-recent Approved Budget. See DIP Loan and Security Agreement, Section 5.14(a), Page 15; Interim Order, <u>Exhibit C</u>
Variance Covenant Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)(E) and 4001-2(a)(iii)	The Budget is subject to Permitted Variances. Commencing with the third calendar week following the Effective Date and for each calendar week thereafter, Debtors shall not permit (i) the Actual Cash Receipts for any Cumulative Four-Week Period to be greater than 15% less than the Budgeted Cash Receipts for such Cumulative Four-Week Period nor (ii) the Actual Cash Disbursements for any Cumulative Four-Week Period to be greater than 15% more than the Budgeted Cash Disbursements for such Cumulative Four-Week Period. See DIP Loan and Security Agreement, Section 5.14(b), at Page 15.

Termination Events / Events of Default Bankruptcy Rules 4001(b)(1)(B)(iii) and 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i) and 4001-2(a)(i)(M), (S)	Any one or more of the following events shall constitute an event of default: (a) <u>Payment Default.</u> Debtors shall fail to make any payment of sums due under the DIP Loan and Security Agreement on the applicable due date, including any amounts specified in the Loan Chart, and such failure continues for five (5) Business Days; (b) <u>Other Defaults Where Grace Period is Inapplicable.</u> Any Debtor shall breach any covenant, condition or other obligation under various specified sections of the DIP Loan and Security Agreement; (c) <u>Other Defaults Where Grace Period is Applicable.</u> Any Debtor shall breach any covenant, condition, or other obligation contained in the DIP Loan and Security Agreement (other than covenants and obligations described in another subsection of this Section 7) or any of the other Loan Documents, and if such breach is capable of being cured, such breach is not cured within five (5) Business Days after the earlier of written notice from Lender or the date on which any Debtor had actual knowledge of such breach; (d) <u>Breach of Representations, Warranties; Misstatements.</u> Any financial statement, representation, warranty or certificate made or furnished by or on behalf of any Debtor in connection with the DIP Loan and Security Agreement or any other Loan Document (including, without limitation, any Approved Budget Variance Report, Borrowing Base Certificate, or Budget Compliance Certificate) shall be materially false or misleading (including by omission) when made or reaffirmed; (e) <u>Judgments; Attachment.</u> One or more judgments, orders, or decrees for the payment of money either individually or in an aggregate uninsured amount in excess of \$100,000 (net of any insurance where the insurer has agreed to pay such judgment) is entered by a court of competent jurisdiction against any Debtor, or any one or more Debtors suffers one or more writs, warrant of attachment, or similar process, or a judgment creditor obtains possession of any of the Assets of any one or more Debtors by any means, including levy, distraint, replevin, or self-help and such judgment, order, decree, writ, warrant of attachment, or similar process is not stayed pursuant to section 362 of the Bankruptcy Code; (f) <u>Restrictions on Business Operations.</u> Any Debtor shall have received any order, or there shall have been imposed upon it any limitation, of any kind, restricting its right to do business and/or its right to free and unencumbered use and operation of any of the Collateral, by any court, administrative body, or other regulatory or judicial authority purporting to have jurisdiction over the business of Debtors or the ownership and/or operation of such Collateral; (g) <u>Loss, Theft, Damage to Assets.</u> The occurrence of any uninsured loss, theft, damage, or destruction to any assets of any Borrower having a value individually or in the aggregate in excess of \$100,000; (h) <u>Revocation of Loan Documents.</u> The actual or attempted revocation or termination of, or limitation or denial of liability under the DIP Loan and Security Agreement or any other Loan Document by any Debtor, including any repudiation or purported revocation; (i) <u>Asset Seizure.</u> Any federal, state, or local governmental body, instrumentality or agency shall condemn, seize or otherwise appropriate, or take custody and control of all or substantially all of the
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	properties of any Debtor, or file a Lien or levy an assessment in respect of all, or substantially all, of the properties of any Debtor; (j) <u>Dissolution</u>. If any Debtor shall dissolve or liquidate, or be dissolved or liquidated, or cease legally to exist, or merge or consolidate, or be merged or consolidated with or into any corporation or entity, or any order, judgment or decree is entered decreeing the dissolution of any Debtor; (k) <u>Disability</u>. If any Debtor is an individual/sole proprietorship and the owner dies or becomes totally and permanently disabled and is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment (“Disabled”); if any Debtor is the settlor of a revocable trust and such Debtor dies or is rendered Disabled; if any Debtor is a general partnership and the general partner dies or is rendered Disabled; if any Debtor is a corporation and any shareholder holding a 10% or more interest in the corporation dies or is rendered Disabled; if any Debtor is a limited liability company and any managing member dies or is rendered Disabled, or if any member(s) directly or indirectly controlling 10% or more of the membership interests dies or is rendered Disabled; or if any Debtor is any other form of business entity and any Person(s) directly or indirectly controlling 10% or more of the ownership interests of such entity dies or is rendered Disabled; (l) <u>Cross Defaults</u>. Except for defaults occasioned by the filing of the Chapter 11 Cases or entry into the DIP Loan and Security Agreement or resulting from obligations with respect to which the Bankruptcy Code prohibits any Debtor from complying or permits any Debtor not to comply, a default shall occur with respect to any Debt (other than the Obligations) of any Debtor in an outstanding principal amount exceeding \$100,000, and such default shall continue for more than the period of grace, if any, therein with respect thereof, if the effect thereof (with or without the giving of notice or further lapse of time or both) is to accelerate, or permit the holder of any such Debt to accelerate, the maturity any such Debt, or any such Debt shall be declared due and payable or be required to be paid (other than by a regularly scheduled required prepayment) prior to the stated maturity thereof; (m) <u>Documents; Liens; Material Adverse Effect</u>. (a) Any of the Loan Documents fails to be in full force and effect for any reason, (b) Lender fails to have a perfected, first priority Lien (subject only to Permitted Liens) in and upon all of the Collateral, or a breach, default or an event of default occurs under any Loan Document not otherwise described in this Section; or (c) the occurrence of a Material Adverse Effect; or (n) <u>Chapter 11 Defaults</u>. The occurrence of any of the following in the Chapter 11 Cases: (i) the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto by any Debtor or any Subsidiary, or any Person claiming by or through any Debtor or any Subsidiary, in the Chapter 11 Cases: (A) to obtain additional financing under section 364(c) or section 364(d) of the Bankruptcy Code not otherwise permitted pursuant to the DIP Loan and Security Agreement ; (B) to grant any Lien other than Permitted Liens upon or affecting any Collateral; (C) except as provided in the Interim Order or the Final Order, as the case may be, to use cash collateral of Lender under section 363(c) of the Bankruptcy Code without the prior written consent of Lender; or (D) materially adverse to Lender or its rights and remedies hereunder, under any other Loan Document, or their interest in the Collateral; (ii) (A) the filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by a Debtor
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	that does not propose to infeasibly repay in full in cash the Obligations under the DIP Loan and Security Agreement, or any such filing by any other Person unless Debtors promptly contest the filing or confirmation of any such plan, (B) the entry of any order terminating any Debtor's exclusive right to file a plan of reorganization, or (D) the expiration of any Debtor's exclusive right to file a plan of reorganization; (iii) the entry of an order in any of the Chapter 11 Cases confirming a plan of reorganization plan (A) is not reasonably acceptable to Lender, or (B) does not contain a provision for termination of the commitments and infeasible repayment in full in cash of all of the Obligations on or before the effective date of such plan of reorganization; (vi)(A) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents or the Orders without the prior written consent of Lender, or the Orders shall otherwise not be in full force and effect without the prior written consent of Lender or (B) any Debtor shall fail to comply with any Order in any material respect; (vii) the payment of any Prepetition claim without Lender's prior written consent unless in accordance with the Approved Budget or pursuant to an order of the Bankruptcy Court; (viii) the allowance of any claim or claims under section 506(c) of the Bankruptcy Code or otherwise against Lender or any of the Collateral; (ix) (A) the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of a trustee or an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, the business, or reorganization of any Debtor, or (B) the sale without Lender's written consent of all or substantially all Debtors' assets that does not result in payment in full in cash of all of the Obligations at the closing of such sale; (x) the dismissal of any Chapter 11 Case, or the conversion of any Chapter 11 Case from one under chapter 11 to one under chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking the dismissal of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise or the conversion of the Chapter 11 Cases to chapter 7 of the Bankruptcy Code in each case, without the prior written consent of Lender; (xi) any Debtor shall file a motion seeking, or the Bankruptcy Court shall enter an order granting, relief from or modifying the Automatic Stay (A) to allow any creditor (other than Lender) to execute upon or enforce a Lien on any Collateral not approved by Lender, (B) approving any settlement or other stipulation not approved by Lender with any secured creditor of any Debtor providing for payments as adequate protection or otherwise to such secured creditor, (C) with respect to any Lien on or the granting of any Lien on any Collateral not approved by Lender to any federal, state or local environmental or regulatory agency or authority, which in either case involves a claim that could have a Material Adverse Effect on any Debtor or its estate or (D) permit other actions that could have a Material Adverse Effect on any Debtor or its estate; (xii) the commencement of a suit or an action (but not including a motion for standing to commence a suit or an action) against Lender and, as to any suit or action brought by any Person other than a Debtor, a Subsidiary, or an officer or employee of a Debtor, the continuation thereof without dismissal for twenty (20) days after service thereof on Lender, that asserts or seeks by or on behalf of a Debtor, any state or federal environmental protection or health and safety agency, any official committee in any Chapter 11 Case or any other party in interest in any Chapter 11 Cases, a claim or any legal or equitable remedy that would (A) have the effect of invalidating, subordinating or challenging any or all of the Obligations or Liens of Lender under the Loan Documents, or (B) have any negative effect on the rights and remedies of Lender under any Loan Document or the collectability of all or any portion of the Obligations; (xiii) the entry of an order in the Chapter 11 Cases avoiding or permitting recovery of any portion of the payments made
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	on account of the Obligations; (xiv) the failure of any Debtor to perform any of its material obligations under, or the occurrence of an event of default under or as defined in, the Interim Order or the Final Order; (xv) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing any claims or charges, other than in respect of the DIP Loan and Security Agreement and the other Loan Documents, or as otherwise permitted under the applicable Loan Documents or permitted under the Orders, entitled to superpriority administrative expense claim status in any Chapter 11 Case pursuant to section 364(c)(1) of the Bankruptcy Code pari passu with or senior to the claims of Lender under the DIP Loan and Security Agreement and the other Loan Documents, or there shall arise or be granted by the Bankruptcy Court (A) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of section 503 or clause (b) of section 507 of the Bankruptcy Code, or (B) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein, except, in each case, as expressly provided in the Loan Documents or in the Orders then in effect (but only in the event specifically consented to by Lender in writing); (xvi) the Orders shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of Lender; (xvii) an order in the Chapter 11 Cases shall be entered charging any of the Collateral under section 506(c) of the Bankruptcy Code against Lender, or the commencement of any other action that is materially adverse to Lender or its rights and remedies under the Loan Documents in any of the Chapter 11 Cases or inconsistent with any of the Loan Documents; (xviii) if the Final Order does not include a waiver, in form and substance satisfactory to Lender, of the right to surcharge the Collateral under section 506(c) of the Bankruptcy Code; (xix) without Lender's prior written consent, an order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by Debtors; (xx) an order materially adversely impacting the rights and interests of Lender shall have been entered by the Bankruptcy Court; (xxi) the Orders or any order on the Sale Motion or Bid Procedures Motion, fails to contain provisions authorizing Lender to credit bid the Obligations; (xxii) any order in respect of the Bidding Procedures fails to provide that Lender will be a consultation party under the Bidding Procedures, or the Bidding Procedures fail to provide that Debtors will consult with the consultation parties regarding the terms of any bidder's proposed terms (other than if Lender submits a bid and such bid remains open); (xxiii) any Debtor shall challenge, support or encourage a challenge of any payments made to Lender with respect to the Obligations; (xxiv) without Lender's prior written consent, the entry of any order by the Bankruptcy Court granting, or the filing by any Debtor or any of their Subsidiaries of any motion or other request with the Bankruptcy Court (in each case, other than the Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without Lender's prior written consent or to obtain any financing under section 364 of the Bankruptcy Code other than the financing under the Loan Documents without Lender's prior written consent; (xxv) any Debtor shall file any motion seeking authority to consummate a sale of assets of Debtors or the Collateral to the extent having a value in excess of \$100,000 outside the ordinary course of business and not otherwise permitted hereunder (including under the Approved Budget) and without Lender's prior written consent; (xxvi) any Debtor shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Prepetition Debt or payables other than payments (A) in respect of accrued payroll and related expenses as of the
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Summary of Material Terms	
	commencement of the Chapter 11 Cases, (B) in respect of certain creditors as may be reasonably acceptable to Lender and (C) permitted under the DIP Loan and Security Agreement , in each case, to the extent authorized or required by one or more “first day” or “second day” orders or any of the Orders (or other orders with the written consent of Lender) and consistent with the Approved Budget; (xxvii) if an order of the Bankruptcy Court shall be entered providing for a change of venue with respect to any of the Chapter 11 Cases and such order shall not be reversed or vacated within ten (10) days; (xxviii) any Debtor or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking (A) to grant or impose, under section 364 of the Bankruptcy Code or otherwise, Liens or security interests in any DIP Collateral (as defined in the Orders), whether senior, equal or subordinate to Lender’s Liens and security interests, or (B) to modify or affect any of the rights of Lender under any Order or any Loan Document by any plan of reorganization confirmed in the Chapter 11 Cases or subsequent order entered in the Chapter 11 Cases; (xxix) any Debtor or any Subsidiary thereof shall take any action in support of any matter set forth in Section 7.15 or any other Person shall do so and such application is not contested in good faith by Debtors and the relief requested is granted in an order that is not stayed pending appeal; (xxx) the assertion by any of Debtors in any pleading filed in any court that any material provision of the Interim Order or the Final Order is not valid and binding for any reason; (xxxi) any material provision of the Interim Order, the Final Order, or any other order of the Bankruptcy Court approving the use of cash collateral ceases to be valid and binding, without Lender’s prior written consent; or (xxxii) if the asset purchase agreement with the Stalking Horse Bidder is breached or terminated (except to the extent such agreement is terminated because a higher or better bidder is selected via auction, and such bidder is legally bound to purchase the Sale Assets on such higher or better terms), and solely with respect to any asserted breach of such asset purchase agreement, such breach remains uncured for five (5) Business Days. See DIP Loan and Security Agreement, Article 7, Pages 20-24.
Remedies Notice Period and Emergency Hearing Del. Bankr. L.R. 4001-2(a)(i)(S), (T)	At any hearing during the Remedies Notice Period to contest the enforcement of remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred, and Debtors hereby waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in way impair or restrict the rights and remedies of Lender, as set forth in the DIP Loan and Security Agreement , the applicable Order or other Loan Documents. Subject to the Orders and after the expiration of the Remedies Notice Period, the automatic stay of section 362 of the Bankruptcy Code shall be modified and vacated to permit Lender to exercise all rights and remedies under the DIP Loan and Security Agreement , the other Loan Documents or applicable law, without further notice, motion or application to, hearing before, or order from, the Bankruptcy Court. See DIP Loan and Security Agreement ¶ 8.2, Page 26.

