

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FOOD52, INC.,¹

Debtor.

Chapter 11

Case No. 25-12277 (___)

**DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING AND APPROVING CONTINUED USE OF CASH
MANAGEMENT SYSTEM, (II) AUTHORIZING USE OF PREPETITION BANK
ACCOUNTS AND BUSINESS FORMS, (III) WAIVING CERTAIN OPERATING
GUIDELINES AND SUSPENDING THE TIME TO COMPLY WITH SECTION 345(b)
OF THE BANKRUPTCY CODE, AND (IV) GRANTING CERTAIN RELATED RELIEF**

The above-captioned debtor and debtor in possession (the “**Debtor**”) hereby submits this motion (this “**Motion**”) for the entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Interim Order**”) and **Exhibit B** (the “**Proposed Final Order**,” and together with the Proposed Interim Order, the “**Proposed Orders**”) (a) authorizing and approving the Debtor’s continued use of its existing cash management system, (b) granting the Debtor a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) to the extent that such requirements are inconsistent with (i) the Debtor’s practices in connection with its existing cash management system or (ii) any action taken by the Debtor in accordance with any order granting the relief requested in this Motion or any other order entered in this chapter 11 case, (c) suspending the time to comply with section 345(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), and (d) granting certain related relief. In support of this Motion,

¹ The Debtor in this chapter 11 case is Food52, Inc. and the last four digits of the Debtor’s federal tax identification number are 2604. For the purpose of this chapter 11 case, the Debtor’s service address is 1 Dock 72 Way, 13th Floor, Brooklyn, New York 11205.



the Debtor relies upon and incorporates by reference the *Declaration of Erika Badan in Support of Chapter 11 Petition and First Day Motions* (the “**First Day Declaration**”),² filed contemporaneously herewith. In further support of this Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. Pursuant to Rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

2. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 345(b), 503(b), 1107(a), and 1108 of the Bankruptcy Code, Rule 2015 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rule 2015-1.

BACKGROUND

3. On the date hereof (the “**Petition Date**”), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor is authorized to operate its businesses and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

Bankruptcy Code. No official committees have been appointed in this chapter 11 case and no request has been made for the appointment of a trustee or an examiner.

4. Additional information regarding the Debtor's businesses, its capital structure, and the circumstances leading to the filing of this chapter 11 case is set forth in the First Day Declaration.

CASH MANAGEMENT SYSTEM

I. THE DEBTOR'S BANK ACCOUNTS

5. In the ordinary course of business, the Debtor maintains a centralized cash management system (the "**Cash Management System**"). Like other businesses of its size, the Debtor designed its Cash Management System to efficiently collect, transfer, and disburse funds generated through the Debtor's operations and to accurately record such collections, transfers, and disbursements as they are made. A diagram of the Cash Management System is attached hereto as **Exhibit C** (the "**Cash Management Schematic**").

6. As reflected in the diagram, the Cash Management System currently utilizes four (4) bank accounts (collectively, the "**Bank Accounts**"). The Debtor maintains two (2) Bank Accounts at Avidbank ("**Avid**"), and two (2) Bank Accounts at Silicon Valley Bank, A Division of First Citizens Bank ("**SVB**" and, together with Avid, the "**Banks**"). SVB is party to a Uniform Depository Agreement (a "**UDA**") with the U.S. Trustee but Avid is not. The Debtor has two (2) additional Bank Accounts which are inactive and hold no balance (each an "**Inactive Bank Account**" and collectively, the "**Inactive Bank Accounts**"). The Inactive Bank Accounts include one (1) Inactive Bank Account at Avid, and one (1) Inactive Bank Account at J.P. Morgan Chase ("**JPM**"). The Bank Accounts are described in more detail in the below chart:

Account Name (last four digits of account number)	Account Description
Avid Cash Account Avid x4116	Cash receipts generated from media exposure and advertising agreements are transferred into this account on a periodic basis.
Avid Cash Account Avid x5378	Cash receipts generated from media exposure and advertising agreements are transferred into this account on a periodic basis.
SVB Operations Account SVB x4610	Cash receipts generated from media exposure and advertising agreements and funds from the sale of goods and services are transferred into this account on a periodic basis. Additionally, cash receipts generated from media exposure and advertising agreements is manually transferred into the SVB Operations Account periodically. Funds from the SVB Operations Account are used to make payroll, reimburse employee expenses, pay employee benefit premiums, make business logistics payments, and make other miscellaneous cash disbursements in the ordinary course of business.
SVB Sweep Account SVB x0261	Funds in excess of \$250,000 are swept daily from the SVB Operations Account into this account for FDIC purposes.
Avid Inactive Bank Account Avid x4538	This Bank Account is inactive and, as of the Petition Date, holds a balance of \$0.00.
JPM Inactive Bank Account JPM x3862	This Bank Account is inactive and, as of the Petition Date, holds a balance of \$0.00.

II. PAYMENT PROCESSORS

7. As an integral part of its Cash Management System and in the ordinary course of business, the Debtor accepts various methods of non-cash payment from customers, such as credit and debit cards (collectively, “**Non-Cash Payments**”). For all methods of payment, the Debtor receives the net sale proceeds from the sale of goods and services, after accounting for any fees charged by the credit card companies or payment processors, into Shopify and Paypal accounts that are then transferred into the SVB Operations Account. The fees that are owing to the payment processors are set off from the funds that are remitted to the Debtor on a daily basis. As of the

Petition Date, the payment processors are owed approximately \$15,000 (the “**Payment Processor Fees**”) on account of accrued and unpaid prepetition fees.

