

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FOOD52, INC.,¹

Debtor.

Chapter 11

Case No. 25-12277 ()

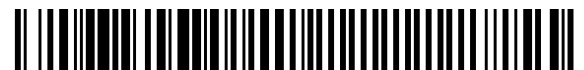
**DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING;
(II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE
EXPENSE STATUS; (III) AUTHORIZING USE OF CASH COLLATERAL;
(IV) GRANTING ADEQUATE PROTECTION; (V) MODIFYING THE AUTOMATIC
STAY; (VI) SCHEDULING A FINAL HEARING; AND
(VII) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession (the “**Debtor**”) hereby submits this motion (this “**Motion**”)² for entry of an interim order, in substantially the form attached hereto as **Exhibit A** (the “**Proposed Interim Order**”), and a final order (the “**Proposed Final Order**” and, together with the Interim Order, the “**Proposed Orders**”)³ granting the relief requested below. In support of this Motion, the Debtor relies upon and incorporate by reference the (i) *Declaration of Erika Badan in Support of Chapter 11 Petition and First Day Motions* (the “**First Day Declaration**”) and (ii) the declaration of Blake Saunders of Core Advisors LLC (“**Core Advisors**”) in support of this Motion (the “**Saunders Declaration**”), filed contemporaneously herewith. In further support of this Motion, the Debtor respectfully states as follows:

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 Any capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Proposed Interim Order or the First Day Declaration (defined below), as applicable.

³ The Debtor will file the form of Proposed Final Order prior to the Final Hearing (as defined below).



PRELIMINARY STATEMENT⁴

1. On December 15, 2025, the Debtor’s prepetition secured lender, Avidbank (“**Avid**”), swept substantially all of the Debtor’s cash, which was sitting in bank accounts maintained by Avid. Following a chaotic scramble to determine the Debtor’s cash balance as Avid debited and credited the Debtor’s account on an hourly basis, the Debtor directed its investment banker, Core Advisors—who had been marketing the Company for an out-of-court transaction for several months—to immediately re-engage the parties that had submitted indications of interest in that process.

2. Core Advisors immediately reached out to those parties and inquired whether they would provide emergency funding to support the Company’s operations through the closing of a sale. The Debtor also contacted various third-party liquidators regarding the immediate liquidation of inventory as well as the potential sale of certain receivables in exchange up-front cash.

3. Of those five parties, only America’s Test Kitchen, LP submitted an actionable proposal, through its wholly owned subsidiary F52, LLC (“**F52**”). F52’s proposal includes DIP financing in the amount of \$3.42 million, \$1.92 million of which will be made available on an interim basis, to fund a 35-day sale process pursuant to section 363 of the Bankruptcy Code. F52 also agreed to serve as the proposed stalking horse bidder (in such capacity, the “**Stalking Horse Bidder**”) for that sale process, offering a total purchase price of \$6.5 million (a portion of which will be satisfied through a credit bid of the DIP Obligations (including all fees and interest accrued under the DIP Facility) if F52 is the successful purchaser) and certain assumed liabilities. If F52 is not approved by the Court as the Stalking Horse Bidder, the DIP Facility provides for a 6% exit

⁴ Capitalized terms used but not otherwise defined in this Preliminary Statement have the meanings given to such terms below.

fee, but such fee will be forgiven upon entry of a Court order designating F52 as the Stalking Horse Bidder and approving the requested bidding protections set forth in the Bidding Procedures Motion. In short, if F52 is designated as the Stalking Horse Bidder, and is ultimately the winning bidder, no interest or fees will be paid in cash to F52 and the entirety of the DIP Obligations will be a component of F52's proposed purchase price.

4. With F52's willingness to consider funding a debtor in possession loan and serving as the Stalking Horse Bidder, on December 22, 2025, the Debtor was able to obtain a \$1.505 million bridge loan from certain affiliates of its majority shareholder, TCG 2.0 Food52, LLC and TCG 3.0 Food52, LLC (together, the "**Prepetition Secured Noteholder**")—through the Prepetition Secured Note—to provide the Debtor with funding to engage additional restructuring professionals, negotiate the Stalking Horse Agreement and DIP Term Sheet with F52, and prepare this chapter 11 case. The Proposed Interim Order includes adequate protection for the Prepetition Secured Noteholder and the Prepetition Secured Noteholder has consented to the priming of its liens. The Debtor's only other secured creditor is Avid, who is owed no more than \$411,000 following its prepetition cash sweep. Avid has a first priority lien on substantially all of the Debtor's assets, and the Prepetition Secured Noteholder has a second priority lien on substantially all of the Debtor's assets. In lieu of adequate protection, given the de minimis amount of Avid's claim, the Debtor seeks authority to pay its \$411,000 obligation to Avid upon entry of the Proposed Interim Order to avoid incurring unnecessary adequate protection costs.

5. The Debtor commenced this chapter 11 case to complete a comprehensive, Court-supervised marketing and sale process to maximize the value of its assets for its creditors, consistent with the milestones set forth in the Stalking Horse Agreement and the DIP Term Sheet. To accomplish the foregoing, it is critically important that the Debtor obtain immediate access to

the proposed DIP Facility and use of Cash Collateral as contemplated hereunder. The Debtor is entering chapter 11 with minimal cash on hand. In its business judgement, the Debtor believes such liquidity is wholly insufficient to administer its estate and this chapter 11 case. In short, the Debtor definitively requires the incremental liquidity proposed to be provided under its proposed DIP Facility to preserve value for all stakeholders.

6. The Debtor's negotiations with the proposed DIP Lender were conducted in good faith, at arm's length, and with the assistance of the Debtor's experienced professionals. As set forth in the Saunders Declaration, the Debtor believes that the terms of the DIP Facility are fair and reasonable under the circumstances of this chapter 11 case and that there is no alternative financing available to the Debtor in the market. For these reasons, and as discussed more fully below, the Debtor respectfully submits that entry into the proposed DIP Facility represents a sound exercise of its business judgment and should be approved.

JURISDICTION AND VENUE

7. 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.

8. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, 506(c), 507, and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rules 2002-1, 4001-2, and 9013-1.

BACKGROUND

A. General Background

9. 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 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.

10. 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.

B. Prepetition Indebtedness

11. As of the Petition Date, the Debtor’s secured funded debt obligations total approximately \$1,916,000, consisting of (i) approximately \$411,000 owed to Avid pursuant to that certain *Loan and Security Agreement*, dated April 12, 2021 (as amended from time to time, the “**Avid Loan Agreement**”), by and between the Debtor and Avid, and (ii) approximately \$1,505,000 owed to the Prepetition Secured Noteholder, pursuant to that certain *Secured Promissory Note*, dated December 22, 2025 (the “**Prepetition Secured Note**”), by and between the Debtor and the Prepetition Secured Noteholder, as set forth in more detail below. The Debtor also has unsecured debt, including a \$15 million term loan from Silicon Valley Bank (“**SVB**” and, such loan, the “**SVB Unsecured Loan**”), guaranteed by TCG, and other obligations incurred in

the ordinary course of the Debtor's business, including obligations to vendors, suppliers, landlords, taxing authorities, and trade counterparties, among others, totaling approximately \$8.3 million as of the Petition Date.

1. Avid Loan Agreement

12. As noted above, the Debtor entered into the Avid Loan Agreement with Avid on April 12, 2021, pursuant to which Avid agreed to provide funding to the Debtor in an aggregate amount of up to \$14 million for general working capital purposes, up to \$5.25 million of which could be used in connection with the acquisition of Dansk Designs. The loans under the Avid Loan Agreement (collectively, the "**Avid Secured Loans**") are secured by a first priority lien on substantially all of the Debtor's assets and include (i) a revolving credit facility of up to \$5 million, and (ii) a term loan facility of up to \$8.5 million, which could be increased to \$10.5 million upon the completion of certain performance milestones. The Avid Loan Agreement has been amended various times, pursuant to which Avid consented to the acquisition of the Debtor's Schoolhouse assets, waived certain various events of default, and decreased the aggregate borrowing limit to \$12,583,300, among other things.

13. On December 15, 2025, Avid sent the Debtor a letter informing it of purported defaults under the Avid Loan Agreement and its election to exercise remedies and, within hours, swept substantially all of the Debtor's cash from its bank accounts at Avid. Over the following days, Avid continued to credit and debit the Debtor's accounts sitting at Avid, reversing then reinstating wires previously initiated, all of which resulted in a chaotic scramble and confusion regarding the cash available to the Debtor. Ultimately, these actions reduced the balance of the Avid Secured Loans to approximately \$411,000 as of the Petition Date from approximately \$6.3 million on December 12, 2025.

14. The Debtor seeks to pay the outstanding Avid Secured Loans, in the amount of up to \$411,000, upon entry of the Proposed Interim Order and believes this payment will satisfy its obligations to Avid in full.

2. TCG Secured Note

15. As discussed above, following Avid's actions on and immediately following December 15, 2025, the TCG Lender provided emergency funding to the Debtor on December 22, 2025, to allow the Debtor to negotiate a value-maximizing transaction with F52, prepare this chapter 11 case, and pay certain taxes (after the funds reserved for such taxes were improperly swept from its accounts by Avid). As of the Petition Date, the outstanding principal balance under the TCG Secured Note was \$1,505,000, and the TCG Secured Note is secured by a second priority lien on substantially all of the Debtor's assets.