Summary of Material Terms	
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The DIP Facility documentation will contain, representations and warranties, financial, affirmative, and negative covenants, indemnities of the Lender and its affiliates, agents, and representatives (which indemnities shall be DIP Facility Obligations), and such other terms and conditions as are typically included in debtor-in-possession facilities. See DIP Loan and Security Agreement, Section 10.4(b), Page 28.
Carveout Bankruptcy Rules 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)(F)	The security interests and liens will be subject only to a carveout for (i) certain allowed professional fees and expenses incurred during the chapter 11 cases of the Debtors as set forth in the Approved Budget and (ii) fees due and owing to the Office of the United States Trustee (items (i) and (ii), the “Carveout”), and perfected liens existing on the Debtor’s assets as of the Petition Date. See DIP Loan and Security Agreement, Section 4.4, Page 8.
Fees Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)(B)	A fee of (a) 3.00% of the Initial Facility Amount of the DIP Facility, plus 1% of the Incremental Facility Amount (the “Upfront Facility Fee”), which Upfront Facility Fee will be deemed earned in full and due and payable on the date the Interim Order is entered, plus (b) a facility fee of 2% of the Incremental Facility Amount (the “Incremental Facility Fee”), which Incremental Facility Fee will be deemed earned in full and due and payable when (i) each of the Incremental Facility Conditions (other than payment of the Incremental Facility Fee) are satisfied, and (ii) the Debtor requests an Additional Draw on the Incremental Facility. Termination Fee of the sum of (a) 2.00% of the Initial Facility Amount plus (b) if the Incremental Facility Conditions are satisfied and an Additional Draw has been made on the Incremental Facility, 2.00% of the Incremental Facility, which Termination Fee will be deemed earned in full and due and payable on the Maturity Date. Draw Fee of 0.25% of the principal amount of each Additional Draw, which Draw Fees will be deemed earned in full and due and payable on the date of the funding of the DIP Loan for the requested Additional Draw. See DIP Loan and Security Agreement, Loan Chart, Pages 2-3.
Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(B)(xi) Del. Bankr. L.R. 4001-2(a)(i)(U)	Subject to entry of the Final DIP Order, the DIP Facility will be secured by, among other things, any avoidance actions of the Debtor under Sections 544, 545, 547 through 551 and 553(b) of the Bankruptcy Code and the proceeds thereof. See DIP Loan and Security Agreement, Section 3.1, Page 6.

Summary of Material Terms	
Waiver/Modification of Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv) Del. Bankr. L.R. 4001-2(a)(i)(S)	Upon the occurrence of an Event of Default, the Lender shall be entitled to immediate relief from the automatic stay (subject to the Lender filing a notice with the Bankruptcy Court setting forth such Event of Default, and granting the Debtor and any other party in interest 5 business days to seek an order of the Bankruptcy Court preventing the Lender from taking such actions) See DIP Loan and Security Agreement, Article 8, Pages 24-26.
Provisions Limiting the Court's Power and/or Discretion Del. Bankr. L.R. 4001-2(a)(i)(C)	The claims arising under the DIP Facility shall be entitled to the full protection of Bankruptcy Code section 364(e) if this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise. See Interim Order ¶¶ 3, 16, 45, 48.
Liens and Priorities Bankruptcy Rule 4001(c)(1)(B)(i), (ii) Del. Bankr. L.R. 4001-2(a)(i)(G), 4001-2(a)(i)(P)	The DIP Facility Obligations shall be (a) entitled to super-priority administrative expense claim status pursuant to § 364(c)(1) of the Bankruptcy Code with priority over all administrative expenses of the kind that are specified in Bankruptcy Code §§ 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code, subject to the Carveout; and (b) secured, pursuant to §§ 364(c)(2) and (c)(3) of the Bankruptcy Code by a first priority security interest and lien on the Debtor's unencumbered assets and a junior priority security interest and lien on the Debtor's encumbered assets, subject to the Carveout.; See DIP Loan and Security Agreement, Section 3.8, Page 7.
Joint Liability Del. Bankr. L.R. 4001-2(a)(i)(J)	Each of the Debtors are co-obligors under the DIP Documents. See DIP Loan and Security Agreement, Section 15.4, Pages 32-33.
Milestones Bankruptcy Rule 4001(c)(1)(B)(vi) Del. Bankr. L.R. 4001-2(a)(i)(H)	See Incremental Facility Conditions above. The Borrowers have agreed to the following milestones: (a) No later than 5 days after the Petition Date, file an application to retain Intrepid Investment Bankers LLC for the purpose of conducting the Sale (which application must be granted by the Bankruptcy Court within 30 days thereafter); (b) No later than 10 days after the Petition Date, make such revisions as requested by Lender in writing to the motion (including its exhibits and proposed orders) to approve bidding procedures for the Sale (the "Bidding Procedures") and customary bidding protections (the "Bid Procedures Motion"); (c) No later than 120 days after the Petition Date, obtain entry of an order of the Bankruptcy Court approving a motion (the "Sale Motion"), in form and substance acceptable to Lender in its sole discretion, to sell all or substantially all of Borrowers' assets, subject to exclusions provided for in an asset purchase agreement, or such portion or portions of Borrowers' assets as approved by Lender in its reasonable discretion (the "Sale Assets"), subject to an auction to determine the highest and best bid for such Sale Assets, and which provides for