8. Maintaining continued use of the Non-Cash Payments is essential to the Debtor’s chapter 11 efforts and ability to maximize value. Accordingly, through this Motion, the Debtor requests authority, in its sole discretion, to allow the payment processors to continue to process the customer payments and seek authority to pay the Payment Processor Fees.

III. DEBTOR’S EXISTING BUSINESS FORMS

9. The Debtor uses a variety of preprinted business forms, including checks, letterhead, correspondence forms, invoices, purchase orders, and other business forms in the ordinary course of business (collectively, the “**Business Forms**”). The Debtor also maintains books and records to document its financial results and a wide array of necessary operating information, including its profits and expenses. To avoid distraction and unnecessary expense to its estate, the Debtor requests authorization to continue using all of the Business Forms and the books and records in use immediately before the Petition Date (and as may be amended or modified in the ordinary course from time to time), including with respect to the Debtor’s ability to update authorized signatories and services, as needed—without reference to the Debtor’s status as a chapter 11 debtor in possession—rather than requiring the Debtor to incur the expense and delay of ordering new Business Forms and creating new books and records. When the Debtor generates new checks during the pendency of this chapter 11 case, such checks will include a legend referring to the Debtor as “Debtor in Possession.” The Debtor also seeks authority to use all other Business Forms (including, without limitation, letterhead, purchase orders, and invoices) without reference to the Debtor’s status as a debtor in possession.

IV. CASH MANAGEMENT FEES

10. The Debtor incurs periodic service and other fees in connection with the maintenance of the Cash Management System (the “**Cash Management Fees**”), which average approximately \$500 per month and are debited directly from the Debtor’s Bank Accounts. As of the Petition Date, the Debtor believes that approximately \$500 in accrued and unpaid Cash Management Fees are outstanding. To minimize disruption to the Cash Management System, the Debtor seeks authority to pay such Cash Management Fees in the ordinary course of business, consistent with past practices.

V. COMPLIANCE WITH U.S. TRUSTEE GUIDELINES AND SECTION 345(b) OF THE BANKRUPTCY CODE

11. Pursuant to the operating guidelines established by the U.S. Trustee (such guidelines, the “**U.S. Trustee Guidelines**”), the U.S. Trustee generally requires chapter 11 debtors to, among other things, deposit all estate funds into an account with an authorized depository (an “**Authorized Depository**”) that agrees to comply with the U.S. Trustee Guidelines and the requirements of the U.S. Trustee’s office.

12. Further, section 345(b) of the Bankruptcy Code governs a debtor’s cash deposits during a chapter 11 case and authorizes a deposits of money as “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(b). Section 345(b) of the Bankruptcy Code requires a debtor’s bank to post a bond, unless a debtor’s funds are “insured by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States.” *Id.*

13. All of the Debtor’s active Bank Accounts are with Banks that are Authorized Depositories, with the exception of Avid, which, while not an Authorized Depository, is well-capitalized, financially stable, and is insured by the FDIC. The Avid Bank Accounts hold

only approximately \$115,000 collectively as of the Petition Date. The Debtor's active Bank Accounts, including the SVB Operations Account and the SVB Sweep Account, are well-positioned to continue performing depository and cash management functions during this chapter 11 case.

14. To the extent that any of the Bank Accounts cease to comply with, or do not comply with, section 345(b) of the Bankruptcy Code during this chapter 11 case, the Debtor requests that the Court grant the Debtor a thirty (30) day suspension, without prejudice to the Debtor's rights to seek an additional suspension after entry of the Proposed Interim Order, to either bring the applicable Bank Accounts into compliance with section 345(b) of the Bankruptcy Code or seek appropriate relief from the Court.

RELIEF REQUESTED

15. By this Motion, the Debtor requests entry of the Proposed Orders: (a) authorizing and approving the continued use of its existing Cash Management System; (b) granting the Debtor a waiver of certain bank account and related requirements of the U.S. Trustee (including, without limitation, the operating guidelines established by the U.S. Trustee that require debtors to close all prepetition bank accounts, open new accounts designated as debtor in possession accounts, and to provide new business forms and stationery) to the extent that such requirements are inconsistent with (i) the Debtor's practices in connection with its Cash Management System, or (ii) any action taken by the Debtor in accordance with any order granting the relief requested in this Motion or any other order entered in this chapter 11 case; (c) suspending the time to comply with section 345(b) of the Bankruptcy Code; and (d) granting certain related relief.

BASIS FOR RELIEF

I. THE COURT SHOULD AUTHORIZE THE DEBTOR'S UNINTERRUPTED USE OF ITS EXISTING CASH MANAGEMENT SYSTEM

16. The Debtor seeks authority to continue utilizing its current Cash Management System, as described above. It is critical that the Debtor be able to consolidate management of cash and centrally coordinate transfers of such funds to operate its business efficiently and effectively. Any disruption to the Cash Management System would seriously harm the Debtor. Maintenance of the existing Cash Management System will prevent any unexpected or inopportune interruption to the Debtor's business operations while protecting the Debtor's cash for the benefit of its estate. Requiring the Debtor to change its Cash Management System at this critical time would cause, among other things, unnecessary disruption to the Debtor and its business affairs.