3. SVB Unsecured Note

16. On August 18, 2022, the Debtor entered into that certain *Loan Agreement*, by and between the Debtor and SVB, pursuant to which SVB agreed to provide unsecured funding to the Debtor in the principal amount of \$15 million. The SVB Unsecured Loan is guaranteed by TCG and, as of the Petition Date, remains outstanding.

C. Material Terms of the DIP Facility

17. Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, the following is a concise summary of the proposed material terms of the DIP Loan Documents and the Proposed Interim Order.⁵

⁵ Capitalized terms used in this summary but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Loan Documents and the Proposed Orders, as applicable. The summary above is qualified in its entirety by reference to the applicable provisions of the DIP Loan Documents and the Proposed Orders. To the extent of any inconsistency or conflict between this concise statement and the provisions of the DIP Loan Documents and Proposed Orders, the provisions of the DIP Loan Documents and Proposed Orders, as applicable,

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
Borrower Bankruptcy Rule 4001(c)(1)(B)	Food52, Inc.	DIP Term Sheet §1
Guarantor Bankruptcy Rule 4001(c)(1)(B)	N/A	
DIP Agent Bankruptcy Rule 4001(c)(1)(B)	N/A	
DIP Lender Bankruptcy Rule 4001(c)(1)(B)	F52, LLC and/or its affiliates, designees or its assignees.	DIP Term Sheet §3
Borrowing Limits/ Commitment Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(A)	The DIP Commitments shall consist of \$3.42 million in term loan commitments, \$1.92 of which will be available upon entry of the Proposed Interim Order.	DIP Term Sheet §3
Maturity and Termination Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)	<ul style="list-style-type: none"> • All DIP Obligations shall be due and payable in full in cash (“Payment in Full”⁶ or such other form of consideration as the DIP Lender and the Borrower may mutually agree) on the earliest of: <ul style="list-style-type: none"> i. February 28, 2026 (the “Maturity Date”); ii. the effective date of any chapter 11 plan of reorganization with respect to the Borrower (a “Plan”); 	DIP Term Sheet §7

shall control. The Debtor reserves the right to supplement the statements made pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2 herein.

⁶ For purposes hereof, the term “**Payment in Full**” means, with respect to the DIP Obligations, the irrevocable and indefeasible payment in full in cash of all DIP Obligations, other than contingent indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated, cancelled and discharged.

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
	<ul style="list-style-type: none"> iii. the consummation of any sale or other disposition of all or substantially all of the assets of the Borrower pursuant to section 363 of the Bankruptcy Code; iv. the date of the acceleration of the DIP Loans and the termination of the DIP Commitments following the occurrence and during the continuation of an Event of Default in accordance with the DIP Documents; v. dismissal of the Chapter 11 Case or conversion of the Chapter 11 Case into a case under chapter 7 of the Bankruptcy Code; and vi. 25 days after the Petition Date (or such later date as agreed to by the DIP Lender), unless the Final Order has been entered by the Bankruptcy Court on or prior to such date (such earliest date, the “DIP Termination Date”). <ul style="list-style-type: none"> • The occurrence of the DIP Termination Date shall terminate the ability of the Borrower to borrow the Draws and shall terminate any further obligation the DIP Lender has to make any DIP Loans under the DIP Documents. • For the avoidance of doubt, any of the above conditions from (i) through (vi) automatically triggers the Maturity Date. 	
Borrowing Conditions and Restrictions on Use of Proceeds Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)	<ul style="list-style-type: none"> • The proceeds of the DIP Facility shall be used only for the disbursements forecasted as per the agreed upon Budget, which include the following: <ul style="list-style-type: none"> i. working capital and other general corporate purposes of the Borrower (with 15% permitted variances for expenditures measured in total (<i>i.e.</i>, the Total Operating Disbursements line in the cash flow forecast) and not by line item); ii. professional fees and expenses of administering the Chapter 11 Case (including payment of fees incurred prior to the Closing Date and funding the Professional Fee Reserve, which shall solely be funded in accordance 	DIP Term Sheet §10

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
	<p>with the Budget and shall not have a permitted variance, except that if the Debtor does not have sufficient funding to fund the Professional Fee Reserve in any given week, such funding may be made subsequently even if it exceeds the professional fee line item for that subsequent week) in accordance with the Bankruptcy Code and any orders of the Bankruptcy Court, as applicable; and</p> <p>iii. fees and expenses payable under the DIP Facility, including, without limitation, the legal expenses of the DIP Lender (including fees incurred prior to the Closing Date).</p>	
<p>Interest Rate</p> <p>Bankruptcy Rule 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(i)(B)</p>	<ul style="list-style-type: none"> • The DIP Loans shall bear interest at a per annum rate equal to 15% payable in kind (the “Non-Default Interest”). • Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default , the DIP Loans shall bear interest at an additional per annum rate of 5%, in each case payable in kind, together with the Non-Default Interest, on the first day of each month in arrears. • If the DIP Lender is the successful bidder for the assets of the Debtor and the successful bid is consummated, then any amounts payable in respect of these obligations will constitute part of the credit bid component of the purchase price for the assets. 	DIP Term Sheet §8
<p>Fees and Expenses</p> <p>Bankruptcy Rule 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(i)(B), 4001-2(a)(i)(K)</p>	<ul style="list-style-type: none"> • Subject to the DIP Documents, all documented out-of-pocket accrued and unpaid fees, costs, disbursements, and expenses of the DIP Lender, including the fees and expenses of Moore & Van Allen PLLC, as counsel to the DIP Lender, and any other local Delaware counsel retained in their capacity as counsel to the DIP Lender for bankruptcy matters, incurred in connection with the DIP Facility and the Chapter 11 Case shall accrued and be paid at maturity; provided that if the DIP Lender is the successful bidder for the assets of the Debtor and the successful bid is consummated, then any amounts payable in respect of these obligations will constitute part of the credit bid component of the purchase price for the assets. 	DIP Term Sheet §§9, 28; Proposed Interim Order ¶¶26, 27

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
	<ul style="list-style-type: none"> The DIP Lender shall be entitled to payment of an exit fee the (“Exit Fee”) of six percent (6%) of the DIP Commitments, which amount shall be fully earned and due and payable when the DIP Obligations are paid in full, provided that the Exit Fee shall only be payable if the DIP Lender is not approved as the stalking horse purchaser for the purchase of the Debtor’s assets as contemplated by the sale motion and bidding procedures to be filed in the Bankruptcy Case. 	
Provisions Limiting Court’s Power or Discretion to Enter Future Orders Local Rule 4001-2(a)(i)(C)	N/A	
Provisions Providing for Funding of Non-Debtor Affiliates Local Rule 4001-2(a)(i)(D)	N/A	
Material Conditions to Closing and Borrowing, Including Budgets Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(E)	<ul style="list-style-type: none"> Entry by the Borrower into an asset purchase agreement with F52, LLC for the sale of substantially all of the assets of Borrower on terms acceptable to the DIP Lender in its reasonable discretion; Entry of the Interim Order within 2 business days of the Petition Date, which order shall not be stayed or subject to appeal; Delivery of the Initial Budget acceptable to the DIP Lender in its reasonable discretion; The representations and warranties of the Borrower under the DIP Documents shall be true and correct in all material respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all respects); No Material Adverse Effect shall have occurred and be continuing; 	DIP Term Sheet §16

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
	<ul style="list-style-type: none"> • The Debtor shall be in compliance in all respects with the Interim Order; • No Event of Default shall have occurred and be continuing under this Term Sheet; • No order has been entered reversing, amending, staying, vacating, terminating or otherwise modifying in any manner adverse to the DIP Lender the Interim Order; and • The Borrower shall have delivered to the DIP Lender a customary borrowing notice. 	
Carve Out Bankruptcy Rule 4001(b)(1)(B)(iii) Local Rule 4001-2(a)(i)(F)	<p>“Carve-Out” means an amount equal to the sum of the following: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717 (without regard to the notice set forth in clause (ii) below); (ii) to the extent allowed by the Bankruptcy Court at any time, whether by interim order, final order, or otherwise, all accrued and unpaid fees, disbursements, costs and expenses incurred by persons or firms retained by the Debtor pursuant to section 327, 328 or 363 of the Bankruptcy Code (the “Debtor Professionals”) and all accrued unpaid fees, disbursements, costs and expenses incurred by the Committee (if any) pursuant to section 328 and 1103 of the Bankruptcy Code (the “Committee Professionals,” together with the Debtor Professionals, the “Estate Professionals,” and such Estate Professional fees in each case in accordance with, and subject to, the Budget, the “Allowed Professional Fees”) at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice; and (iii) Allowed Professional Fees of Estate Professionals in an aggregate amount not to exceed \$125,000 incurred after the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, final order, or otherwise (the amounts set forth in this clause (iii), the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice (which may be delivered by e-mail (or other electronic means)) by the DIP Lender to the Debtor and its counsel, the United</p>	DIP Term Sheet §10; Proposed Interim Order ¶24(b)