Summary of Material Terms	
	the closing of such sale or sales, as applicable, no later than 150 days after the Petition Date (any such sale or sales of the Sale Assets, regardless of the timing or method thereof, the “Sale”) and contains such other sale terms that are acceptable to Lender in its reasonable discretion; (d) No later than 150 days after the Petition Date (or 180 days, if such extended period is agreed to by Lender in writing, in its sole discretion), close the Sale of the Sale Assets pursuant to the Bid Procedures and indefeasibly repay the Obligations in full. See DIP Loan and Security Agreement, Addendum 4.
Approval of the DIP Facility Del. Bankr. L.R. 4001-2(a)(i)(R)	The Interim Order provides for approval of the DIP Facility on the terms set forth in the DIP Loan and Security Agreement. See Interim Order .
506(c) Waiver Bankruptcy Rule 4001(c)(1)(B)(x) Del. Bankr. L.R. 4001-2(a)(i)(V)	Subject to the entry of the Final Order, effective as of the Petition Date the Debtors waive irrevocably all claims and rights, if any, they or their estates might otherwise assert against the DIP Collateral pursuant to Bankruptcy Code §§ 506(c), 105(a), or any other applicable law See Interim Order ¶ 12(a).
Marshalling Provision Del. Bankr. L.R. 4001-2(a)(i)(X)	Each Debtor expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Lender to marshal assets or to proceed against any Debtor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Debtor. See Interim Order ¶ 15.4.

Explanation for Inclusion of Significant Provisions Pursuant to Local Rule 4001-2(a)(i)

I. The Significant Provisions Are Appropriate and Justified Under the Circumstances of This Case.

17. Local Rule 4001-2(a)(i) requires that the Debtors explain the reason for including certain significant provisions described in Local Rules 4001-2(a)(i)(N)–(X) (collectively, the “Significant Provisions”). The Debtors believe that each of the Significant Provisions and the Carveout is justified and necessary in the context and circumstances of these cases.

A. The Scope of the Carveout Is Appropriate (Del. Bankr. L.R. 4001-2(a)(i)(F)).

18. The liens provided to the Lender under the DIP Documents are subject to the Carveout. Without the Carveout, the Debtors and other parties in interest may be deprived of certain rights and powers because the services for which professionals may be paid in these cases would be restricted. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve-outs for professionals representing parties in interest because “[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced”). The Carveout does not directly or indirectly deprive the Debtors’ estates or other parties in interest of possible rights and powers. Additionally, the Carveout protects against administrative insolvency during the course of these cases by ensuring that assets remain for the payment of U.S. Trustee fees and professional fees of the Debtors and any statutory committee.

B. The Provisions Immediately Approving All Terms and Conditions of the DIP Loan and Security Agreement Are Appropriate (Del. Bankr. L.R. 4001-2(a)(i)(R)).

19. Local Rule 4001-2(a)(i)(R) requires explicit disclosure of provisions that immediately approve all terms and conditions of the underlying loan agreement. Here, the Interim Order provides that it shall be effective and immediately enforceable upon its entry by the Court. Moreover, to the extent the DIP Loan Documents conflict with the Interim Order, the Interim Order controls. *See* Interim Order ¶ 28. It is necessary and appropriate for the Debtors to access the DIP Loan and to provide all parties with the assurances that the Debtors’ entry into the DIP Facility postpetition is valid. Without such a provision, the Debtors would be unable to access the DIP Loan on an interim basis.

C. The Provisions Modifying the Automatic Stay and Providing for a Remedies Notice Period (Del. Bankr. L.R. 4001-2(a)(i)(S), (T)).

20. Local Rules 4001-2(a)(i)(S) and (T) require explicit disclosure of provisions that modify the automatic stay upon a DIP Termination Event without a Remedies Notice Period and provisions that seek to limit what parties in interest may raise at an emergency hearing during the Notice Period. The Interim Order provides for a five (5) business day Remedies Notice Period following the Maturity Date or the occurrence of an Event of Default. *See* Interim Order ¶ 16. At any hearing during the Remedies Notice Period to contest the enforcement of remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred, and Debtors hereby waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights and remedies of Lender, as set forth in the DIP Loan and Security Agreement, the applicable Order, or other Loan Documents. *See* DIP Loan and Security Agreement, ¶ 8.2 The Debtors submit that the Significant Provisions are appropriate under the facts and circumstances of this Case. Accordingly, the Significant Provisions in the Interim Order should be approved.

The DIP Facility

I. The Debtors' Need for Access to Financing.

21. The Debtors require access to additional liquidity to ensure that they are able to continue operating their business during these cases and preserve the value of their estates for the benefit of all parties in interest.

22. As part of the Debtors' preparations for these cases, the Debtors and their advisors analyzed how much postpetition financing would be required to operate the Debtors' business and fund the administrative costs of the chapter 11 process. As part of this analysis, the Debtors and

their advisors developed a 13-week cash flow forecast, which takes into account anticipated cash receipts and disbursements during the projected period and considers a number of factors, including, but not limited to, the effect of a chapter 11 filing on the operations of the business, the fees, and interest expense associated with the DIP Facility, restructuring costs (including professional fees), required operational payments, and the potential acceleration of demands on available liquidity through working capital contraction.

23. Based on this analysis, the Debtors determined that they would require incremental liquidity to comfortably operate postpetition and satisfy all administrative costs and expenses. The Debtors believe that their ability to continue funding ongoing operations during these cases is essential to the preservation of the Debtors' assets and its ability to maximize the value of those assets.

24. The Debtors also believe that the DIP Facility will provide a strong message to their customers, vendors, employees, contract counterparties, and bidders that operations are appropriately funded and that the bankruptcy filing will not impact the Debtors' business operationally. Access to liquidity will communicate that the Debtors are able to continue meeting the needs of their customers, provide compensation to its employees, and are continuing to manage its businesses as close to the ordinary course as possible. And, access to the proposed DIP Facility will provide the Debtors with sufficient funds to pay wages to their employees, administer these cases, and thereby enable the Debtors to continue its efforts to preserve and maximize the value of their estates during these cases.

A. Alternative Sources of Financing Are Not Available on Better Terms.

25. Leading up to the Petition Date, the Debtors and the Lender engaged in good faith, arm's-length negotiations over the terms of the DIP Facility. Given the Debtors' current

circumstances, the most optimal source of debtor in possession financing was with the Lender. *See* Beers Decl. ¶ 10.

26. To ensure that there was no other available financing on better terms under the circumstances, Intrepid Investment Bankers (“Intrepid”) reached out to 25 other parties to assess any party’s willingness to provide financing. Of those 12 parties signed nondisclosure agreements, none of them expressed an interest in providing financing to the Debtors on better terms than the Lender. *See* Beers Decl. ¶¶ 7-9.

27. The DIP Facility is critical to the Debtors’ ability to fund the administrative costs of these cases. The DIP Facility provides a path to a successful resolution of these cases, which is important to reassure customers and vendors, protect operations, and maximize value for creditors.

Basis for Relief

I. The Debtors Should Be Authorized to Obtain Postpetition Financing Through the DIP Loan Documents.

A. Entry into the DIP Loan Documents Is an Exercise of the Debtors' Sound Business Judgment.

28. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Loan Documents and obtain access to the DIP Facility. Bankruptcy Code section 364 authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant a debtor considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *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.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit 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.”).

29. Specifically, to determine whether the business judgment standard is met, a court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor’s business decision when that decision involves “a business judgment

made in good faith, upon a reasonable basis, and within the scope of the debtor's authority under the [Bankruptcy] Code").

30. Furthermore, 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 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); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to acquire funds for its reorganization). The Court may also appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the bankruptcy court for the Southern District of New York held 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 foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

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

31. The Debtors' determination to move forward with the DIP Facility is an exercise of their sound business judgment following an arm's-length process and careful evaluation of available alternatives. Specifically, the Debtors and their advisors determined that the Debtors

would require postpetition financing to support their operational and chapter 11 activities. The DIP Facility will allow the Debtors to: (a) fund certain costs, fees, and expenses related to these chapter 11 cases; (b) fund the fees, interest, payments, and expenses associated with the DIP Facility; and (c) fund the working capital needs and expenditures related to these chapter 11 cases. The Debtors negotiated the DIP Facility and other DIP Loan Documents with the Lender in good faith, at arm's length, and with the assistance of their advisors. The Debtors believes that they have obtained the best financing available under 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.

B. The Debtors Should Be Authorized to Grant Liens.

32. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth in the DIP Loan Documents pursuant to Bankruptcy Code section 364(c). Specifically, the Debtors propose to provide the Lender with first priority security interest in and liens on the DIP Collateral (as defined in the Interim Order) that was not, on the Petition Date, subject to valid, enforceable, non-avoidable, and perfected security interests and liens.