17. The Cash Management System utilizes the Bank Accounts to effectively and efficiently collect, transfer, and disburse funds, as needed in the Debtor's general business operations. The Cash Management System provides significant benefits to the Debtor, including the ability to: (a) closely track, and thus control, all corporate funds; (b) ensure cash availability; and (c) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. A disruption in the Cash Management System could cause delays in the collection and disbursement of funds, thus impeding the Debtor's ability to avoid an unexpected or inopportune interruption in its operations during the pendency of this chapter 11 case. Furthermore, the Debtor's chapter 11 case will be facilitated by preserving the "business as usual" atmosphere and avoiding the distractions that would inevitably be associated with a substantial disruption in the Cash Management System.

18. The Debtor believes that it can only proceed through the chapter 11 process in an efficient and cost-effective manner if the Bank Accounts are continued in their current form. The Debtor will ensure that appropriate procedures are in place so that checks issued prior to the Petition Date, but presented after the Petition Date, will not be honored absent approval from the Court. The Debtor will also maintain records of post-petition transfers within the Cash Management System, so that transfers and transactions will be documented in its books and records to the same extent such information was maintained by the Debtor prior to the Petition Date.

19. Accordingly, the Debtor respectfully requests that the Court authorize the continued use of the Cash Management System, provided that no prepetition checks, drafts, wire transfers, or other forms of tender that have not yet cleared the relevant drawee bank as of the Petition Date will be honored unless authorized by separate order of the Court.

20. The Debtor also requests that no Bank that honors a prepetition check or other item drawn on any account that is the subject of this Motion (a) at the direction of the Debtor, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures, be deemed to be liable to the Debtor or to its estate on account of such prepetition check or other item being honored post-petition. The Debtor believes that according such flexibility to the Banks is necessary to induce the Banks to continue providing cash management services during this chapter 11 case without incurring additional credit exposure.

21. The Debtor further requests that the Court (a) authorize the Debtor's Banks to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the relief sought herein to the extent that the Debtor has sufficient funds on deposit in its accounts with the Bank, whether such checks were presented or electronic requests were

submitted before or after the Petition Date, and (b) authorize the Bank to rely on the Debtor's designation of any particular check or electronic payment request as appropriate pursuant to this Motion without any duty of further inquiry and without liability for following the Debtor's instructions. The Debtor anticipates having sufficient funds to pay the amounts described herein. In addition, under the Debtor's existing cash management system, the Debtor can readily identify whether checks or wire transfer requests are payments authorized by the relief requested herein. Accordingly, the Debtor believes that checks or wire transfer requests, other than those relating to payments authorized by the relief requested herein, will not be honored inadvertently.

II. THE COURT SHOULD GRANT THE DEBTOR A WAIVER OF THE U.S. TRUSTEE GUIDELINES

22. The Debtor further requests a waiver of certain bank account and related requirements of the U.S. Trustee (including, without limitation, the operating guidelines established by the U.S. Trustee that require debtors to close all prepetition bank accounts, open new accounts designated as debtor-in-possession accounts, and to provide new business forms and stationery) to the extent that such requirements are inconsistent with (a) the Debtor's practices in connection with its Cash Management System, or (b) any action taken by the Debtor in accordance with any order granting the relief requested in this Motion or any other order entered in this chapter 11 case.

23. The U.S. Trustee Guidelines require that a chapter 11 debtor, among other things:
- a. close all existing bank accounts;
 - b. open new bank accounts in a depository approved by the U.S. Trustee that are designated as debtor-in-possession accounts ("**DIP Accounts**"), with separate DIP Accounts established for an operating account, a tax account (to the extent that payroll or other taxes are an issue for the debtor), and a payroll account (to the extent that the debtor had a separate payroll account prepetition);

- c. obtain and utilize new checks for all DIP Accounts that bear the designation “Debtor-in-Possession” and contain other information about the debtor’s chapter 11 case, and insure that the signature cards for all DIP Accounts clearly indicate that the debtor is a “Debtor-in-Possession”;
- d. deposit all receipts and make all disbursements only through the approved DIP Accounts, with any funds in excess of those required for current operations being maintained in an interest-bearing account;
- e. deposit to the tax DIP Account sufficient funds to pay any tax liability (when incurred) associated with the debtor’s payroll; and
- f. deposit all estate funds into DIP Accounts with a financial institution that agrees to comply with the requirements of the U.S. Trustee (which will be monitored by the U.S. Trustee), with no DIP Account exceeding the insured or collateralized limits of that approved depository.

24. If enforced in this chapter 11 case, given the nature of the Debtor’s business, such requirements would cause disruption to the Debtor’s business and would impair the Debtor’s chapter 11 efforts. The Bank Accounts represent an established Cash Management System that the Debtor needs to maintain to ensure smooth collections and disbursements in the ordinary course of its business. Therefore, to avoid delays in paying debts incurred post-petition, and to ensure as smooth a transition into chapter 11 as possible, the Debtor should be permitted to continue to maintain its Bank Accounts and, if necessary, open new accounts and close existing accounts, in the ordinary course of business. Otherwise, transferring its Bank Accounts will be disruptive, time consuming, and expensive.

25. The Court has the authority to grant the requested relief pursuant to its equitable powers under section 105(a) of the Bankruptcy Code. Section 105(a) provides, in relevant part, that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The relief requested herein is both necessary and appropriate to allow the Debtor to administer this chapter 11 case successfully, to optimize its post-petition business performance, and to maximize the value of its estate.