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
	States Trustee, and lead counsel to any Committee appointed in the Chapter 11 Case, which notice may be delivered following the occurrence of an Event of Default, stating that the Post-Carve Out Trigger Notice Cap has been invoked.	
Security and Priority Under the DIP Facility Bankruptcy Rule 4001(c)(1)(B)(i), 4001(c)(1)(B)(ii) Local Rule 4001-2(a)(i)(G), 4001-2(a)(i)(N), 4001-2(a)(i)(P)	<ul style="list-style-type: none"> As security for the DIP Obligations, subject to the Carve Out and Permitted Prior Liens (as defined in Schedule 1), Borrower shall grant to the DIP Lender a priming first lien security interest (“Priming First Lien”) on all of Borrower’s right, title and interest in, to and under all the Borrower’s assets, including, but not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located: all assets and property of Borrower and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all fee-owned real properties, contracts, contract rights, licenses, general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, accounts receivables, chattel paper, letters of credit and letter of credit rights, investment property, commercial tort claims, arbitration awards, money, insurance, receivables, receivables records, deposit accounts, collateral support, supporting obligations and instruments, fixtures, all interests in leaseholds and real properties, all patents, copyrights, trademarks, all trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), together with all books and records relating to the foregoing, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (as such terms are defined in the Uniform Commercial Code as in effect from time to time in the State of New York), and, subject to the entry of a Final Order, on proceeds of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral and proceeds of actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code (collectively, the “DIP Collateral”). 	DIP Term Sheet §§13, 14; Proposed Interim Order ¶¶7, 8

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
	<ul style="list-style-type: none"> Negative pledge on all assets of the Borrower subject to Permitted Prior Liens (if any) to be agreed upon by the Final Order. Subject to the Carve-Out and Permitted Prior Liens, all obligations of the Borrower under the DIP Documents, including, without limitation, all principal, accrued interest, costs, fees and premiums provided for therein, and all obligations of the Borrower under the DIP Facility (the “DIP Obligations”) shall be entitled to (a) senior secured priming lien and (b) superpriority claim status pursuant to section 364(c)(1) and section 364(d)(1) of the Bankruptcy Code, with priority over any and all secured liens, administrative expense claims and unsecured claims, of any kind or nature whatsoever, now existing or hereafter arising under the Bankruptcy Code (the “DIP Claims”). Subject to the Carve-Out and the Permitted Prior Liens, all DIP Obligations in respect of the DIP Facility shall be: <ul style="list-style-type: none"> i. pursuant to section 364(c)(1) of the Bankruptcy Code, entitled to superpriority claim status in the Chapter 11 Case (which claims shall be payable from and have recourse to all DIP Collateral); ii. secured, pursuant to (i) section 364(c)(2) of the Bankruptcy Code, by a valid, enforceable, fully perfected and automatic first-priority lien on the DIP Collateral; and iii. senior secured priming first lien, pursuant to section 364(d)(1) of the Bankruptcy Code. The liens securing the DIP Facility (the “DIP Liens”) shall mean the liens described above and in the priority set forth in the Interim Order and Final Order. The DIP Liens described herein shall, to the fullest extent permitted by applicable law, be effected and perfected upon entry of the Interim Order and without the necessity of the execution of mortgages, landlord agreements, security agreements, pledge agreements, control 	

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
	agreements, financing statements or other agreements.	
Milestones Bankruptcy Rule 4001(c)(1)(B)(vi) Local Rule 4001-2(a)(i)(H)	The DIP Term Sheet includes certain events of default, including: <ol style="list-style-type: none"> i. the entry of the Final Order shall have not occurred within 25 days after the Petition Date; ii. the entry of an order approving F52, LLC as the stalking horse purchaser for substantially all of the assets of the Debtor shall not have occurred prior to January 9, 2026; and iii. the entry of an order approving the sale of substantially all of the assets of Debtor shall have not occurred before February 2, 2026. 	DIP Term Sheet §27
Prepayment Local Rule 4001-2(a)(i)(I)	<p>Voluntary prepayments of the DIP Loans shall be permitted at any time, subject to accrued interest on the amount prepaid.</p> <p>Upon the occurrence of (x) the sale, transfer or other disposition of any of the Assets that constitute Collateral outside of the ordinary course of the Borrower's respective businesses and/or (y) the entrance into any equity raise, any offering or private placement of any debt securities in the debt capital markets, any bank loan and/or any other debt financing (whether structured as a debt financing or equity financing, or any combination thereof) (each, a "Liquidity Transaction"), the Borrower's shall prepay the principal of the DIP Loans in an amount equal to one hundred percent (100%) (or such lesser portion as is necessary to repay all of the Obligations hereunder) of the net cash proceeds in respect of such sales, transfers, dispositions, or Liquidity Transaction, as applicable, to prepay (i) all accrued and unpaid interest, and (ii) all or a portion of the principal amount of the DIP Loans outstanding.</p>	DIP Term Sheet §§11, 12

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
Provisions Governing Joint Liability Local Rule 4001-2(a)(i)(J)	N/A	
Provisions Requiring Debtors to Pay Agent or Lender's Expenses and Attorneys' Fees Without Notice or Review Local Rule 4001-2(a)(i)(K)	N/A	
Provisions Prohibiting Use of Estate Funds to Investigate Liens and Claims of Prepetition Lenders Local Rule 4001-2(a)(i)(L)	The Proposed Interim Order includes the following provision: “Limitations on Use of DIP Proceeds, Cash Collateral, the Carve Out and Other Funds. Except as otherwise permitted in this Interim Order and the Approved Budget, the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, and the Carve Out may not be used, directly or indirectly, by any of the Debtor, the Creditors' Committee, if any, or any trustee or other estate representative appointed in the Chapter 11 Case (or any Successor Case) or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith) in connection with (a) preventing, hindering, or delaying any of the DIP Lender and/or Prepetition Secured Noteholder's enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (b) using or seeking to use Cash Collateral without the permission of the DIP Lender, and the Prepetition Secured Noteholder or selling or otherwise disposing of DIP Collateral without the consent of the DIP Lender or as permitted by the DIP Loan Documents; (c) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Lender or the Prepetition Secured Noteholder; (e) seeking to amend or modify any of the rights granted to the DIP Lender or the Prepetition Secured Noteholder under this Interim Order, the DIP Loan Documents, or the Prepetition Loan Documents, including seeking to use Cash Collateral and/or DIP Collateral on a contested basis; (f) litigating, objecting to, challenging or	Proposed Interim Order ¶30

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
	<p>contesting in any manner in any way the DIP Liens, DIP Obligations, DIP Superpriority Claims, the Prepetition Secured Obligations, the Prepetition Liens, DIP Collateral (including Cash Collateral) or, as the case may be, the Prepetition Collateral, or any other claims held by or on behalf of any of the DIP Lender or the Prepetition Secured Noteholder, respectively; (g) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, Avoidance Actions or applicable state law equivalents or actions to recover or disgorge payments, against any of the DIP Lender, Prepetition Secured Noteholder, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees; (h) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Secured Obligations, the Prepetition Secured Noteholder Liens, or any other liens or interests of any of the DIP Lender, or the Prepetition Secured Noteholder; or (i) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations, the Prepetition Secured Obligations; provided, however, that the Carve Out and such collateral proceeds and loans under the DIP Loan Documents may be used for allowed fees and expenses, in an amount not to exceed \$10,000 in the aggregate (the “Investigation Budget Amount”), incurred solely by a Creditors’ Committee (if appointed), in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority or extent of the Prepetition Liens within thirty (30) calendar days following appointment of the Creditors’ Committee. For the avoidance of doubt, no portion of the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, or the Carve Out may be used, directly or indirectly, by the Debtor or a Creditors’ Committee (if appointed), or any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, any creditors, or parties in interest to investigate or Challenge any of the Prepetition Loan Lien and Claim Matters as they relate to the DIP Lender or to the Prepetition Secured Noteholder.”</p>	

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
Termination or Events of Default Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(M)	The DIP Term Sheet contains usual and customary events of default for debtor-in-possession financings of this type.	DIP Term Sheet §27
Provisions (a) Granting Cross-Collateralization Protection, (b) Elevating Prepetition Debt to Admin. Expense, or (c) Securing Prepetition Debt with Liens on Postpetition Assets Local Rule 4001-2(a)(i)(N)	N/A	
“Roll-Up” Provisions Local Rule 4001- 2(a)(i)(O)	N/A	
Priming Provisions Local Rule 4001-2(a)(i)(P)	<p>The Proposed Interim Order grants the DIP Lender valid, binding, continuing, enforceable, non-avoidable automatically and fully perfected first priority senior priming liens and security interests in all DIP Collateral, regardless of where located, which senior priming liens and security interests in favor of the DIP Lender shall be senior to the Prepetition Liens of the Prepetition Secured Noteholder.</p> <p>The Proposed Interim Order also grants the DIP Lender a first priority lien on unencumbered property and a junior lien to Permitted Prior Liens.</p>	Interim DIP Order ¶7