33. The above-described liens on unencumbered assets are a common features of postpetition financing facilities and, as set forth in greater detail in the Beers Declaration and the First Day Declaration, were a necessary feature in these cases to provide security for the proposed DIP Facility. Indeed, postpetition financing facilities approved in this Circuit and elsewhere routinely are secured by the proceeds of a debtor's unencumbered assets such as leaseholds that are subject to leases that prohibit the impositions of liens thereon. *See, e.g., In re Novation Companies, Inc., et al.*, No. 23-11153 (JTD) (Bankr. D. Del. Aug. 13, 2023) (approving DIP liens on collateral including any leasehold interests or the proceeds thereof as permitted by applicable

law); *In re Amyris, Inc., et al.*, No. 239-11131 (TMH) (Bankr. D. Del. Aug. 9, 2023) (same); *In re 540 West 21st Street Holdings LLC*, No. 23-11053 (MFW) (Bankr. D. Del. Aug. 2, 2023) (same); *In re ViewRay, Inc.*, No. 23-10935 (KBO) (Bankr. D. Del. July 16, 2023) (same); *In re iMedia Brands, Inc. et al.*, No. 23-10852 (KBO) (Bankr. D. Del. June 28, 2023) (same).

34. The statutory requirement for obtaining postpetition credit under Bankruptcy Code section 364(c) is a finding, made after notice and hearing, that a debtor is “unable to obtain unsecured credit allowable under Section 503(b)(1) of [the Bankruptcy Code].” 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under Bankruptcy Code section 364(c) is authorized, after notice and hearing, upon a showing that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine whether a debtor is entitled to financing under Bankruptcy Code section 364(c). Specifically, courts look to whether:

- (i) the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim;
- (ii) the credit transaction is necessary to preserve the assets of the estate; and
- (iii) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-Debtor and proposed lenders.

See In re Los Angeles Dodgers LLC, 457 B.R. 308 (Bankr. D. Del. 2011); *See In re Ames Dep’t Stores*, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990); *see also In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.

35. As described above and as set forth in the Beers Declaration, during the Debtors’ prepetition marketing process, no third-party lender indicated it would be willing to provide postpetition financing on an unsecured basis. *See Beers Decl.* ¶ 9. The DIP Facility is therefore the best DIP financing available to the Debtors under the circumstances to provide liquidity during these cases. *See id.*

36. Absent the DIP Facility, which will provide assurances that the Debtors will have sufficient liquidity to administer these chapter 11 cases, the value of the Debtors' estates would be significantly impaired to the detriment of all stakeholders. Without postpetition financing, the Debtors lack sufficient funds to operate their business, continue paying their debts as they come due, and cover the projected costs of these cases. Under the circumstances, the Debtors believe that the terms of the DIP Facility, as set forth in the DIP Loan Documents, are reasonable, as more fully set forth above and in the Beers Declaration. For all these reasons, the Debtors submit that they have met the standard for obtaining postpetition financing.

37. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under Bankruptcy Code section 503(b)(1), Bankruptcy Code section 364(c) provides that a court "may authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien." 11 U.S.C. § 364(c). As described above, the Debtors are unable to obtain unsecured credit. Therefore, approving a lien on all unencumbered assets in favor of the Lender is reasonable and appropriate.

C. No Comparable Alternative to the DIP Facility Is Reasonably Available on More Favorable Overall Terms.

38. A debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by Bankruptcy Code sections 364(c). *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky*

Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (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 section 364 requirement was met); *In re Ames Dep't Stores*, 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)).

39. As noted above, the Debtors do not believe that more favorable financing is reasonably available given the Debtor's solicitation of alternative financing proposals. The Debtors have determined that the DIP Facility provides the most favorable terms and is provided on reasonable terms under the circumstances. The DIP Facility provides the Debtors with the liquidity they need at the lowest cost available while simultaneously placing the Debtors on an optimal path for successfully implementing these cases. Therefore, the Debtors submit that the requirement of Bankruptcy Code section 364 that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

II. The Debtors Should Be Authorized to Pay the Fees Required Under the DIP Loan Documents.

40. Under the DIP Loan Documents, the Debtors agreed, subject to Court approval, to pay certain fees to the Lender. In particular, as noted above, the Debtors agreed to pay:

- (i) An Upfront Facility Fee of (a) 3.00% of the Initial Facility Amount of the DIP Facility, plus 1% of the Incremental Facility Amount, which Upfront Facility Fee, plus (b) an Incremental Facility Fee of 2% of the Incremental Facility Amount (the "**Incremental Facility Fee**"), which Incremental Facility Fee will be deemed earned in full and due and payable when (i) each of the Incremental Facility Conditions (other than payment of the Incremental Facility Fee) are satisfied, and (ii) the Debtor requests an Additional Draw on the Incremental Facility;

- (ii) Termination Fee of the sum of (a) 2.00% of the Initial Facility Amount plus (b) if the Incremental Facility Conditions are satisfied and an Additional Draw has been made on the Incremental Facility, 2.00% of the Incremental Facility, which Termination Fee will be deemed earned in full and due and payable on the Maturity Date; and
- (iii) a Draw Fee of 0.25% of the principal amount of each Additional Draw, which Draw Fees will be deemed earned in full and due and payable on the date of the funding of the DIP Loan for the requested Additional Draw.

41. Courts in this district and others have approved similar aggregates in fees in large chapter 11 cases. *See In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. May 22, 2022) (approving a commitment fee of approximately 3.0 percent of the DIP loans, a backstop fee of approximately 2.0 percent of the DIP loans, and a fronting premium of approximately 0.50% of the DIP loans); *540 West 21 Street Hodlings, LLC*, No. 23-11053 (MFW) (Bankr. D. Del. Aug. 2, 2023) (approving 3% commitment fee and 1% unused line fee); *In re ATD Corp.*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (approving a cash fee approximately 2.0 percent of the overall DIP facility); *In re PES Holdings LLC*, No. 18- 10122 (KG) (Bankr. D. Del. Jan. 22, 2018) (same); *In re Toys “R” US, Inc.*, No. 17-34665 (KLP) (Bankr. E.D.Va. Sept. 19, 2017) (approving aggregate fees that were just less than 3.0 percent of the overall DIP facility).

42. These fees are an integral component of the overall terms of the DIP Facility and were required by the Lender as consideration for the extension of postpetition financing. *See Beers Decl.* ¶ 10. Accordingly, the Court should authorize the Debtors to pay the fees provided under the DIP Loan Documents in connection with entering into those agreements.

III. The Lender Should Be Deemed A Good-Faith Lender Under Section 364(e).

43. Bankruptcy Code section 364(e) 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 debtor’s authority to obtain such loans or grant such liens is later reversed or modified on appeal. Bankruptcy Code section 364(e) provides:

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.

44. As explained herein, in the Beers Declaration, and in the First Day Declaration, the DIP Loan Documents are the result of: (a) the Debtors' reasonable and informed determination that the Lender is providing the best postpetition financing available under the circumstances; and (b) arm's length, good-faith negotiations between the Debtors and the Lender. The Debtors submit that the terms and conditions of the DIP Loan Documents are reasonable 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 any party under the DIP Loan Documents other than as described herein. Accordingly, the Court should find that the Lender is a "good faith" lenders within the meaning of Bankruptcy Code section 364(e) and is entitled to all of the protections afforded by that section.

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

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

46. Before the Petition Date, the Debtors funded their operations, in part, with an unsecured line of credit from Mizuho Bank. The Debtors no longer have access to that line of credit. The Debtors' revenues alone are insufficient to cover its expenses. For these reasons, the

Debtors have an immediate postpetition need to access the liquidity provided by the DIP Facility to continue operations, preserve and maximize the value of their estates, and administer these cases. The Debtors require immediate access to liquidity to satisfy the day-to-day financing needs of their business operations. This access will allow the Debtors to continue operating their business, maintain business relationships with their vendors and suppliers, pay wages and benefits, and satisfy other essential working capital and operational needs, all of which are required to preserve and maintain the Debtors' going concern value for the benefit of all parties in interest.

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

47. The proposed Interim Order provides that the automatic stay provisions of Bankruptcy Code section 362 will be modified to allow the 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 Interim Order. The proposed Interim Order further provides that the automatic stay is modified as necessary to permit the Debtors to grant liens to the Lender and to incur all liabilities and obligations set forth in the Interim Order.

48. The Interim Order further provides that, upon the expiration of the Remedies Notice Period (as defined in the Interim Order), the automatic stay will be automatically terminated to permit the Lender to exercise all its rights and remedies set forth in the Interim Order, the DIP Loan Documents, and as otherwise available at law without further order or application or motion to the Court to foreclose upon and sell all or a portion of the DIP Collateral in order to collect any amounts payable to the Lender.

49. 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 these cases. *See, e.g., In re Novation Companies, Inc., et al.*, No. 23-

11153 (JTD) (Bankr. D. Del. Aug. 13, 2023) (modifying automatic stay as necessary to effectuate the terms of the order); *In re Amyris, Inc., et al.*, No. 239-11131 (TMH) (Bankr. D. Del. Aug. 9, 2023) (same); *In re 540 West 21st Street Holdings LLC*, No. 23-11053 (MFW) (Bankr. D. Del. Aug. 2, 2023) (same); *In re ViewRay, Inc.*, No. 23-10935 (KBO) (Bankr. D. Del. July 16, 2023) (same); *In re iMedia Brands, Inc. et al.*, No. 23-10852 (KBO) (Bankr. D. Del. June 28, 2023) (same).

Request for Final Hearing

50. Pursuant to Bankruptcy Rule 4001(c)(2) and Local Rule 4001-2(c), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable and fix the time and date prior to the Final Hearing for parties to file objections to this motion.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

51. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first 21 days after the petition date only “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and the failure to receive the requested relief during the first 21 days of these cases would severely disrupt the Debtors’ operations at this important juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize the value of their estates for the benefit of all stakeholders. The Debtors have demonstrated that the requested relief is “necessary to avoid immediate and irreparable harm,” as contemplated by Bankruptcy Rule 6003, and the Court should grant the requested relief.