26. Accordingly, the Debtor requests that the Court waive the strict enforcement of the requirement that the Debtor open new bank accounts. The Debtor further requests that its existing Bank Accounts be deemed debtor-in-possession accounts, and that the Debtor be authorized to maintain and continue using these accounts in the same manner and with the same account numbers, styles, and document forms as those employed during the prepetition period.

27. A centralized cash management system “allows efficient utilization of cash resources and recognizes the impracticability of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part, rev’d in part on other grounds*, 997 F.2d 1039 (3d Cir. 1993). The Third Circuit agreed, emphasizing that requiring the maintenance of all accounts separately “would be a huge administrative burden and economically inefficient.” *In re Columbia Gas Sys.*, 997 F.2d at 1061; *see also In re Southmark*, 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor “to administer more efficiently and effectively its financial operation and assets”).

28. Accordingly, bankruptcy courts routinely grant debtors authority to continue utilizing existing cash management systems and treat requests for such authority as a relatively “simple matter.” *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); *see Charter Co. v. Prudential Ins. Co. of Am. (In re Charter Co.)*, 778 F.2d 617, 621 (11th Cir. 1985) (holding that allowing the debtors to use their prepetition “routine cash management system” was entirely consistent with applicable provisions of the Bankruptcy Code). Courts in this circuit have recognized that allowing a debtor to maintain existing cash management systems is often appropriate. *See, e.g., In re Genesis Health Ventures, Inc.*, 402 F.3d 416, 424 (3d Cir. 2005); *In re Kindred Healthcare, Inc.*, 2003 WL 22327933, at *1 (Bankr. D. Del, Oct. 9, 2003); *In re*

Columbia Gas Sys., 997 F.2d at 1061 (recognizing that a requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient”).

29. The Debtor represents that if the relief requested is granted, it will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by the Debtor prior to the Petition Date, other than those authorized by the Court. To prevent the possible inadvertent payment of prepetition claims, except for those otherwise authorized by the Court, the Debtor will work closely with the Banks to ensure appropriate procedures are in place to prevent checks issued prepetition from being honored absent the Court’s approval.

30. The Debtor also requests authorization to continue to use all correspondence and business forms existing immediately before the Petition Date without reference to the Debtor’s status as debtor in possession. The Debtor, in the ordinary course of business, uses many checks, invoices, letterhead, stationery, purchase orders, and other correspondence and business forms. To operate in an orderly fashion, the Debtor needs to be permitted to use its existing forms without alteration or change. Parties doing business with the Debtor undoubtedly will be aware of the Debtor’s status as debtor in possession as a result of the size and publicity surrounding this chapter 11 case.

31. If the Debtor was required to change its forms, the Debtor would be forced to choose standard forms rather than use its current forms, with which the Debtor’s employees, customers, and vendors are familiar. Such a change in operations would create a sense of disruption and potential confusion within the Debtor’s organization and for the Debtor’s employees, customers, and vendors. Further, the Debtor uses a significant number and a wide variety of business forms in the ordinary course of its business operations. The Debtor therefore believes that it would be costly and disruptive to cease using all existing forms and to purchase

and begin using new stationery and business forms. The Debtor respectfully submits that to do so would be unnecessary and that appropriate care can be taken to assure the proper use of the existing forms.

32. Notwithstanding the foregoing, upon the depletion of any pre-printed check stock and other business forms, the Debtor will obtain new check stock and business forms reflecting its status as a debtor-in-possession, and with respect to checks which the Debtor or its agents print themselves, the Debtor will begin printing “Debtor-in-Possession” or “DIP” and the case number for this chapter 11 case on such items within ten (10) days of the date of the entry of the Proposed Interim Order.

III. A SUSPENSION OF TIME TO COMPLY WITH THE REQUIREMENTS OF SECTION 345(b) OF THE BANKRUPTCY CODE IS WARRANTED

33. Pursuant to section 345(b) of the Bankruptcy Code, any deposit or other investment made by a debtor, except those insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, must be secured by a bond in favor of the United States that is secured by the undertaking of a corporate surety approved by the U.S. Trustee or by the deposit of securities of the kind specified in 31 U.S.C. § 9303. *See* 11 U.S.C. § 345(b). Section 345(b) provides further, however, that a bankruptcy court may allow the use of alternatives to these approved investment guidelines “for cause.” *Id.*; *see also In re Serv. Merch. Co.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999). Moreover, Local Rule 2015-1 provides that, if a motion for suspension of the section 345 requirements is filed on the first day of a chapter 11 case in which there are more than 200 creditors, the Court may grant an interim suspension of the section 345 requirements until such motion is heard. *See* Local Rule 2015-1.

34. In *Service Merchandise*, the court identified the following factors for determining whether cause exists to suspend the requirements of Bankruptcy Code section 345(b):

- (a) the sophistication of the debtor's business;
- (b) the size of the debtor's business operations;
- (c) the amount of investments involved;
- (d) the bank ratings of the financial institutions where the debtor's funds are held;
- (e) the complexity of the case;
- (f) the safeguards in place within the debtor's own business for insuring the safety of the funds;
- (g) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- (h) the benefit to the debtor of current practices;
- (i) the harm, if any, to the estate; and
- (j) the reasonableness of the debtor's request for relief from the section 345(b) requirements in light of the overall circumstances of the case.