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
Provisions or Findings of Fact (i) Binding Estate or Parties in Interest w/r/t Validity, Perfection, or Amount of Prepetition Liens or the Waiver of Claims Against the Secured Creditor Without Giving Parties in Interest at Least Seventy-Five (75) Days from the Entry of the Initial Interim Order to Investigate Such Matters Bankruptcy Rule 4001(c)(1)(B)(viii) Local Rule 4001-2(a)(i)(Q)	Subject to entry of a final order granting such relief, the Proposed Interim Order includes a challenge period no later than (a) one (1) business day before the hearing approving a sale of substantially all of the Debtor's assets and (b) seventy-five (75) days following the entry of the Interim Order.	Proposed Interim Order ¶31(a)
Provisions Immediately Approving All Terms and Conditions of the DIP Term Sheet Local Rule 4001-2(a)(i)(R)	N/A. The Proposed Interim Order authorizes the Debtor to enter into the DIP Credit Agreement and other DIP Loan Documents on an interim basis.	Proposed Interim Order ¶1
Waivers/ Modification of Automatic Stay and Provisions Allowing Lenders to Enforce Remedies Without at Least Five (5) Days Written Notice Bankruptcy Rule 4001(c)(1)(B)(iv)	N/A. The DIP Term Sheet provides that "[a]ny exercise of remedies by the DIP Lender shall be subject in all respects to the terms of the Orders, including a requirement that the DIP Lender provide five (5) days written notice of such Event of Default to the Borrower prior to any exercise of remedies." The Proposed Interim Order provides that "[t]he Debtor may seek an emergency hearing during the period beginning on the DIP Termination Date and prior to the expiration of the five (5) days following the DIP Termination Date[.]"	DIP Term Sheet §17; Proposed Interim Order ¶22(c)

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
Local Rule 4001-2(a)(i)(S)		
Provisions Limiting What Parties in Interest (Other Than the Debtors) May Raise Local Rule 4001-2(a)(i)(T)	N/A	
Immediate Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(b) Local Rule 4001-2(a)(i)(U)	N/A. This provision is subject to entry of the Proposed Final Order.	Proposed Interim Order ¶5
Immediate Section 506(c), 552(b) “Equities of the Case,” and Marshalling Waivers Bankruptcy Rule 4001(c)(1)(B)(x); Local Rule 4001-2(a)(i)(V)-(X)	N/A. These provisions are subject to entry of the Proposed Final Order.	Proposed Interim Order ¶33
Adequate Protection Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii) Local Rule 4001-2(a)(i)(B), 4001-2(a)(i)(K),	As adequate protection solely to the extent of any Diminution of the Prepetition Secured Noteholder’s asserted interest in the Prepetition Collateral resulting from the subordination of the Prepetition Secured Noteholder Subordinated Liens to the DIP Liens and the Carve Out, the Prepetition Secured Noteholder shall receive the following (“ Adequate Protection Obligations ”), <i>provided, however</i> , that such Adequate Protection Obligations shall be subject to the same validity, priority, and extent as any Prepetition Secured	Proposed Interim Order ¶13

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
4001-2(a)(i)(N), 4001-2(a)(i)(P)	<p>Noteholder Liens or claims asserted by the Prepetition Secured Noteholder.</p> <p>Adequate Protection Liens. Continuing valid, binding, enforceable, and perfected postpetition replacement liens pursuant to sections 361, 363(e), and 364(d)(1) of the Bankruptcy Code on the DIP Collateral, which shall be subject and subordinated only to the Carve Out, the DIP Liens, and Permitted Prior Liens (the “Adequate Protection Liens”) and which (a) shall otherwise be senior to all other security interests in, liens on, or claims against the DIP Collateral, and (b) shall not otherwise be made subject to or <i>pari passu</i> with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Case or any Successor Case and shall be valid and enforceable against any trustee appointed in the Chapter 11 Case or any Successor Case, and shall not be subject to sections 510, 549 or 550 of the Bankruptcy Code.</p> <p>Adequate Protection Superpriority Claim. Administrative superpriority expense claims in the Chapter 11 Case (the “Adequate Protection Superpriority Claims”), junior and subordinate only to the Carve Out and the DIP Superpriority Claims, pursuant to section 507(b) otherwise with priority over any and all other administrative expenses and unsecured claims against the Debtor or its estate, now existing or hereafter arising, of any kind or nature whatsoever as to and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code. The Prepetition Secured Noteholder shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection Superpriority Claims unless and until the DIP Obligations have indefeasibly been paid in cash in full and all commitments to extend credit under the DIP Facility and Prepetition Loan Documents have been terminated.</p>	
<p>Loan Covenants</p> <p>Bankruptcy Rule 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(i)</p>	The DIP Documents shall contain affirmative covenants as are usual and customary with respect to the Borrower in loan documents for similar debtor-in-possession financings and as are acceptable to the DIP Lender and the Borrower, including the requirement to repay and satisfy all outstanding amounts to Avid with the proceeds of the First Draw, which amounts shall not exceed \$411,000.	DIP Term Sheet §§ 20, 21

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
	<p>The DIP Documents shall contain negative covenants with respect to the Borrower as are usual and customary in loan documents for debtor-in-possession financings and as are acceptable to the DIP Lender and the Borrower; <u>provided</u> that the DIP Documents will permit: (i) the Debtor to continue to pursue a sale process for all or substantially all of the Borrower's assets and consummate any sale or sales related thereto subject to Bankruptcy Court approval and provided that such sale or sales and/or related transactions are acceptable to the DIP Lender and the proceeds of such sale are satisfactory to pay the DIP Obligations in full, (ii) the ability to reject or modify contracts, (iii) postpetition employment arrangements subject to maximum thresholds agreed upon by the DIP Lender and the Borrower, and (iv) provide for adequate protection in accordance with the Budget and reasonably acceptable to the DIP Lender.</p>	
<p>Indemnification</p> <p>Bankruptcy Rule 4001(c)(1)(B)(ix)</p>	<p>The Proposed Interim Order includes the following indemnification provision: "Indemnification. The DIP Lender (and its affiliates and respective officers, directors, employees, advisors, and agents, solely in such capacity) (each such person, an "Indemnitee") will have no liability for, and will be indemnified and held harmless against, any losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof, except to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the gross negligence, bad faith or willful misconduct of the relevant indemnified person (or any of its affiliates or any of its or its respective officers, directors, employees, advisors or agents). Such indemnity shall not be available (a) to the extent arising from a material breach of any obligation of such Indemnitee under the DIP Loan Documents or (b) to the extent arising out of any loss, claim, damage, liability or expense that does not involve an act or omission of the Debtor and that is brought by an Indemnitee against another Indemnitee (other than claims against an Indemnitee in its capacity or in fulfilling its role as DIP Lender or any similar role under the DIP Loan Documents). Notwithstanding the foregoing, the Debtor shall not indemnify any Indemnitee for any costs, expenses, losses, claims, damages, or liabilities incurred in connection with a successful Challenge brought in accordance with paragraph 31 hereof."</p>	<p>Proposed Interim Order ¶28</p>

RELIEF REQUESTED

18. The Debtor respectfully requests entry of the Proposed Orders:
- (i) authorizing the Debtor to obtain postpetition financing on the terms set forth in the DIP Term Sheet;
 - (ii) authorizing the Debtor to enter into the DIP Term Sheet, in substantially the form attached hereto as **Exhibit B** (the “**DIP Term Sheet**”), and the DIP Loan Documents, and to perform its 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 Debtor to use the proceeds of the DIP Facility, in accordance with the terms of the Proposed Interim Order and the Budget, attached hereto as **Exhibit C**, to (a) pay principal, fees, interest, and other obligations under the DIP Facility, and (b) provide working capital for, and for other general corporate purposes of, the Debtor, including for funding the Carve Out;
 - (iv) authorizing the use of Cash Collateral by the Debtor effective as of the Petition Date;
 - (v) determining that the Prepetition Secured Noteholder is adequately protected for the use of its Cash Collateral and the incurrence of obligations under the DIP Facility;
 - (vi) modifying the automatic stay imposed under section 362 of the Bankruptcy Code, to the extent necessary, to implement and effectuate the terms and provisions of the DIP Loan Documents and the Proposed Orders; and
 - (vii) granting related relief.

BASIS FOR RELIEF REQUESTED

A. Entry into the DIP Loan Documents Is an Exercise of the Debtor’s Sound Business Judgment

19. The Court should authorize the Debtor, as an exercise of its sound business judgment, to enter into the DIP Loan Documents, obtain access to the proceeds of the DIP Facility, and continue using Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant debtors considerable deference in acting in accordance with their 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 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 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 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 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor’s] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

20. Bankruptcy courts generally will not second-guess a debtor’s business decisions when those decisions involve “a business judgment made in good faith, upon a reasonable basis, and within the scope of [its] authority under the [Bankruptcy] Code.” *In re Curlew Valley Assoc.’s*, 14 B.R. 506, 513-14 (Bankr. D. Utah. Oct 8, 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”). To determine whether the business judgment test is met, the court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Dura Auto. Sys. Inc.*, No. 06-11202 (KJC), 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (citation omitted).