Reservation of Rights

52. Nothing contained in this motion or any order granting the relief requested in this motion and no action taken pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this motion or any order granting the relief requested by this motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to Bankruptcy Code section 365; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Notice

53. The Debtors will provide notice of this motion to the following parties or their respective counsel: (a) the U.S. Trustee for the District of Delaware, Attn: Rosa Sierra Fox; (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Lender; (d) the office of the attorney general for each of the states in which the

Debtors operate; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this motion is seeking "first day" relief, within one business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

54. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of the Interim Order, substantially in the form attached hereto as **Exhibit A**, (a) granting the relief requested herein and (b) granting such other relief as is just and proper.

Dated: October 30, 2023
Wilmington, Delaware

DORSEY & WHITNEY (DELAWARE) LLP

/s/ Eric Lopez Schnabel

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*Proposed Counsel for the Debtors
and Debtors in Possession*

EXHIBIT A

PROPOSED INTERIM ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

WATER GREMLIN COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11775 (LSS)

(Jointly Administered)

D.I. []

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN
POSTPETITION FINANCING, (II) GRANTING LIENS, (III) MODIFYING THE
AUTOMATIC STAY, (IV) SCHEDULING A FINAL HEARING, AND
(V) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the above-captioned debtors and debtors in possession (the “Debtors”), pursuant to sections 105, 361, 362, 363, 364, 503, 506, and 507 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2002-1, 4001-2, and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking, among other things:

(a) authority to obtain debtor in possession, secured financing in the maximum principal amount of \$10,000,000 pursuant to the following documents (collectively, the “DIP Loan Documentation”): (a) this Order (this “Interim Order”), and any final order entered by the Court with respect to the Motion (the “Final Order”), and (b) the agreement between the Debtors and SG Credit Partners, Inc. (the “DIP Lender”) entitled Senior Secured, Super-Priority Debtor In Possession Loan and Security Agreement (the “DIP Loan and Security”)

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: WG Sub, LLC ("WG Sub") (0781), Water Gremlin Holdings, Inc. ("Holdings") (9250), and Water Gremlin Company ("Water Gremlin") (6396).

Agreement”), a copy of which is attached hereto as **Exhibit A**, as well as any other documents entered into or contemplated by the DIP Loan and Security Agreement ;

(b) to grant the DIP Lender (i) valid, enforceable, non-avoidable, and automatically and fully perfected DIP Credit Liens (as defined hereafter) in all DIP Collateral (as defined hereafter), to secure the Obligations² of the Debtors under the DIP Loan and Security Agreement and (ii) super priority administrative claim status pursuant to §§ 364(c)(1) and 507(b) of the Bankruptcy Code in accordance with the terms of this Interim Order;

(c) authorization for the Debtors’ use of the proceeds of DIP Collateral, as contemplated by § 363 of the Bankruptcy Code in accordance with the terms set forth herein;

(d) subject to entry of the Final Order, a waiver of the Debtors’ (or their estates’, including³ via any successor) ability to surcharge pursuant to § 506(c) of the Bankruptcy Code against any DIP Collateral;

(e) modification of the automatic stay to the extent hereinafter set forth and waiving the fourteen (14) day stay provisions of Bankruptcy Rules 4001(a)(3) and 6004(h); and

(f) setting a final hearing on the Motion.

The Court held an interim hearing with respect to the Motion on October [___], 2023 (the “Interim Hearing”). At the Interim Hearing, all objections to the interim relief requested in the Motion were withdrawn, resolved, or overruled by the Court;

² Capitalized terms not otherwise defined in this Interim Order shall have the meanings ascribed to them in the DIP Loan and Security Agreement .

³ Including shall not be a term of limitation, and shall be deemed to read as “including, without limitation” pursuant to § 102 of the Bankruptcy Code.

THE DEBTORS AND THE DIP LENDER STIPULATE AS FOLLOWS

1. Certain of the Debtors' equipment and other assets are subject to validly perfected unavoidable security interests or liens existing as of the Petition Date, including (i) those security interests or liens expressly set forth on **Exhibit B** hereto, (ii) certain liens for taxes or other governmental charges to the extent applicable non-bankruptcy law creates such liens, and (iii) certain mechanic's, worker's, materialmen's or other like statutory liens arising in the ordinary course of business (collectively, items (i), (ii), and (iii), the "**Permitted Liens**"). For the avoidance of doubt, Permitted Liens shall only include those liens which were validly perfected, unavoidable security interests or liens as of the Petition Date or which are capable of being perfected pursuant to § 546(b) of the Bankruptcy Code.

2. The Debtors have the requisite power and authority to own, lease, and operate their property, including the DIP Collateral. The Debtors have the requisite power and authority to enter into, execute, deliver, and perform their obligations under the DIP Loan Documentation, and to incur the Obligations provided for therein. No consent or waiver of, filing with, authorization, approval or other action by any shareholder, any federal, state, or other governmental authority or regulatory body, or any other party or person (other than the DIP Lender), which has not already been obtained or done, is required in connection with the execution, delivery, and performance by the Debtors under the DIP Loan Documentation, other than entry by this Court of this Interim Order.

3. The Debtors believe the extension of credit and financial accommodations under the DIP Loan and Security Agreement are fair, reasonable, in good faith, negotiated at arm's length, reflect the Debtors' exercise of prudent business judgment, and are supported by

reasonably equivalent value and fair consideration and the DIP Lender is entitled to the protections of Bankruptcy Code § 364(e).

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:⁴

4. On the Petition Date, the Debtors filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code.

5. The Debtors continue the management and operation of their business pursuant to §§ 1107 and 1108 of the Bankruptcy Code, and no trustee or examiner has been appointed.

6. The Debtors gave notice of the Motion and the Interim Hearing (the “Notice”) pursuant to Local Rule 9013-1(m). The Notice was served by the Debtors in accordance with Bankruptcy Rules 4001(b) and 4001(c) and the Local Rules on: (i) the DIP Lender; (ii) the U.S. Trustee for the District of Delaware, Attn: Rosa Sierra Fox; (iii) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (iv) counsel to the DIP Lender; (v) the office of the attorney general for each of the states in which the Debtors operate; (vi) the United States Attorney’s Office for the District of Delaware; (vii) the Internal Revenue Service; (ix) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (x) the Departments of Revenue for the States of Minnesota, Illinois, and Wisconsin, Ramsey County Property Tax Services; and (xi) other parties identified in the certificate(s) of service filed with the Court. Further, as this motion is seeking “first day” relief, within one business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). Under the circumstances, the notice given by the Debtors complies with Bankruptcy Rule 4001 and the Local Rules.

⁴ 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 pursuant to Bankruptcy Rule 9014. To the extent, any findings of fact constitute conclusions of law, they are adopted as such, and vice versa, pursuant to Fed. R. Bankr. P. 7052.

7. The Court has core jurisdiction over the Debtors' Bankruptcy Cases (the "Bankruptcy Cases"), the Motion, and the parties and property affected by this Interim Order pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

8. As of the date hereof, the U.S. Trustee has not yet appointed an official committee of unsecured creditors in this case pursuant to Bankruptcy Code § 1102 (a "Statutory Committee").

9. The Debtors do not have sufficient available sources of capital and financing to maintain their property throughout the Bankruptcy Cases without the financing provided via the DIP Loan and Security Agreement. As a result, the Debtors have an immediate need for the financing set forth in this Interim Order. In the absence of the financing provided via the DIP Loan and Security Agreement, the Bankruptcy Cases and potential reorganization or disposition of the Debtors' assets would not be possible, and would cause serious and irreparable harm to the Debtors and their estates.

10. The DIP Lender is willing to provide postpetition financing to the Debtors through the DIP Loan Documentation.

11. Prior to the Petition Date, the Debtors sought to obtain financing from a number of sources. Notwithstanding such efforts, the Debtors were unable to obtain credit except (i) under the terms and conditions provided for in the DIP Loan and Security Agreement and this Interim Order, or (ii) on terms more onerous to the Debtors and their estates.

12. Given the Debtors' current financial condition, financing arrangements and capital structure, and in light of the Debtors' prepetition search for other forms or types of financing (which did not yield any better terms of financing than that offered by the DIP

Lender), the Debtors cannot obtain unsecured credit allowable under Bankruptcy Code § 503(b)(1) as an administrative expense. Financing on a post-petition basis is not otherwise available to the Debtors without the Debtors and their estates (i) granting, pursuant to Bankruptcy Code § 364(c)(1), claims having priority over any and all administrative expenses of the kinds specified in Bankruptcy Code §§ 503(b) and 507(b), and (ii) securing, pursuant to Bankruptcy Code §§ 364(c), such indebtedness and obligations with security interests in and liens on all of the DIP Collateral.

13. The Debtors reasonably and in good faith believe the use of the loans, advances, and other financial accommodations to be obtained pursuant to the DIP Loan and Security Agreement are sufficient to fund all administrative expenses associated with the operation of their business and other costs relating to the administration of the Bankruptcy Cases from the Petition Date through the term of the Approved Budget (as defined hereafter), and in order to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing.

14. It is in the best interest of the Debtors' estates that the Debtors be allowed to enter into the DIP Loan and Security Agreement in order to obtain postpetition secured financing from the DIP Lender, and use the DIP Collateral subject to, and in accordance with, the terms of the DIP Loan Documentation, including the Approved Budget.

15. At the Interim Hearing, the Court considered the *Declaration of Lorie Beers in Support of Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief*, the *Declaration of Bradley J. Hartsell in Support of Chapter 11 Petitions and First Day Relief*, representations made by counsel, offers of proof, and/or testimony regarding: (i) the negotiations pertaining to

this Interim Order; (ii) the necessity for the financing contemplated by this Interim Order; (iii) the events leading up to the filing of the Bankruptcy Cases by the Debtors; and (iv) the Debtors' need for credit to the extent necessary to avoid immediate and irreparable harm to their estates, pending a final hearing in accordance with Bankruptcy Rule 4001(c).