Service Merchandise, 240 B.R. at 896. Examining these factors, the *Service Merchandise* court concluded that "cause" existed in that case because the debtors were "large, sophisticated [companies] with a complex cash management system," with the ability to shift money as needed to insure the safety of their funds. *Id.* Moreover, the benefits to the debtor of suspending the section 345(b) requirements far outweighed any potential harm to the estate, and the failure to suspend the requirements "would needlessly handcuff this debtor's reorganization efforts." *Id.* at 896–97.

35. As in *Service Merchandise*, the Debtor operates a sophisticated enterprise with a complex Cash Management System that provides the Debtor with the ability to transfer funds rapidly to ensure their safety. In light of the *Service Merchandise* factors and the safety of the institutions that the Debtor proposes to utilize as a continuation of its pre-petition practices, the Debtor believes that sufficient cause exists to allow deviation from the investment guidelines set

forth in section 345(b) of the Bankruptcy Code. Satisfaction of those requirements would impose needless costs on the Debtor's estate and the process of satisfying those requirements would lead to inefficiencies in the management of the Debtor's business.

36. Stabilizing and continuing ongoing operations is necessary to preserve the value of the Debtor's estate. Disrupting the Debtor's Cash Management System to consolidate all cash activities to the narrow group of financial institutions approved in the U.S. Trustee Guidelines will disrupt operations, negatively impact the value of the Debtor's estate, and jeopardize the sale process and this chapter 11 case in general, to the detriment of all creditors. The Debtor's estate and creditors, however, will not be harmed by the Debtor's maintenance of the status quo as modified by the relief requested herein because of the relatively safe and prudent practices already utilized by the Debtor.

37. Moreover, the Debtor submits that it is in substantial compliance with section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines with respect to the Debtor's Bank Accounts, other than those at Avid. Pursuant to the U.S. Trustee Guidelines, the U.S. Trustee generally requires chapter 11 debtors to, among other things, deposit all estate funds into an account with an authorized depository that agrees to comply with the requirements of the U.S. Trustee's office.

38. The Banks are well-positioned to perform the depository and cash management functions during this chapter 11 case. SVB, the Bank at which the Debtor holds most of its cash, is an Authorized Depository and thus complies with section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines. While Avid is not on the U.S. Trustee's list of Authorized Depositories, the Debtor holds minimal cash in the Avid Bank Accounts and has pivoted almost entirely to SVB for its cash management needs prepetition. Nonetheless, Avid is FDIC insured

and financially stable, and the Debtor intends to maintain minimal balances in the Avid Bank Accounts, thus reducing any risk with respect to cash held in the Avid Bank Accounts. Consequently, the Debtor believes that it can maintain the Bank Accounts pending entry of the Proposed Final order without jeopardizing any parties in interest.

39. As a result, to the extent that the requirements of section 345 of the Bankruptcy Code are inconsistent, or otherwise conflict, with the Debtor's Cash Management System or any action taken by the Debtor in accordance with an order of the Court, the Debtor respectfully requests a thirty (30) day (or such longer period as the Debtor may request) suspension of time to address any questions that the U.S. Trustee may have regarding the Cash Management System and the Debtor's compliance with section 345(b) of the Bankruptcy Code to allow the Debtor to continue its existing cash management practices. The Debtor will work in good faith with the U.S. Trustee to address any concerns regarding the continued use of the Debtor's Bank Accounts on a post-petition basis and, should the U.S. Trustee have concerns regarding the Bank Accounts, make such arrangements as are acceptable to the U.S. Trustee (without prejudice to the Debtor's right to request further suspensions of time by motion in the Court).

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED
AND BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

40. Under Bankruptcy Rule 6003, the Court may grant a motion to "use . . . property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" within 21 days after the commencement of a chapter 11 case to the extent "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. The Debtor believes an immediate and orderly transition into chapter 11 is critical to the success of this chapter 11 case. As discussed in detail above and demonstrated by the First Day Declaration, immediate and irreparable harm would result if the relief requested herein is not granted. As set forth throughout

this Motion, any disruption of the current Cash Management System would substantially diminish or impair the Debtor's efforts in this chapter 11 case to preserve and maximize the value of its estate. Furthermore, there is no question that the Debtor's failure to pay or otherwise satisfy any outstanding fees on account of the Cash Management System would likely result in immediate and irreparable harm to the Debtor's business operations. Accordingly, the Debtor submits that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully requests that the Court approve the relief requested in this Motion on an emergency basis.

41. The Debtor also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief sought herein is necessary for the Debtor to operate its business without interruption, thereby preserving value for its estate. Accordingly, the Debtor respectfully requests that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

42. Nothing in the Proposed Orders or this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor and its estate with respect to the validity, priority, or amount of any claim against the Debtor and its estate; or (c) shall be construed as a promise to pay a claim.

NOTICE

43. Notice of this Motion will be given to: (a) the U.S. Trustee; (b) counsel to the DIP Lender; (c) counsel to The Chernin Group; (d) counsel to Avidbank; (e) the creditors listed on the Debtor's list of twenty (20) creditors holding the largest unsecured claims against the Debtor; (f) the United States Attorney for the District of Delaware; (g) the Internal Revenue Service; (h) the state attorneys general for states in which the Debtor conducts business; (i) the United States Securities and Exchange Commission; (j) the Banks; and (k) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtor submits that, under the circumstances, no other or further notice is required.