21. In determining whether the Debtor has exercised sound business judgment in entering into the DIP Loan Documents, the Court should consider the economic terms of the DIP Facility under the totality of circumstances. *See* Hr’g Tr. at 734–35:24, *In re Lyondell Chem. Co.*,

No. 09-10023 (Bankr. S.D.N.Y. Feb. 27, 2009) (recognizing that “the terms that are now available for DIP financing in the current economic environment aren’t as desirable” as they once were previously, referring to the period following the 2008 financial markets collapse); *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) (while many of the terms favored the DIP lenders, “taken in context, and considering the relative circumstances of the parties,” the court found them to be reasonable); *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). Moreover, the Court may appropriately take into consideration non-economic benefits to the Debtor offered under a proposed postpetition facility. *See In re ION Media Networks, Inc.*, No. 09-13125 (JMP), 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (holding that “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. . . .”).

22. The Debtor’s decision to enter into the DIP Loan Documents is an exercise of its sound business judgment. As further discussed in the First Day Declaration and the Saunders Declaration, the DIP Facility was a product of good faith arm’s length negotiation among the Debtor and the DIP Lender, which was the best (and only) available source of postpetition financing given the realities of the Debtor’s finances and business prospects. The Debtor ultimately decided that moving forward with the proposed DIP Facility was an appropriate step given that the DIP Facility will allow the Debtor to fund this chapter 11 case and pursue a value-maximizing sale process for the benefit of the Debtor’s creditors and all stakeholders.

23. Ultimately, the Debtor and its advisors determined that the DIP Facility was and is appropriate and in the Debtor's best interests under the totality of circumstances. The incremental liquidity provided under the DIP Facility is needed to ensure adequate working capital and funding for the other administrative expenses associated with this chapter 11 case. Absent this funding, the Debtor would not be able to sustain operations throughout its sale process and would be forced to liquidate. Accordingly, estate value would be significantly impaired absent the funding under the DIP Facility. In light of the above, the Debtor determined that entry into the DIP Facility was and is the best path available and it has obtained the best terms currently achievable under the circumstances.

B. The Debtor Should be Authorized to Grant Liens and Superpriority Claims

24. The Debtor proposes to obtain postpetition financing under the DIP Facility by providing security interests and liens as set forth in the DIP Loan Documents and described above. The Debtor satisfies the requirements for relief under section 364 of the Bankruptcy Code, which authorizes a debtor to incur secured or superpriority debt under certain circumstances. Specifically, section 364(c) of the Bankruptcy Code provides that:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

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

(2) secured by a lien on property of the estate that is not otherwise subject to a lien;

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

25. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate “by a good faith effort that credit was not available” to the debtor on an

unsecured or administrative expense basis. *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (finding that secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon a showing that unsecured credit cannot be obtained). “The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (finding that superpriority administrative expenses should be authorized where debtor could not obtain credit as an administrative expense). When few lenders (or no lenders) are likely to be willing to 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).

26. Courts have articulated a three-part test to determine whether a debtor is entitled to enter into financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

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

In re Aqua Assocs., 123 B.R. 192, 195–96 (Bankr. E.D. Pa. 1991); *accord In re Ames Dep’t Stores*, 115 B.R. at 37–40; *In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.

27. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the 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).

28. As set forth in the First Day Declaration and the Saunders Declaration, the Debtor believes, having consulted with its advisors, that the DIP Facility represents the best option available to address its immediate liquidity needs. Following an extensive prepetition marketing and sale process, followed by a chaotic pivot to any chance for survival as a going-concern, the Debtor only received one actional proposal—from the DIP Lender. As a result, the Debtor submits that it could not have obtained financing on more favorable terms from sources other than the DIP Lender and is similarly unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense.

29. Further, section 364(d) provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is “unable to obtain such credit otherwise” and “there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364(d)(1). Here, the Prepetition Secured Noteholder consented to the priming of its prepetition liens. In addition, the Proposed Interim Order includes adequate protection for the Prepetition Secured Noteholder, including the Adequate Protection Liens and the Adequate Protection Superpriority Claims described in the summary chart above.

30. Further, as set forth above, the Debtor is not aware of any available financing on equal or better terms from the DIP Lender. Therefore, the Debtor submits that the requirement of

section 364 of the Bankruptcy Code—that alternative credit on more favorable terms be unavailable to the Debtor—is satisfied.

C. The Debtor Should be Authorized to Use Cash Collateral

31. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use, sell, or lease cash collateral unless “(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.”

32. The Debtor has an urgent need for the immediate use of Cash Collateral and seek to use all Cash Collateral existing on or after the Petition Date pursuant to the terms of the DIP Loan Documents. The Debtor needs the Cash Collateral to pay operating expenses, including essential vendors, to ensure a continued supply of goods and services essential to the Debtor’s business, as well as fund this chapter 11 case so it can pursue a value-maximizing sale process.

33. The Debtor believes that the terms and conditions of its use of the Cash Collateral (including the provision of adequate protection described above) are appropriate and reasonable and that such adequate protection is sufficient to secure any adequate protection obligations under the circumstances. Furthermore, the Prepetition Secured Noteholder has consented to the Debtor’s use of the Cash Collateral subject to the terms and conditions of the DIP Loan Documents and the Proposed Interim Order. Therefore, the Debtor submits that it should be authorized to use the Cash Collateral on the terms set forth in the DIP Loan Documents.

D. The Rates and Fees of the DIP Facility Are Reasonable

34. Under the DIP Loan Documents, the Debtor has agreed, subject to Court approval, to pay certain interest and fees to the DIP Lender, as set forth above. If the DIP Lender is ultimately the successful bidder in connection with the Debtor’s sale process, these fees will not be charged. However, if the DIP Lender is not approved as the Stalking Horse Bidder, it will be entitled to an

exit fee, and if the Debtor ultimately selects a higher or better offer for the sale of its assets, the DIP Lender will be entitled to interest and professional fees at maturity.

35. The Debtor and the DIP Lender agree that the collateral terms, covenants, interest rates, and fees were subject to negotiation and are an integral component of the overall terms of the DIP Facility and were required by the DIP Lender as consideration for the extension of the DIP Facility. Moreover, the fees are customary and usual and in line with debtor in possession financings of this kind. The Debtor considered the fees when determining in its sound business judgment whether the DIP Facility constituted the best terms on which the Debtor could obtain sufficient debtor in possession financing. The Debtor believes paying these fees in order to obtain the DIP Facility is in the best interests of the Debtor's estate.

36. Under the circumstances, the interest rates and fees reflected in the DIP Loan Documents are reasonable and substantially in line with other debtor in possession financings generally, including debtor in possession financings recently approved by the Court in other comparable chapter 11 cases.

G. The Milestones Imposed by the DIP Facility Are Reasonable

37. As set forth in the chart above, the DIP Term Sheet also contemplates, as a condition to providing the DIP Facility, certain (i) conditions precedent; (ii) milestones (the "**Milestones**") in connection with this chapter 11 case; and (iii) events of default, all of which are customary for postpetition financing in chapter 11.

38. The DIP Facility is a critical component of the Debtor's chapter 11 efforts because it provides the Debtor with the stability and certainty needed to fund its case and conduct its sale process. The continued operation of the Debtor's business during this case would not be possible absent access to the DIP Facility. The DIP Facility will prevent interruptions to the Debtor's operations, preserve the Debtor's ability to maintain ordinary course relationships with vendors,

customers, and suppliers, and satisfy working capital needs in the ordinary course during the sale process. Moreover, the Milestones are reasonable under the circumstances and are not designed to make the Debtor disproportionately susceptible to a breach of such terms. Accordingly, the Milestones and other conditions precedent and events of default are reasonable and should be approved.

H. The Carve Out Is Appropriate

39. The liens granted pursuant to the Proposed Orders, and the superpriority claims of the DIP Lender, are subject and subordinate to the Carve Out (and the Permitted Prior Liens). The Carve Out contains similar terms to others that the Court has found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from counsel. Without the Carve Out, the Debtor's estate may be deprived of possible rights and powers if the services for which professionals may be compensated is restricted. *See In re Ames Dep't Stores*, 115 B.R. at 38 (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"). Additionally, the Carve Out protects against administrative insolvency during the course of this chapter 11 case by ensuring that assets remain for the payment of fees to the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") and professional fees. Accordingly, the Carve Out is appropriate and should be approved.

J. The DIP Lender Should be Deemed a Good Faith Lender

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

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.

11 U.S.C. § 364(e).

41. Here, the Debtor believes the DIP Facility embodies the most favorable terms on which the Debtor could obtain postpetition financing. As described in the First Day Declaration, negotiations of the terms of the DIP Facility with the DIP Lender were conducted in good faith and at arms'-length. The terms and conditions of the DIP Loan Documents are fair and reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code, and in accordance with the Proposed Orders and the DIP Loan Documents, including, for the avoidance of doubt, the Budget. Further, no consideration is being provided to any party to the DIP Loan Documents other than as described herein, in the DIP Loan Documents, the First Day Declaration, and the Saunders Declaration. Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code, and are entitled to all of the protections afforded by that section.

K. Modification of the Automatic Stay Is Warranted

42. The relief requested herein contemplates a modification of the automatic stay to permit the Debtor to, among other things: (a) grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (b) upon the occurrence of an Event of Default (as defined in the DIP Loan Documents), subject to the notice periods set forth in the Proposed Orders,

for the DIP Lender to exercise any remedies available to them; and (c) implement the terms of the Proposed Orders, including payment of all amounts referred to in the DIP Loan Documents.