16. Based on the record presented to the Court by the Debtors at the Interim Hearing, the extensions of credit under the DIP Loan and Security Agreement appear to be fair and reasonable, negotiated at arm's length, are ordinary and appropriate for secured financing to debtors in possession, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration, and good and sufficient cause exists for the issuance of this Interim Order, to prevent immediate and irreparable harm to the Debtors' estates. Therefore, the DIP Lender is entitled to the full protections of Bankruptcy Code § 364(e).

Based upon the foregoing, and after due consideration and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

17. The Motion is granted on an interim basis, as set forth herein, effective as of the date hereof.

(a) The Debtors are authorized, pursuant to Bankruptcy Code §§ 363 and 364, to enter into the DIP Loan and Security Agreement (the terms of which are incorporated herein and approved in their entirety) and such other and additional documents necessary or desired to implement the DIP Loan and Security Agreement, in order to obtain postpetition secured financing from the DIP Lender, and to use the DIP Collateral and the proceeds and products thereof, pursuant to the terms and conditions of the DIP Loan Documentation to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing.

(b) To enable the Debtors to continue to preserve the value of their estates, during the period prior to a hearing to consider entry of the Final Order (the “Interim Period”) and subject to the terms and conditions of this Interim Order, the Debtors are hereby authorized to borrow up to \$3,000,000 from the DIP Lender, such amount equaling the Debtors’ cash needs during the Interim Period as set forth in the budget attached hereto as **Exhibit C** (the “Approved Budget”).

(c) The Debtors shall use the advances obtained under the DIP Loan and Security Agreement and the DIP Collateral only for the purposes and in the amounts set forth in the Approved Budget and otherwise subject to the terms and conditions set forth in the DIP Loan Documentation. The DIP Lender shall have no obligation to make DIP Loan and Security Agreement advances in excess of the amounts and times set forth in the Approved Budget and DIP Loan Documentation.

18. With respect to the Approved Budget:

(a) the Approved Budget reflects, on a line-item basis, anticipated cash receipts and expenditures on a weekly basis and includes all necessary and required expenses the Debtors expect to incur during the thirteen week period of the Approved Budget.

(b) the Approved Budget shall be revised at least once during each four week period during the term of the DIP Loan and Security Agreement, and shall remain subject to the approval of the DIP Lender each month unless otherwise ordered by the Court after notice and a hearing; provided, however, if any revision to the Approved Budget cannot be agreed between Debtors and DIP Lender the most recent Approved Budget shall continue pending resolutions among the parties or direction by the Court after such notice and hearing.

(c) not later than Thursday of each week commencing with the third week of the period covered by the Approved Budget, the Debtors shall provide the DIP Lender with a variance report reflecting, on a line-item basis, the actual cash disbursements and revenues for the preceding week and the percentage variance (the “Variance Percent”) of such actual disbursements and revenues from those reflected in the Approved Budget for that period, along with the Debtors’ explanation of such variance (the “Variance Report”). Any amount included in the Approved Budget that is not incurred or paid during a particular week shall be permitted to be carried over into subsequent weeks of the Approved Budget, or utilized for other line items in subsequent weeks.

(d) any disbursement made by the Debtors other than for budgeted amounts as set forth in the Approved Budget shall be deemed to be an Event of Default (as hereinafter defined), unless the DIP Lender consents to those changes in writing or unless otherwise ordered by the Court after notice and a hearing; provided, however, the Debtors may make payments in excess of the total budgeted disbursements (including permitted carryforwards) so long as the Variance Percent of the aggregate of all actual disbursements for each week shall not exceed fifteen percent (15.0%) of the budgeted disbursements for that week in the aggregate (the “Allowed Disbursement Variance”).

(e) the Approved Budget shall contain, *inter alia*, line items for payment of (i) estimated fees/expenses of professionals retained by the Debtors (which in the alternative the Debtors may place into escrow); (ii) estimated fees/expenses of professionals retained by any Statutory Committee (which in the alternative the Debtors may place into escrow); and (iii) estimated quarterly fees pursuant to 28 U.S.C. § 1930(a)(6) (“U.S. Trustee Fees”) and any fees payable to the Clerk of the Bankruptcy Court, it being understood that all payments due to such

parties (other than U.S. Trustee Fees and fees payable to the Clerk of the Bankruptcy Court) in excess of the amounts set forth on the Approved Budget shall be paid from proceeds of the DIP Collateral only after the Obligations under the DIP Loan and Security Agreement are indefeasibly paid in full and in cash to the DIP Lender.

(f) upon the occurrence of an Event of Default, (i) the Debtors shall immediately cease making any payments under the Approved Budget; provided, however, the Debtors may utilize up to \$100,000 of cash on hand for preservation of the DIP Collateral (which shall not, for the avoidance of doubt, be used to pay any Debtors or Statutory Committee professional fees or expenses, which shall instead resort only to the Carve-Out and to any pre-petition retainers or deposits unless and until the Obligations under the DIP Loan and Security Agreement are indefeasibly paid in full and in cash to the DIP Lender) and for payment of U.S. Trustee Fees; and (ii) the DIP Lender shall be relieved from any further funding obligations.

19. Pursuant to Bankruptcy Code §§ 363 and 364(c), all Obligations under the DIP Loan and Security Agreement shall be an allowed administrative expense of the Debtors' estates, which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtors and over all administrative expenses (other than any fees arising under 28 U.S.C. § 1930) or charges against property arising in the Bankruptcy Cases and any superseding chapter 7 case including those specified in Bankruptcy Code §§ 105, 326, 328, 330, 331, 503(b), 506(c) (subject to the entry of the Final Order), 507(a), 507(b), 726, 1113, or 1114 (such claim, the "DIP Superpriority Claim").

20. Subject only to the Permitted Liens, pursuant to Bankruptcy Code §§ 363 and 364(c), the DIP Lender shall have and hereby is granted, effective upon the date of this Interim Order, valid, perfected, binding, and enforceable liens, mortgages and/or security interest (which

shall immediately be valid, binding, permanent, continuing, enforceable, perfected, and non-avoidable without the need for filing or recordation) (a “Lien,” and as so granted to the DIP Lender, the “DIP Credit Lien”), in all of the Debtors’ presently owned or hereafter acquired property and assets, whether such property and assets were acquired before or after the Petition Date, of any kind or nature, whether real or personal, tangible or intangible, wherever located, and the proceeds and products thereof, including first priority perfected security interests in any and all claims, defenses, causes of action, or rights of the Debtors arising under §§ 542 through 553 of the Bankruptcy Code and any proceeds thereof (“Avoidance Actions”), provided, however, that the DIP Credit Lien on Avoidance Actions is subject to entry of a Final Order (collectively, the “DIP Collateral”), in the following priority:

(a) pursuant to Bankruptcy Code § 364(c)(2), first priority, perfected DIP Credit Liens upon all of the Debtors’ right, title, and interest in, to and under all of the Debtors’ unencumbered assets; and

(b) pursuant to Bankruptcy Code § 364(c)(3), second priority, junior perfected Liens upon all of the Debtors’ right, title, and interest in, to and under all other DIP Collateral, subject only to the Permitted Liens.

21. Pursuant to Bankruptcy Code §§ 364(c), the DIP Credit Lien shall be a first priority senior lien on the DIP Collateral, subject and junior only to the Permitted Liens. The DIP Credit Lien shall not be subject or subordinate to any Lien which is avoided and which would otherwise be preserved for the benefit of the Debtors’ estates under Bankruptcy Code § 551, and in no event shall any person or entity who pays (or causes to be paid) any of the Obligations under the DIP Loan Documentation be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or security interests granted to or in favor of, or conferred

upon, the DIP Lender by the terms of the DIP Loan Documentation until such time as the obligations under the DIP Loan Documentation are indefeasibly paid in full, in cash. The DIP Credit Lien shall not be subject or subordinate to Liens arising after the Petition Date. Except as expressly set forth in this Interim Order, the DIP Credit Liens shall not be subordinated to or made *pari passu* with any other Lien or security interest.

22. **Insurance Proceeds and Policies.** Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Lender shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained now or in the future by the Debtors that in any way relates to the DIP Collateral.

23. Provided no Event of Default exists, the Debtors shall be authorized to use Cash Collateral only in accordance with the terms of the Approved Budget and the DIP Loan Documentation.

24. The automatic stay provisions of § 362 are hereby modified to permit (a) the Debtors and the DIP Lender to implement and perform the DIP Loan and Security Agreement and the DIP Loan Documentation, and (b) the creation and perfection of the DIP Credit Lien granted or permitted by this Interim Order. The Debtors and the holders of any DIP Credit Lien shall not be required to enter into any additional security agreements to create, memorialize, and/or perfect any such liens, or to file UCC financing statements, mortgages, or other instruments with any other filing authority or take any other action to perfect any such Liens, which shall be and are deemed valid, binding, enforceable, and automatically perfected by the docket entry of this Order by the Clerk of the Court. If, however, the holder of the DIP Credit Lien, in its sole and absolute discretion, elects for any reason to enter into, file, record or serve

any such financing statements or other documents with respect to such DIP Credit Lien, the Debtors shall execute same upon request and the filing, recording, or service thereof (as the case may be) shall be deemed to have been made at the time and on the date of the docket entry of this Interim Order by the Clerk of the Court. The DIP Lender is hereby relieved of any requirement to file proofs of claim in the Bankruptcy Cases with respect to the DIP Credit Lien and the claims secured thereby, but the DIP Lender may, in its sole and absolute discretion, file any such proof of claim.

25. Notwithstanding anything to the contrary contained herein, the DIP Credit Lien shall only be subject to (a) fees and expenses of the Clerk of the Court and the U.S. Trustee Fees; (b) the Carve-Out (as defined below), subject to the terms set forth below, and (c) Permitted Liens.