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WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Orders granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: December 29, 2025
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Brynna M. Gaffney

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*Proposed Counsel for the Debtor
and Debtor in Possession*

Exhibit A

Proposed Interim Order

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

In re:

FOOD52, INC.,¹

Debtor.

Chapter 11

Case No. 25-____ (____)

Ref. Docket No. ____

INTERIM ORDER (I) AUTHORIZING AND APPROVING CONTINUED USE OF CASH MANAGEMENT SYSTEM, (II) AUTHORIZING USE OF PREPETITION BANK ACCOUNTS AND BUSINESS FORMS, (III) WAIVING CERTAIN OPERATING GUIDELINES AND SUSPENDING THE TIME TO COMPLY WITH SECTION 345(b) OF THE BANKRUPTCY CODE, AND (IV) GRANTING CERTAIN RELATED RELIEF

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession (the “**Debtor**”) for the entry of an interim order (this “**Interim Order**”), (a) authorizing and approving the Debtor’s continued use of its existing cash management system, (b) granting the Debtor a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) to the extent that such requirements are inconsistent with (i) the Debtor’s practices in connection with its existing cash management system or (ii) any action taken by the Debtor in accordance with any order granting the relief requested in this Motion or any other order entered in this chapter 11 case, (c) suspending the time to comply with section 345(b) of the Bankruptcy Code, and (d) granting certain related relief; and upon consideration of the First Day Declaration and the record of this chapter 11 case; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as otherwise provided herein; and it appearing that

¹ The Debtor in this chapter 11 case is Food52, Inc. and the last four digits of the Debtor’s federal tax identification number are 2604. For the purpose of this chapter 11 case, the Debtor’s service address is 1 Dock 72 Way, 13th Floor, Brooklyn, New York 11205.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtor, its estate, and its creditors, and is necessary to avoid immediate and irreparable harm to the Debtor and its estate, as contemplated by Bankruptcy Rule 6003(b); and after due deliberation and sufficient cause appearing therefore, **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on an interim basis as set forth herein.
2. Objections to entry of an order granting the Motion on a final basis must be filed by _____, 2026 at 4:00 p.m. (ET) and served on: (a) proposed counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Esq. (mnestor@ycst.com), Kara Hammond Coyle, Esq. (kcoyle@ycst.com), Elizabeth S. Justison, Esq. (ejustison@ycst.com), S. Alexander Faris, Esq. (afaris@ycst.com), and Andrew M. Lee, Esq. (alee@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Benjamin A. Hackman, Esq. (Benjamin.A.Hackman@usdoj.gov); (c) counsel for the DIP Lender, Moore & Van Allen PLLC, 100 N. Tryon Street, Suite 4700, Charlotte, North Carolina 28202, Attn: James R. Langdon, Esq. (jimlangdon@mvlaw.com) and C. Cowden W. Rayburn, Esq. (cowdenrayburn@mvlaw.com), and Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street, Wilmington, Delaware 19801, Attn: William E. Chipman Jr., Esq. (chipman@chipmanbrown.com); and (d) counsel to any statutory

committee appointed in this chapter 11 case. A final hearing, if required, on the Motion will be held on _____, 2026 at _____.m. (ET). If no objections are filed to the Motion, this Court may enter a final order without further notice or hearing.

3. The Debtor is authorized, in its discretion, to: (a) designate, maintain, and continue to use, with the same account numbers, all of its bank accounts in existence on the Petition Date (collectively, the “**Bank Accounts**”), including, without limitation, those bank accounts identified in the Motion; (b) use, in their present form, any and all checks and other documents related to the Bank Accounts; (c) treat the Bank Accounts for all purposes as accounts of the Debtor as debtor-in-possession and to maintain and continue using these accounts in the same manner and with the same account numbers, styles, and document forms as used prior to the Petition Date; and (d) pay Cash Management Fees and Payment Processor Fees, not to exceed \$15,500 on account of accrued and unpaid prepetition amounts pending entry of a final order.

4. The Banks are hereby authorized to continue to service and administer all of the Bank Accounts as accounts of the Debtor as debtor-in-possession without interruption and in the ordinary course in a manner consistent with any agreements between the Banks and the Debtor that existed prior to the Petition Date, and to receive, process, honor, and pay any and all checks, drafts, wires, or other electronic transfer requests issued, payable through, or drawn on, such Bank Accounts after the Petition Date by the holders or makers thereof or other parties entitled to issue instructions with respect thereto, as the case may be; provided, however, that any such checks, drafts, wires, or other electronic transfer requests issued by the Debtor before the Petition Date may be honored by any Bank only if such requests (a) have been represented by the Debtor to have been authorized by an order of this Court, (b) have been directed by the Debtor and not otherwise prohibited by a “stop payment” request received by the relevant Bank from the Debtor, (c) are

supported by sufficient funds in the relevant Bank Account, and (d) are authorized by the approved DIP Budget (as defined in the *Interim Order (I) Authorizing the Debtor to Obtain Postpetition Financing; (II) Granting Liens and Providing Superpriority Administrative Expense Status; (III) Authorizing Use of Cash Collateral; (IV) Granting Adequate Protection; (V) Modifying the Automatic Stay; (VI) Scheduling a Final Hearing; and (VII) Granting Related Relief* (the “**Interim DIP Order**”)).