43. Stay modifications of this kind are ordinary and standard features of debtor in possession financing arrangements and, in the Debtor's business judgment, are reasonable and fair under the circumstances of this chapter 11 case.

REQUEST FOR A FINAL HEARING

44. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests the Court set a date for a final hearing (the "**Final Hearing**") that is as soon as practicable, and in no event later than January 22, 2026, in accordance with the Milestones, and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

BANKRUPTCY RULE 6003

45. The Court may grant the relief requested in this Motion immediately if the "relief is necessary to avoid immediate and irreparable harm." Bankruptcy Rule 6003; *see also In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008). The Third Circuit Court of Appeals has interpreted the language "immediate and irreparable harm" in the context of preliminary injunctions. In that context, the Third Circuit has instructed that irreparable harm is that which "cannot be redressed by a legal or an equitable remedy following a trial." *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989). As explained above and in the First Day Declaration, access to the DIP Facility and the use of Cash Collateral, in the interim amounts proposed, are essential and the relief requested is narrowly tailored to only the relief that is necessary to prevent immediate and irreparable damage to the Debtor's operations, and therefore, Bankruptcy Rule 6003 is satisfied.

BANKRUPTCY RULE 6004(a) AND (h) WAIVERS ARE APPROPRIATE

46. To implement the foregoing successfully, the Debtor requests that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances, and waive the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtor. Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

DEBTOR'S STATEMENT PURSUANT TO LOCAL RULE 4001-2(a)(iii)

47. The Debtor believes that the Budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the Budget.

RESERVATION OF RIGHTS

48. 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

49. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) counsel to the DIP Lender; (c) counsel to The Chernin Group; (d) counsel to Avid; (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 Banks; (j) any party known after a reasonable inquiry to have asserted a lien against the Debtor's assets; 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.

[Remainder of Page Intentionally Left Blank]

CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court enter the Proposed Interim Order, substantially in the form annexed hereto as **Exhibit A**, and the Proposed Final Order, granting the relief requested herein and such other and further relief as the Court deems appropriate under the circumstances.

Dated: December 29, 2025
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Elizabeth S. Justison

Michael R. Nestor (No. 3526)
Kara Hammond Coyle (No. 4410)
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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. 25-12277 (___)

Ref. Docket No. __

**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**

Upon the motion (the “**Motion**”)² of Food52, Inc. as debtor and debtor-in-possession (the “**Debtor**”) in the above-captioned chapter 11 case (the “**Chapter 11 Case**”), seeking entry of an interim order (this “**Interim Order**”) and a final order (the “**Proposed Final Order**”), pursuant to 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, 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 the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), that, among other things:

i. authorizes the Debtor to obtain postpetition financing on a senior secured superpriority basis, consisting of a new money term loan facility (the “**DIP Facility**,” and the loans

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 Unless stated otherwise, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the DIP Term Sheet (as defined below), as applicable.

issued thereunder, the “**DIP Loans**”) in an aggregate principal amount of up to \$3,420,000 (the “**DIP Loan Commitment**”), consisting of

i. a superpriority senior secured multiple draw term loan credit facility in the principal amount of \$3,420,000 (the “**New Money Loan**”), of which (x) upon entry of this Interim Order and satisfaction or waiver of the borrowing conditions set forth in the DIP Term Sheet (as defined below), \$1,920,000 (the “**Interim Advance**”) shall be made available to the Debtor on the Closing Date, and (y) subject to entry of the Proposed Final Order, any amounts above the Interim Advance shall be made available to the Debtor in the amount set forth in the DIP Term Sheet, in each case subject to the terms and conditions set forth in the DIP Term Sheet and/or a Debtor-in-Possession Loan and Security Agreement (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**DIP Credit Agreement**” and, together with any ancillary, collateral or related documents and agreements, the “**DIP Loan Documents**”), among the Debtor, as Borrower, and F52, LLC, as Lender (the “**DIP Lender**”), which DIP Credit Agreement shall be consistent with the terms set forth in the attached *Debtor-in-Possession Term Loan Facility Summary of Terms and Conditions* attached hereto as **Exhibit 1** (the “**DIP Term Sheet**”);

ii. approves the terms of the DIP Term Sheet, and authorizes the Debtor, to execute, deliver, and perform under the DIP Term Sheet, the DIP Loan Documents, and all other credit documentation relating to the DIP Facility, including, without limitation, as applicable, security agreements, pledge agreements, debentures, mortgages, control agreements, deeds, charges, guarantees, promissory notes, intercompany notes, certificates, instruments, intellectual property security agreements, notes, fee letters, and such other documents that are ancillary or incidental thereto or that may be reasonably requested by the DIP Lender in connection with the DIP Facility,

in each case, as amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof;

iii. authorizes the Debtor, on an interim basis, to issue, incur and guarantee all loans, notes, advances, extensions of credit, financial accommodations, reimbursement obligations, fees and premiums (including, without limitation the Exit Fee, and any other fees payable pursuant to the DIP Term Sheet and/or DIP Loan Documents), costs, expenses and other liabilities and all other obligations (including indemnities and similar obligations, whether contingent or absolute) due or payable to or for the benefit of the DIP Lender under the DIP Term Sheet and/or the DIP Loan Documents (collectively, the “**DIP Obligations**”), and to perform such other and further acts as may be required, necessary, desirable, or appropriate in connection therewith;

iv. authorizes the Debtor to perform such other and further acts as may be necessary or desirable in connection with this Interim Order, the DIP Term Sheet, the DIP Loan Documents (including the DIP Credit Agreement) and the transactions contemplated hereby and thereby;

v. authorizes and directs the Debtor, to use the proceeds of the DIP Facility and Cash Collateral (defined below) in accordance with the DIP Term Sheet and/or the DIP Loan Documents to (a) fund the postpetition working capital needs of the Debtor pending the Final Hearing, (b) pay fees, costs and expenses of the DIP Facility on the terms and conditions described in this Interim Order, the DIP Term Sheet and/or the DIP Loan Documents, and (c) pay the allowed administrative costs and expenses of the Chapter 11 Case, in each case, solely in accordance with the DIP Term Sheet, the DIP Budget (as defined below), and this Interim Order;

vi. authorizes the Debtor to grant to the DIP Lender valid, enforceable, non-avoidable, automatically, and fully perfected security interests, liens, and superpriority claims, including allowed superpriority administrative expense claims, pursuant to sections 364(c)(1) and 507(b) of

the Bankruptcy Code, subject only to the Carve Out (as defined below) and the Permitted Prior Liens (as defined below), and liens pursuant to sections 364(c)(2), 364(c)(3), and 364(d)(1) of the Bankruptcy Code in the Collateral (as defined below) (and all proceeds thereof), including, without limitation, all property constituting “Cash Collateral,” as defined in section 363(a) of the Bankruptcy Code, (“**Cash Collateral**”), to secure all DIP Obligations, subject only to the Carve Out and the Permitted Prior Liens;

vii. subject to the proviso herein below, authorizes the Debtors to grant TCG 2.0 Food52, LLC (the “**Prepetition Secured Noteholder**”) valid, enforceable, non-avoidable, automatically and fully perfected security interests, liens, and claims, including allowed administrative expense claims, pursuant to section 507(b) of the Bankruptcy Code, in the DIP Collateral solely to the extent of any Diminution (as defined below) of the Prepetition Collateral, as more fully set forth in this Interim Order, subject and subordinate only to the Carve Out, the Permitted Prior Liens, the DIP Liens, and DIP Superpriority Claims (all as defined below), *provided, however*, only to the same validity, priority, and extent as any prepetition security interest, lien, or claim asserted by the Prepetition Secured Noteholder;

viii. authority for the DIP Lender to take all commercially reasonable actions to implement and effectuate the terms of this Interim Order and the DIP Term Sheet;

ix. authorizes payment of the DIP Fees (as defined below);

x. authorizes the Debtor to waive, as to the DIP Lender and Prepetition Secured Noteholder (subject to and pending entry of the Final Order granting such relief), all of the Debtor’s rights to surcharge against the DIP Collateral and Prepetition Collateral, as applicable, pursuant to section 506(c) of the Bankruptcy Code;

xi. subject to entry of the Final Order granting such relief, determination that the equitable doctrine of marshaling or any other similar doctrine shall not apply with respect to any collateral of the DIP Lender for the benefit of any party other than the DIP Lender;

xii. modification of the automatic stay provided by section 362(a) of the Bankruptcy Code to the extent set forth herein and as necessary to permit the Debtor and the DIP Lender to implement and effectuate the terms and provisions of the DIP Term Sheet and/or the DIP Loan Documents, including, upon entry, the Interim Order, and, subject to the terms of the DIP Term Sheet and DIP Loan Documents (including this Interim Order), to deliver any Carve Out Trigger Notice (as defined herein) or other notices in relation thereto and the exercise of certain rights and remedies, as contemplated hereby and by the DIP Term Sheet and other DIP Loan Documents;

xiii. waiver of any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Interim Order; and

xiv. schedules a final hearing (the “**Final Hearing**”) to consider final approval of the DIP Facility pursuant to the Proposed Final Order, as set forth in the Motion and the DIP Term Sheet.