26. Proceeds from the DIP Loan and Security Agreement may not be used for the payment of any chapter 11 professional fees incurred directly or indirectly, in respect of, arising from or relating to:

(a) the initiation, joinder, or prosecution of any action contesting the indebtedness owed to the DIP Lender, or the validity of the DIP Credit Liens granted to the DIP Lender;

(b) preventing, hindering, or otherwise delaying (or supporting any other person or entity in preventing, hindering, or otherwise delaying), whether directly or indirectly, the exercise by the DIP Lender of any of its rights and remedies under the DIP Loan Documentation;

(c) the commencement, support, or prosecution of any action or proceeding, or the assertions of any claims, causes of action, or defenses, against the DIP Lender, or any of its officers, directors, employees, agents, attorneys, affiliates, successors, or assigns;

(d) any request to borrow money other than pursuant to the terms of the DIP Loan Documentation;

(e) performing or commencing any investigation or litigation, whether threatened or pending, with respect to any matter to be released, waived, or specified as not subject to challenge by the Debtors pursuant to this Interim Order; or

(f) for any other purpose for which proceeds of the DIP Loan and Security Agreement may not be used pursuant to the DIP Loan Documentation.

27. Subject to the entry of the Final Order, effective as of the Petition Date:

(a) the Debtors waive irrevocably all claims and rights, if any, they or their estates might otherwise assert against the DIP Collateral pursuant to Bankruptcy Code §§ 506(c), 105(a), or any other applicable law;

(b) no entity in the course of the Bankruptcy Cases shall be permitted to recover from the DIP Collateral (whether directly or through the grant of derivative or equitable standing in the name of the Debtors or their estates) any cost or expense of preservation of the DIP Collateral, including expenses and charges as provided in Bankruptcy Code §§ 506(c), 105(a), or any other applicable law;

(c) no entity shall be permitted to recover from the DIP Collateral, or assert against the DIP Lender, any claim or administrative expense in the Bankruptcy Cases, whether or not the Debtors' payment of such amounts was contemplated by or included in the Approved Budget; and

(d) the DIP Lender shall not be subject to the equitable doctrines of “marshaling” or any similar claim or doctrine, with respect to any DIP Collateral.

28. Each of the following shall constitute an “Event of Default” hereunder: (a) the Debtors seek entry of any other orders in the Bankruptcy Cases which authorize, or the Court on motion of any other party enters an order that authorizes (i) the obtaining of credit or the incurring of indebtedness pursuant to §§ 364(c) or 364(d) of the Bankruptcy Code that does not repay the Obligations under the DIP Loan and Security Agreement immediately in full and in cash; or (ii) any other grant of rights against the Debtors and/or their estates that is secured by a Lien in the DIP Collateral or is entitled to superpriority administrative status that does not repay the Obligations under the DIP Loan and Security Agreement immediately in full and in cash; (b) the Debtors’ failure to comply with the terms of this Interim Order, including their failure to comply with the Approved Budget (subject to any approved variances); (c) the Debtors’ failure to comply with the terms of the DIP Loan and Security Agreement or any other DIP Loan Documentation subject to notice and cure as expressly set forth in such documentation; (d) the entry of an order dismissing the Bankruptcy Cases (or any of them) or converting the Bankruptcy Cases (or any of them) to chapter 7 cases; (e) the entry of an order appointing a chapter 11 trustee in the any of the Bankruptcy Cases; (f) the entry of an order granting any other claim superpriority status or a Lien equal or superior to the Liens granted to the DIP Lender; (g) the entry of an order staying, reversing, vacating, or otherwise modifying the DIP Loan and Security Agreement under this Interim Order (except as modified in a Final Order acceptable in form and substance to the DIP Lender) without the DIP Lender’s prior written consent; (h) the entry of an order in the Bankruptcy Cases appointing an examiner having enlarged powers beyond those set

forth under Bankruptcy Code § 1106(a)(3) and (4); or (i) the entry of a Final Order shall not have occurred within thirty (30) days after the Petition Date.

29. Upon the occurrence of an Event of Default, the DIP Lender shall be fully authorized, in its sole discretion to (a) cease making advances to the Debtors; (b) terminate the DIP Loan and Security Agreement; and (c) issue a notice (the “Carve-Out Trigger Notice”) such that the Carve-Out shall be limited to those monies which the Debtors have deposited into a segregated account through the date of such notice. Upon the Maturity Date, or occurrence of an Event of Default (and after five (5) Business Days written notice of such Event of Default (the “Remedies Notice Period”), which may be made via e-mail to the Debtors, with a copy to counsel to the Debtors, any Statutory Committee and the U.S. Trustee), the DIP Lender may, absent an Order of this Court specifically precluding such actions obtained prior to the expiry of the Remedies Notice Period, (x) demand immediate repayment of the DIP Loan and Security Agreement Obligations then outstanding and exercise control over any amounts maintained in Debtors’ bank accounts (other than certain Excluded Accounts as identified in the DIP Loan and Security Agreement) and direct account debtors to remit payments directly to DIP Lender (y) free of the restrictions of Bankruptcy Code § 362 (which does not apply to the DIP Lender) or under any other section of the Bankruptcy Code or Bankruptcy Rules (including Bankruptcy Rule 4001(a)), exercise any contractual, legal, and equitable rights and remedies as to all or such part of the DIP Collateral as it shall elect, and to apply the proceeds of the DIP Collateral to the repayment of the Obligations under the DIP Loan and Security Agreement, and (z) preclude the Debtors from utilizing any DIP Collateral or proceeds thereof for any purpose other than those expressly allowed after an Event of Default (or after a Carve-Out Trigger Notice) in this Interim Order . In addition, the DIP Lender shall, after filing of an appropriate statement with the Court,

be deemed to have been granted “peaceful possession” of, and right of access to, all or any portion of the DIP Collateral, by the Debtors.

30. Throughout the term of this Interim Order and the DIP Loan and Security Agreement, the Debtors shall regularly provide the DIP Lender with all financial statements, certificates, reports and other information it shall reasonably require. The DIP Lender and its representatives shall have reasonable access to the Debtors’ business premises and to the DIP Collateral in order to review and evaluate the physical condition of any of the DIP Collateral and to inspect the records of the Debtors concerning the prior or current operation of the Debtors’ business, property or assets.

31. Until the Maturity Date or an Event of Default, each week the Debtors shall be authorized to deposit in a separate account the amounts allocated in the Approved Budget for estate professional fees and expenses for such week. The amounts in such separate account shall be the “Carve-Out.” Neither the Obligations secured by the DIP Credit Liens nor the DIP Superpriority Claim shall be paid from the amounts in the Carve-Out, except to the extent the fees and expenses of estate professionals that are allowed and were incurred prior to any Event of Default or the Maturity Date (other than fees and expenses incurred in taking actions not allowed by this Interim Order or for which DIP Collateral could not be used pursuant to this Interim Order, which such fees and expenses cannot be paid from the Carve-Out) are less than the amount in the Carve-Out, after taking into account the application of any pre-petition deposits or retainers held by each professional.

32. The Debtors and any successors to the Debtors, including any successor trustee or trustees, shall assign or direct to the DIP Lender all proceeds realized in any disposition of any DIP Collateral outside the ordinary course of business of the Debtors, and immediately deliver

all such proceeds which come into their possession to the DIP Lender in the form received; provided, however, the foregoing shall be subject in all respects the relative priorities of the DIP Credit Lien granted by this Interim Order and the Permitted Liens.

33. Absent the consent of the DIP Lender, the DIP Loan and Security Agreement prohibits certain asset sales, the incurrence of any new debt (other than limited purchase money indebtedness or capital leases entered into in the ordinary course of Debtors business) and equity issuances. Further, in the event the aggregate outstanding principal balance of the DIP Loan exceeds the lesser of the Borrowing Base (as defined in the DIP Loan and Security Agreement) or the then-applicable Commitment of DIP Lender thereunder, the Debtors must make such repayments of the DIP Loan or take such other actions as are satisfactory to DIP Lender as shall be necessary to eliminate such excess, and any amounts so repaid may not be reborrowed.

34. Any and all proceeds or other amounts paid to the DIP Lender shall be applied to the repayment of the DIP Loan and Security Agreement Obligations, in a manner selected by the DIP Lender in its sole discretion or as otherwise specified in the DIP Loan Documentation, until such Obligations are paid in full.

35. Subject to entry of the Final Order, in consideration of and as a condition to the DIP Lender providing credit and other financial accommodations to the Debtors pursuant to the DIP Loan Documentation, the Debtors, on their own behalf and on behalf of each of their present and future predecessors, successors, heirs, subsidiaries, and assigns (the “Releasors”) absolutely release, forever discharge, and acquit the DIP Lender, in its capacity as DIP Lender, and its respective successors and assigns, affiliates, officers, directors, employees, professionals, attorneys, and other representatives, solely in each of their capacity as such (the “Releasees”) of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages,

expenses (including attorneys' fees), debts, liens, actions, and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether known or unknown, matured or contingent, arising under, in connection with, the DIP Loan and Security Agreement or the DIP Loan Documentation and arising only up through the date hereof, including (a) any so-called "lender liability" or equitable subordination claims or defenses, (b) any and all "claims" (as defined in the Bankruptcy Code) and causes of action arising under the Bankruptcy Code, and (c) any and all offsets, defenses, claims, counterclaims, set off rights, objections, challenges, causes of action, and/or choses in action of any kind or nature whatsoever, whether arising at law or in equity, including any recharacterization, recoupment, subordination, avoidance, or other claim or cause of action arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law, including any right to assert any disgorgement or recovery, in each case, with respect to the extent, amount, validity, enforceability, priority, security, and perfection of any of the DIP Loan and Security Agreement Obligations, the DIP Loan Documentation, or the DIP Credit Liens, and further waives and release any defense, right of counterclaim, right of setoff, or deduction to the payment of the DIP Obligations that the Debtors now have or may claim to have against the Releasees arising under, in connection with, based upon, or released to any and all acts, omissions, conduct undertaken, or events occurring prior to entry of this Interim Order (collectively, the "Released Claims").