5. Except for those that comply with paragraph 4 herein, no checks, drafts, wires, or other electronic transfer requests drawn, issued, or requested on the Bank Accounts before the Petition Date, but presented for payment after the Petition Date, shall be honored or paid.

6. The operation of the Cash Management System in accordance with the Debtor’s normal and customary practice is adequate and sufficient and may be continued on and after the Petition Date.

7. The Banks shall not be liable to the Debtor or to its estate and shall not be deemed to be in violation of this Interim Order for honoring a prepetition check or other item drawn on any account that is the subject of this Interim Order: (a) at the direction of the Debtor; (b) in a good faith belief that this Court has authorized such prepetition check or item to be honored; or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures.

8. The Debtor is authorized to continue to use all of its correspondence and business forms (including, without limitation, checks, invoices, letterhead, stationery, and purchase orders) existing immediately before the Petition Date without reference to the Debtor’s status as debtor-in-possession; *provided, however*, that upon the depletion of any pre-printed check stock and other business forms, the Debtor will obtain new check stock and business forms reflecting

the Debtor's status as debtor-in-possession and the case number for this chapter 11 case; *provided further, however*, that with respect to checks which the Debtor or its agents print themselves, the Debtor shall begin printing "Debtor-in-Possession" or "DIP" and the case number for this chapter 11 case on such items within ten (10) days of the date of entry of this Interim Order.

9. The Debtor is authorized to open any new bank accounts and close any of the Bank Accounts as the Debtor may deem necessary and appropriate; provided, however, that the Debtor shall provide notice to (1) the U.S. Trustee and any statutory committees appointed in this chapter 11 case and (2) the DIP Lender (as defined in the Interim DIP Order) within fifteen (15) days of the opening or closing of such accounts; *provided, further, however*, that the Debtor shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to immediately execute such an agreement.

10. The relief granted herein is extended to any new bank accounts opened by the Debtor after the date hereof in accordance with this Interim Order, and any such new accounts shall be deemed a Bank Account and part of the Cash Management System for purposes of this Interim Order.

11. For Banks at which the Debtor holds accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, upon the entry of this Interim Order, the Debtor shall immediately (a) contact the Bank, (b) provide the Bank with the Debtor's employer identification number and the case number of this chapter 11 case and (c) identify for the Bank each of the Bank Accounts held at such Bank as being held by a debtor in possession in a bankruptcy case and provide the case number for this chapter 11 case.

12. To the extent that any of the Debtor's Bank Accounts are not in compliance with section 345(b) of the Bankruptcy Code or the U.S. Trustee Guidelines, the Debtor shall have thirty

(30) days, without prejudice to seeking an additional suspension, to come into compliance with section 345(b) of the Bankruptcy Court, as ordered by this Court.

13. The Debtor shall maintain accurate and detailed records of all transfers within the Cash Management System so that all transactions may be readily ascertained, traced, recorded properly, and distinguished between prepetition and post-petition transactions.

14. Within five (5) business days of the date of the entry of this Interim Order, the Debtor shall (a) serve a copy of this Interim Order on each Bank and (b) request that each Bank internally code each of the Bank Accounts as “debtor-in-possession” accounts.

15. Nothing in this Interim Order: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor and its estate with respect to the validity, priority, or amount of any claim against the Debtor and its estate; or (c) shall be construed as a promise to pay any claim.

16. The Banks may rely on the Debtor’s representations with respect to whether any check or other transfer drawn or issued by the Debtor before the Petition Date should be honored pursuant to this Interim Order, and the Banks shall not have any liability to any party for relying on such representations by the Debtor as provided for in this Interim Order.

17. The requirements of Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm to the Debtor’s estate.

18. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

19. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

EXHIBIT B

Proposed Final Order

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

In re:

FOOD52, INC.,¹

Debtor.

Chapter 11

Case No. 25-____ (____)

Ref. Docket Nos. ____ & ____

FINAL ORDER (I) AUTHORIZING AND APPROVING CONTINUED USE OF CASH MANAGEMENT SYSTEM, (II) AUTHORIZING USE OF PREPETITION BANK ACCOUNTS AND BUSINESS FORMS, (III) WAIVING CERTAIN OPERATING GUIDELINES AND SUSPENDING THE TIME TO COMPLY WITH SECTION 345(b) OF THE BANKRUPTCY CODE, AND (IV) GRANTING CERTAIN RELATED RELIEF

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession (the “**Debtor**”) for the entry of an order (this “**Final Order**”), (a) authorizing and approving the Debtor’s continued use of its existing cash management system, (b) granting the Debtor a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) to the extent that such requirements are inconsistent with (i) the Debtor’s practices in connection with its existing cash management system or (ii) any action taken by the Debtor in accordance with any order granting the relief requested in this Motion or any other order entered in this chapter 11 case, (c) suspending the time to comply with section 345(b) of the Bankruptcy Code, and (d) granting certain related relief; and upon consideration of the First Day Declaration and the record of this chapter 11 case; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as otherwise provided herein; and it appearing that