This Court, having considered the Motion, the DIP Term Sheet, the proposed Interim Order, the (a) *Declaration of Erika Badan in Support of Chapter 11 Petition and First Day Pleadings* and (b) *Declaration of Christopher Saunders in Support of Debtor’s Motion for Entry of Interim and Final Orders (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* (together, the “**DIP Declarations**”), the papers filed with this Court, the evidence submitted and arguments proffered

or adduced at the hearing held before this Court on December 30, 2025 (the “**Interim Hearing**”), and upon the record of the Chapter 11 Case; and adequate notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001 and 9014 and all applicable Local Rules; and it appearing that no other or further notice need be provided; and all objections, responses and reservations of rights with respect to the entry of this Interim Order, if any, having been withdrawn, resolved, or overruled by this Court; and it appearing to this Court that extraordinary circumstances exist and that granting the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estate pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtor, its estate, creditors, and other parties in interest, and is essential for the continued operation of the Debtor’s businesses and the preservation of the value of the Debtor’s assets and represents a sound exercise of the Debtor’s business judgment; and after due deliberation and consideration, and for good and sufficient cause appearing therefor,

THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW BASED UPON THE MOTION, THE REPRESENTATIONS OF COUNSEL AND EVIDENCE SUBMITTED DURING THE INTERIM HEARING:³

a. **Petition Date.** On December 28, 2025 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court commencing this Chapter 11 Case.

³ The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014, and shall take effect and be fully enforceable effective as of the Petition Date immediately upon entry hereof. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

b. **Debtor in Possession.** The Debtor is operating its businesses and managing its properties as a Debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed an official committee of unsecured creditors in the Chapter 11 Case (a “**Creditors’ Committee**”) and no request has been made for the appointment of a trustee or an examiner.

c. **Jurisdiction and Venue.** This Court has core jurisdiction over the Chapter 11 Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for relief sought in this Motion are sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Local Rules 2002-1, 4001-2, and 9013-1.

d. **Notice.** Under the circumstances, the notice given by the Debtor of, and as described in, the Motion, the relief requested therein, and the Interim Hearing constitutes proper notice thereof and complies with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014 and the Local Rules, and no further notice of the relief sought at the Interim Hearing and the relief granted herein is necessary or required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtor and its estate, creditors, and other parties in interest, pending the Final Hearing.

e. **Debtor’s Acknowledgements and Agreements.** Without prejudice to the rights of a Creditors’ Committee or other parties-in-interest as and to the extent set forth in paragraph 31 of this Interim Order, the Debtor admits, stipulates, acknowledges and agrees that:

i. **Prepetition Loan Documents.** Prior to the Petition Date, the Prepetition Secured Noteholder made a loan advance and provided other financial

accommodations to the Debtor pursuant to the terms and conditions set forth in that certain *Secured Promissory Note*, dated as of December 22, 2025, among the Debtor and the Prepetition Secured Noteholder (as amended, supplemented or otherwise modified prior to the Petition Date, and including all exhibits and other ancillary documentation in respect thereof, the “**Prepetition Loan and Security Agreement**”) and all other agreements, documents and instruments executed and/or delivered with, to, or in favor of the Prepetition Secured Noteholder, all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements, and all other related agreements, documents and instruments executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Prepetition Loan and Security Agreement, as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated, and/or replaced at any time prior to the Petition Date, collectively, the “**Prepetition Loan Documents**”).

- ii. **Prepetition Secured Obligations.** As of the Petition Date, the Debtors were indebted under the Prepetition Loan Documents to the Prepetition Secured Noteholder in an aggregate outstanding amount of not less than \$1,505,000 plus accrued interest and other charges accrued, accruing or chargeable with respect thereto, including, but not limited to, any contingent or unliquidated liabilities (the “**Prepetition Secured Obligations**”). The Prepetition Secured Obligations constitute allowed, legal, valid, binding, enforceable, and non-avoidable obligations of Debtor, and are not subject to any offset, defense, counterclaim, avoidance, recharacterization, or subordination, pursuant to the Bankruptcy Code or any other applicable law, and, subject to entry of the Proposed Final Order granting such relief, the Debtor will forever release, shall not assert, and be forever barred from bringing any claim, counterclaim, setoff, or defense of any kind, nature or description which would in any way affect the validity, enforceability, and non-avoidability of any of the Prepetition Secured Obligations.
- iii. **Prepetition Collateral.** As of the Petition Date, and subject to the terms of the Prepetition Loan Documents, the Prepetition Secured Obligations were secured pursuant to the Prepetition Loan Documents by valid, perfected, enforceable, and non-avoidable security interests and liens (the “**Prepetition Liens**”) granted by Debtors to the Prepetition Secured Noteholder under the Prepetition Loan Documents, in substantially all of the existing and after-acquired assets of the Debtor as more fully set forth in the Prepetition Loan Documents (the “**Prepetition Collateral**”).
- iv. **Proof of Claim.** The acknowledgment by the Debtor of the Prepetition Secured Obligations and the liens, rights, priorities, and protections granted to or in favor of Prepetition Secured Noteholder in respect of the Prepetition Collateral as set forth herein and in the Prepetition Loan Documents shall be deemed a timely filed proof of claim on behalf of the Prepetition Secured Noteholder in these Chapter 11 Case.

- v. No claims or causes of action exist against or with respect to the Prepetition Secured Noteholder under any agreements or otherwise by the Debtor.
- vi. Subject to paragraph 31 below and to the entry of the Final Order granting such relief, the Debtor hereby absolutely and unconditionally releases and forever discharges and acquits the Prepetition Secured Noteholder and, solely in such capacities, its representatives and agents (collectively, the “**Prepetition Loan Released Parties**”) from any and all obligations and liabilities to the Debtor (and its successors and assigns) and from any and all claims, counterclaims, demands, debts, accounts, contracts, liabilities, actions and causes of action arising prior to the Petition Date (collectively, the “**Prepetition Loan Released Claims**”) of any kind, nature or description, whether known or unknown, foreseen or unforeseen or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or otherwise, arising out of or related to the Prepetition Loan Documents, the obligations thereof and the deal reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtor at any time had, now have or may have or that its successors or assigns hereafter can or may have against any of the Prepetition Loan Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Interim Order, whether such Prepetition Loan Released Claims are matured or unmatured or known or unknown.

f. **No Credit Available on More Favorable Terms.** The DIP Facility is the best source of debtor-in-possession financing available to the Debtor. Given its current financial condition, financing arrangements, and capital structure, and the circumstances of the Chapter 11 Case, the Debtor has been and continue to be unable to obtain financing from sources other than the DIP Lender on terms more favorable than the DIP Facility. The Debtor is unable to procure financing in the form of unsecured credit allowable as an administrative expense under sections 364(a), 364(b), or 503(b)(1) of the Bankruptcy Code. The Debtor is also unable to obtain secured credit without (i) granting to the DIP Lender the DIP Liens and the DIP Superpriority Claims (each as defined herein) and (ii) incurring the Adequate Protection Obligations (as defined herein), to the extent set forth herein and under the terms and conditions set forth in the DIP Term Sheet and/or the DIP Loan Documents, in each case of (i) and (ii) subject and subordinate (to the extent

provided herein) to the Carve Out and the Permitted Prior Liens, and has been unable to procure the necessary financing on terms more favorable, taken as a whole, than the financing offered by DIP Lender pursuant to the DIP Term Sheet and/or the DIP Loan Documents.

g. **Best Interests of Estate.** It is in the best interests of the Debtor's estate and creditors that the Debtor be allowed to obtain postpetition secured financing from the DIP Lender under the terms and conditions set forth herein and in the DIP Term Sheet and/or the DIP Loan Documents, as such financing is necessary to avoid immediate and irreparable harm to the Debtor's estate and for the continued operation of the Debtor's businesses.

h. **Good Faith.** Based upon the papers filed in this Chapter 11 Case and the proceedings of record in this Chapter 11 Case, (a) the extension of credit and financial accommodations under the DIP Term Sheet and/or the DIP Loan Documents are fair, reasonable, in good faith, negotiated at arm's length, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration; (b) the terms and conditions of the DIP Facility and the use of the Cash Collateral have been negotiated in good faith and at arm's-length among the Debtor and the DIP Lender, and Prepetition Secured Noteholder with the assistance and counsel of their respective advisors; (c) the use of Cash Collateral, including, without limitation, pursuant to this Interim Order, has been allowed in "good faith" within the meaning of section 364(e) of the Bankruptcy Code; (d) any credit to be extended, loans to be made, and other financial accommodations to be extended to the Debtor by the DIP Lender, or the Prepetition Secured Noteholder, including, without limitation, pursuant to this Interim Order, have been allowed, advanced, extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code by the DIP Lender and the Prepetition Secured Noteholder in express reliance

upon the protections offered by section 364(e) of the Bankruptcy Code; (e) the liens, claims, and other covenants and payments as set forth in this Interim Order and the DIP Term Sheet, as well as the protections afforded parties acting in “good faith” under section 364(e) of the Bankruptcy Code are integral, critical and essential components of the DIP Facility provided by the DIP Lender to the Debtor; and (e) the DIP Facility, the DIP Liens (as defined below), the DIP Superpriority Claims (as defined below), the Adequate Protection Liens (as defined below), and Adequate Protection Superpriority Claims (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is reconsidered, vacated, reversed, or modified, on appeal or otherwise. Accordingly, the DIP Lender is entitled to the protections of section 364(e) of the Bankruptcy Code.