36. Subject to entry of the Final Order, each of the Releasors hereby absolutely, unconditionally, and irrevocably covenants and agrees with each Releasee that it will not sue (at law, in equity, or in any other proceeding) any Releasee on the basis of any Released Claims released and discharged by the Releasors pursuant to this Interim Order. If the Releasors violate

this covenant, the Debtors agree to pay as part of the DIP Loan and Security Agreement Obligations, in addition to such other damages as any Releasee may sustain as a result of such violation, all reasonable attorneys' fees and costs incurred by any Releasee as a result of such violation.

37. **Limitation of Liability.** The transactions contemplated by the DIP Loan and Security Agreement are not intended to provide the DIP Lender, solely by virtue thereof, with sufficient control over the Debtors so as to subject the DIP Lender to any liability (including environmental liability as an "owner," "operator," or "responsible person" as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorizations Act of 1986 ("CERCLA")) in connection with the management of the Debtors' business or any of the Debtors' properties. In making decisions to extend credit to the Debtors pursuant to the DIP Loan and Security Agreement (including the exercise of its approval rights with respect to any budget), the DIP Lender shall have no liability to any third party and shall not be deemed to be in control of the operations of the Debtors or to be acting as a "control person", "responsible person" or other "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the Internal Revenue Code, CERCLA, or any similar Federal or state statute), and the DIP Lender's relationship with the Debtors shall not constitute or be deemed to constitute a joint venture or partnership of any kind between the DIP Lender and the Debtors. Nothing in this Interim Order, the DIP Loan Documentation, or any other document related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender of (a) any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their business, or in connection with their

restructuring efforts or (b) any fiduciary duties to the Debtors, their respective creditors, shareholders, or estates. So long as the DIP Lender complies with its obligations under the DIP Loan Documentation and its obligations, if any, under applicable law (including the Bankruptcy Code), (Y) the DIP Lender shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person and (Z) all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the Debtors.

38. The provisions of the DIP Loan Documentation and any actions taken pursuant thereto shall survive entry of any order, including (a) confirmation of any plan in the Bankruptcy Cases; (b) converting the Bankruptcy Cases (or any of them) to a chapter 7 case; or (c) dismissing the Bankruptcy Cases, and the terms and provisions of this Interim Order as well as the Superpriority Claims and DIP Credit Lien shall continue in full force and effect notwithstanding the entry of such order, and such Superpriority Claims and DIP Credit Liens shall maintain their respective priority as provided by this Interim Order until the Obligations under the DIP Loan and Security Agreement are indefeasibly paid in full.

39. This Interim Order shall be binding upon and inure to the benefit of the DIP Lender, the Debtors, and their respective successors and assigns, including any trustee, responsible officer, examiner, estate administrator or representative, or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code. No rights are created under this Interim Order for the benefit of any creditor of the Debtors, any other party in interest in the Bankruptcy Cases, or any other persons or entities, or any direct, indirect or incidental beneficiaries thereof.

40. Any order dismissing the Bankruptcy Cases under Bankruptcy Code § 1112 or otherwise shall be deemed to provide (in accordance with §§ 105 and 349 of the Bankruptcy Code) that (a) the DIP Credit Liens shall continue in full force and effect notwithstanding such dismissal until the DIP Loan and Security Agreement obligations are indefeasibly paid and satisfied in full, in cash; and (b) this Court shall retain jurisdiction, to the extent permissible under applicable law, notwithstanding such dismissal, for the purposes of enforcing the DIP Superpriority Claim and the DIP Credit Lien.

41. Nothing in this Interim Order shall be construed to constitute or authorize a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Borrowers shall be jointly and severally liable for all Obligations under the DIP Loan and Security Agreement .

42. The DIP Lender shall be entitled to credit bid any Obligations owed to it in any sale of the Debtors' assets as provided for in section 363(k) of the Bankruptcy Code without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363 or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

43. Any payments pursuant to any interim order granting a "first day" pleading in these Bankruptcy Cases shall be made only to the extent allowed by this Interim Order, the Approved Budget, and the DIP Documentation. To the extent that any of the provisions of this Interim Order shall directly conflict with any provisions of the DIP Loan Documentation or with any other Order of the Court, this Interim Order is deemed to control and supersede the conflicting provisions therein.

44. The terms and conditions of this Interim Order shall be effective and immediately enforceable upon its entry by the Clerk of the Court notwithstanding any potential application of Fed. R. Bankr. P. 6004(h) or otherwise. Furthermore, to the extent applicable, the notice requirements and/or stays imposed by Fed R. Bankr. P. 4001(a)(3), 6003(b), and 6004(a) are hereby waived for good and sufficient cause.

45. The DIP Lender shall be entitled to the benefits and protections of this Interim Order, including the protections afforded pursuant to Bankruptcy Code § 364(e), with respect to all loans, advances, and other financial accommodations made by the DIP Lender pursuant to this Interim Order. The DIP Credit Lien and the priority afforded the DIP Lender as set forth in this Interim Order, shall be binding on the Debtors and any successor trustee or trustees even if this Interim Order is reversed or modified on appeal with respect to all loans, advances, and other financial accommodations made by the DIP Lender pursuant to this Interim Order. Except as provided herein, no monies advanced by the DIP Lender may be used by any party in interest seeking to modify any of the rights granted to the DIP Lender hereunder or in the DIP Loan Documentation.

46. After closing of the DIP Loan and Security Agreement , the Debtors and the DIP Lender may implement non-material modifications to the DIP Loan Documentation without the need for notice or further approval of the Court; provided, however, that three (3) business days prior notice of such amendments will be provided to the U.S. Trustee and any Statutory Committee. The Debtors and the DIP Lender may implement material modifications of the DIP Loan Documentation only upon at least three (3) business days' prior notice, which notice shall be filed with the Court and provided to any Statutory Committee and the U.S. Trustee, and upon approval by the Court.

47. The Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents, and to pay all fees and expenses that may be required or necessary for the Debtors' performance the DIP Loan Documentation, including (a) the execution of the DIP Loan Documentation, (b) the payment of the fees and expenses described herein or in the DIP Loan Documentation as such become due, including fees and expenses (whether pre-petition or post-petition) payable to the DIP Lender under the DIP Loan and Security Agreement, provided, however, that any payment of professional fees of the DIP Lender shall first require written notice of such fees with reasonable detail (redacted to protect an privilege) to the Debtors, any Statutory Committee, and the U.S. Trustee, giving them seven days to object, and if there is no objection such professional fees shall be deemed allowed and paid, and if there is an objection and such objection is not resolved, such professional fees may only be paid upon further order of this Court (and provided further however, pending such payment or resolution of any dispute the DIP Lender may reserve for such professional fees).

48. The Court has considered and determined the matters addressed herein pursuant to its powers under the Bankruptcy Code, including the power to authorize the Debtors to obtain credit on terms and conditions to which the Debtors and the DIP Lender have agreed after good faith negotiations. Based upon the foregoing, the DIP Lender is entitled to the full protection afforded under § 364(e) of the Bankruptcy Code for all advances made pursuant to this Interim Order.

49. A final hearing with respect to the Motion is scheduled for [____], 2023 at [____] [____].m. (prevailing Eastern Time) (the "Final Hearing") before the Honorable Laurie Selber Silverstein, Chief United States Bankruptcy Judge. The Debtors shall promptly mail copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the

parties having been given notice of the Interim Hearing and to any other party that has filed a Bankruptcy Rule 2002 request for service. Any party in interest objecting to the relief sought at the Final Hearing shall file written objections on or before 4:00 p.m. (prevailing Eastern Time) on [____], 2023 and serve them on (a) the Debtors' proposed counsel, Dorsey & Whitney LLP, Attn: Eric Lopez Schnabel and Alessandra Glorioso, 300 Delaware Avenue, Suite 1010, Wilmington, Delaware 19801, schnabel.eric@dorsey.com and glorioso.alessandra@dorsey.com; (b) the DIP Lender's counsel, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., Attn: Anthony Cianciotti and Mark Duedall, 3414 Peachtree Road Northeast, Suite 1500, Atlanta, Georgia 30324, acianciotti@bakerdonelson.com and mduedall@bakerdonelson.com; (c) counsel to any Statutory Committee; and (d) the Office of the U.S. Trustee, Attn: Rosa Sierra-Fox, 844 King Street, Suite 2207, Wilmington, Delaware 19801, rosa.sierra@usdoj.gov. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without a Final Hearing.

EXHIBIT A

DIP LOAN AND SECURITY AGREEMENT

[to be provided as supplement]

EXHIBIT B

LIST OF PERMITTED LIENS

“PERMITTED LIENS”

Secured Party & Address	Filing Agent	Collateral
U.S. Bank Equipment Finance 1310 Madrid Street, Marshall MN 56258	Qiang Xu CT Lien Solutions	1 COPIERS C5535I 2KJ07967; 1 COPIERS C5535I 2KJ07950; 1 COPIERS C5535I 2KJ06987; 1 COPIERS C5535I 2KJ06820; 1 COPIERS C5535I 2KJ06990; 1 COPIERS C5540I 2JU07264; 1 COPIERS 1435IF RZJ04729; 1 COPIERS 1435IF RZJ05438; TOGETHER WITH ALL REPLACEMENTS, PARTS, REPAIRS, ADDITIONS, ACCESSIONS AND ACCESSORIES INCORPORATED THEREIN OR AFFIXED OR ATTACHED THERE TO AND ANY AND ALL PROCEEDS OF THE FOREGOING, INCLUDING, WITHOUT LIMITATION, INSURANCE RECOVERIES.

EXHIBIT C

APPROVED BUDGET

[to be provided as supplement]

EXHIBIT B

BEERS DECLARATION

[to be provided as supplement]