¹ The Debtor in this chapter 11 case is Food52, Inc. and the last four digits of the Debtor’s federal tax identification number are 2604. For the purpose of this chapter 11 case, the Debtor’s service address is 1 Dock 72 Way, 13th Floor, Brooklyn, New York 11205.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court, if any; and this Court having previously entered the *Interim Order (I) Authorizing and Approving Continued Use of Cash Management System, (II) Authorizing Use of Prepetition Bank Accounts and Business Forms, (III) Waiving Certain Operating Guidelines and Suspending the Time to Comply with Section 345(b) of the Bankruptcy Code, and (IV) Granting Certain Related Relief* [Docket No. ____]; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtor, its estate, and its creditors; and after due deliberation and sufficient cause appearing therefore, **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. The Debtor is authorized, in its discretion, to: (a) designate, maintain, and continue to use, with the same account numbers, all of its bank accounts in existence on the Petition Date (collectively, the “**Bank Accounts**”), including, without limitation, those bank accounts identified in the Motion; (b) use, in their present form, any and all checks and other documents related to the Bank Accounts; (c) treat the Bank Accounts for all purposes as accounts of the Debtor as debtor-in-possession and to maintain and continue using these accounts in the same manner and with the same account numbers, styles, and document forms as used prior to the Petition Date; and (d) pay Cash Management Fees and the Payment Processor Fees.
3. The Banks are hereby authorized to continue to service and administer all of the Bank Accounts as accounts of the Debtor as debtor-in-possession without interruption and in the

ordinary course in a manner consistent with any agreements between the Banks and the Debtor that existed prior to the Petition Date, and to receive, process, honor, and pay any and all checks, drafts, wires, or other electronic transfer requests issued, payable through, or drawn on, such Bank Accounts after the Petition Date by the holders or makers thereof or other parties entitled to issue instructions with respect thereto, as the case may be; *provided, however*, that any such checks, drafts, wires, or other electronic transfer requests issued by the Debtor before the Petition Date may be honored by any Bank only if such requests (a) have been represented by the Debtor to have been authorized by an order of this Court, (b) have been directed by the Debtor and not otherwise prohibited by a “stop payment” request received by the relevant Bank from the Debtor, (c) are supported by sufficient funds in the relevant Bank Account, and (d) are authorized by the approved DIP Budget (as defined in the *Final Order (I) Authorizing the Debtor to Obtain Postpetition Financing; (II) Granting Liens and Providing Superpriority Administrative Expense Status; (III) Authorizing Use of Cash Collateral; (IV) Granting Adequate Protection; (V) Modifying the Automatic Stay; and (VI) Granting Related Relief* (the “**Final DIP Order**”)).

4. Except for those that comply with paragraph 3 herein, no checks, drafts, wires, or other electronic transfer requests drawn, issued, or requested on the Bank Accounts before the Petition Date, but presented for payment after the Petition Date, shall be honored or paid.

5. The operation of the Cash Management System in accordance with the Debtor’s normal and customary practice is adequate and sufficient and may be continued on and after the Petition Date.

6. The Banks shall not be liable to the Debtor or to its estate and shall not be deemed to be in violation of this Final Order for honoring a prepetition check or other item drawn on any account that is the subject of this Final Order: (a) at the direction of the Debtor; (b) in a good faith

belief that this Court has authorized such prepetition check or item to be honored; or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures.

7. The Debtor is authorized to continue to use all of its correspondence and business forms (including, without limitation, checks, invoices, letterhead, stationery, and purchase orders) existing immediately before the Petition Date without reference to the Debtor's status as debtor-in-possession; *provided, however*, that upon the depletion of any pre-printed check stock and other business forms, the Debtor will obtain new check stock and business forms reflecting the Debtor's status as debtor-in-possession and the case number for this chapter 11 case; *provided further, however*, that, to the extent not already done, with respect to checks which the Debtor or its agents print themselves, the Debtor shall begin printing "Debtor-in-Possession" or "DIP" and the case number for this chapter 11 case on such items.

8. The Debtor is authorized to open any new bank accounts and close any of the Bank Accounts as the Debtor may deem necessary and appropriate; *provided, however*, that the Debtor shall provide notice to (1) the U.S. Trustee and any statutory committees appointed in this chapter 11 case and (2) the DIP Lender (as defined in the Interim DIP Order) within fifteen (15) days of the opening or closing of such accounts; *provided, further, however*, that the Debtor shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to immediately execute such an agreement.

9. The relief granted herein is extended to any new bank accounts opened by the Debtor after the date hereof in accordance with this Final Order, and any such new accounts shall be deemed a Bank Account and part of the Cash Management System for purposes of this Final Order.

10. To the extent that any of the Debtor's Bank Accounts are not in compliance with section 345(b) of the Bankruptcy Code or the U.S. Trustee Guidelines, the Debtor shall have an additional thirty (30) days, without prejudice to seeking an additional suspension, to come into compliance with section 345(b) of the Bankruptcy Court, as ordered by this Court.

11. The Debtor shall maintain accurate and detailed records of all transfers within the Cash Management System so that all transactions may be readily ascertained, traced, recorded properly, and distinguished between prepetition and post-petition transactions.

12. Nothing in this Final Order: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor and its estate with respect to the validity, priority, or amount of any claim against the Debtor and its estate; or (c) shall be construed as a promise to pay any claim.

13. The Banks may rely on the Debtor's representations with respect to whether any check or other transfer drawn or issued by the Debtor before the Petition Date should be honored pursuant to this Final Order, and the Banks shall not have any liability to any party for relying on such representations by the Debtor as provided for in this Final Order.

14. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be effective and enforceable immediately upon its entry.

15. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

EXHIBIT C

Schematic of Cash Management System