i. **Good Cause.** Good cause has been shown for immediate entry of this Interim Order, and the entry of this Interim Order is in the best interests of the Debtor, its estate, and its stakeholders. Among other things, the Debtor has an immediate need for the liquidity provided by the DIP Facility on an interim basis and interim use of Cash Collateral in order to avoid immediate, irreparable harm, and the relief granted herein will minimize disruption of the Debtor’s businesses and permit the Debtor to pay critical expenses necessary to maximize the value of its estate. The interim relief requested in the Motion is necessary, essential, and appropriate, and is in the best interest of and will benefit the Debtor, its creditors, and its estate, as its implementation will, among other things, provide the Debtor with the necessary liquidity to (1) minimize disruption to the Debtor’s businesses and ongoing operations, (2) preserve and maximize the value of the Debtor’s estate for the benefit of all the Debtor’s creditors, and (3) avoid potential immediate and irreparable harm to the Debtor, its creditors, its businesses, its employees, and its assets.

j. **Necessity of DIP Facility Terms.** The terms of this Interim Order, the DIP Term Sheet, and/or the DIP Loan Documents assuring that the liens and the various claims, superpriority claims, and other protections granted in this Interim Order will not be affected by any subsequent reconsideration, reversal or modification, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the postpetition financing arrangement contemplated in the DIP Term Sheet and/or the DIP Loan Documents, are necessary in order to induce the DIP Lender to provide postpetition financing to the Debtor.

k. **Immediate Need for Postpetition Financing and Use of Cash Collateral.** The Debtor has an immediate and critical need to obtain financing pursuant to this Interim Order, the DIP Term Sheet, and/or the DIP Loan Documents and to continue to use the Prepetition Collateral (including Cash Collateral) in order to, among other things, (a) pay the fees, costs, and expenses incurred in connection with the Chapter 11 Case, (b) fund any obligations benefitting from the Carve Out, (c) permit the orderly continuation of the operation of its businesses, (d) maintain business relationships with customers, vendors, and suppliers, (e) make payroll, and (f) satisfy other working capital and operational needs. The incurrence of new debt under this DIP Order, the DIP Term Sheet, and/or the DIP Loan Documents and use of Cash Collateral is in the best interest of the Debtor's estate and necessary and vital to the preservation and maintenance of the going concern value of the Debtor. Immediate and irreparable harm will be caused to the Debtor and its estate if immediate financing is not obtained and permission to use Cash Collateral is not granted. The extensions of credit under this Interim Order, the DIP Term Sheet, and/or the DIP Loan Documents are fair and reasonable, and the Debtor's entry into the DIP Facility reflects the Debtor's exercise of prudent business judgment and is supported by reasonably equivalent value

and fair consideration. The adequate protection provided in this Interim Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

1. **Willingness to Provide Financing.** The DIP Lender has committed to provide financing to the Debtor subject to: (a) entry of this Interim Order and the Final Order; (b) approval of the terms and conditions of the DIP Term Sheet, the DIP Facility, and those set forth in the DIP Loan Documents; (c) satisfaction of the closing conditions set forth in the DIP Loan Documents; and (d) findings by this Court that the DIP Facility is essential to the Debtor's estate, that the DIP Lender is extending credit to the Debtor pursuant to this Interim Order, the DIP Term Sheet, and/or the DIP Loan Documents in good faith, and that the DIP Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order, the DIP Term Sheet, and/or the DIP Loan Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

m. **Priming of Prepetition Liens.** The priming of the security interests in and liens on the Prepetition Collateral (collectively, the "**Prepetition Liens**") under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Term Sheet (and/or the DIP Loan Documents) and as further described below, will enable the Debtor to obtain the DIP Facility and to continue to operate its businesses for the benefit of its estate and creditors, and the Debtor would not be able to obtain debtor-in-possession financing in a sufficient amount without granting such priming liens. Consistent with the requirements of section 364(d) of the Bankruptcy Code, and without waiving the Debtors' right to assert any and all challenges, causes of action, and claims against the Prepetition Secured Noteholder, the Prepetition Secured Noteholder shall receive adequate protection as set forth in this Interim Order, pursuant to sections 361, 363, and 364 of the Bankruptcy Code, solely to the extent of any decrease in the value of its interest, if any, in the

Prepetition Collateral (including Cash Collateral) resulting from (a) the use, sale, or lease by the Debtors of the Prepetition Collateral during the pendency of the Chapter 11 Case, (b) the DIP Liens and the Carve Out pursuant to this Interim Order, the DIP Term Sheet, and/or the DIP Loan Documents, or (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (such actual diminution, collectively, “**Diminution**”).

n. **DIP Budget.** The Debtor has prepared and delivered to the DIP Lender and its advisors an initial budget attached hereto as Schedule 1 (together with any additional line-item or other detail and supplements as may be provided pursuant to the terms of the DIP Term Sheet, the “**Approved Budget**”). The Approved Budget has been reviewed by the Debtor, its management, and its advisors, and the Debtor believes that the Approved Budget is reasonable under the circumstances. The DIP Lender is relying, in part, upon the Debtor’s agreement to comply with the Approved Budget (subject only to Permitted Variances) and the terms of the Term Sheet in determining to enter into the DIP Facility and to consent to the use of Cash Collateral provided for in this Interim Order.

o. **Extraordinary Circumstances.** Extraordinary circumstances exist within the meaning of Local Rule 4001–2(b) as set forth in the Motion and at the Interim Hearing to the extent necessary to justify the relief set forth in this Interim Order.

p. **Use of Cash Collateral and Proceeds of DIP Facility.** As a condition to the Debtor’s entry into the DIP Term Sheet and/or the DIP Loan Documents and the extension of credit under the DIP Facility and the authorization to use Prepetition Collateral, including Cash Collateral, the Debtor has agreed that Cash Collateral and the proceeds of the DIP Facility shall be used solely in accordance with the terms and conditions of this Interim Order, the DIP Term Sheet and/or DIP Loan Documents, and the Approved Budget (subject only to Permitted Variances).

q. **Adequate Protection.** As part of the adequate protection provided by this Interim Order, the Prepetition Secured Noteholder shall receive, among other things, replacement liens and superpriority claims with the same validity, priority and extent of any liens asserted by the Prepetition Secured Noteholder, subject in all respects to the Carve-Out. The terms of the Adequate Protection Obligations (as defined in paragraph 13 below) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and are sufficient to allow the Debtor's use of the Prepetition Collateral (including the Cash Collateral) and to permit the relief granted in this Interim Order.

r. **Sections 506(c), 552(b) and Marshaling.** In light of the DIP Lender's agreement that its liens and superpriority claims shall be subject to payment of the Carve Out and the Permitted Prior Liens, the DIP Lender has negotiated for, and the Debtor intend to seek in the Final Order, (a) a waiver of the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, the DIP Obligations, Prepetition Collateral, and the Prepetition Secured Obligations in favor of the DIP Lender and Prepetition Secured Noteholder, as applicable, (b) a waiver of any "equity of the case" exception under section 552(b) of the Bankruptcy Code in connection with the DIP Facility and the use of Cash Collateral and the Prepetition Liens, and (c) a waiver of the provisions of section 506(c) of the Bankruptcy Code with respect to the collateral of the DIP Lender and Prepetition Secured Noteholder.

s. **Business Judgment.** Based on the Motion, the DIP Declarations, and the record presented to this Court at the Interim Hearing, (i) the terms of the financing embodied in the DIP Loan Documents, including the fees, expenses, and other charges paid and to be paid thereunder or in connection therewith, (ii) the adequate protection authorized by the Interim Order and DIP Loan Documents, and (iii) the terms on which the Debtor may continue to use the Prepetition

Collateral (including Cash Collateral), in each case pursuant to this Interim Order and the DIP Loan Documents, are fair and reasonable, reflect the Debtor's exercise of prudent business judgment, constitute reasonably equivalent value and fair consideration, and represent the best financing and terms available under the circumstances.

t. **Immediate Entry.** Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the applicable Local Rules.

NOW, THEREFORE, based upon the foregoing findings and conclusions, the Motion and the record before this Court with respect to the Motion, and after due consideration and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. **Motion Granted.** Entry into the DIP Credit Agreement and other DIP Loan Documents is authorized and approved, and the use of Cash Collateral on an interim basis is authorized, in each case, subject to the terms and conditions set forth in this Interim Order and in the DIP Loan Documents, including but not limited to the Approved Budget (subject only to Permitted Variances). All objections to this Interim Order to the extent not withdrawn, waived, settled or resolved, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry. For the avoidance of doubt, the rights of all parties in interest to object to the entry of the Final Order are expressly reserved.

2. **Authorization of the DIP Facility.** The Debtor is expressly and immediately authorized and empowered to execute and deliver the DIP Loan Documents, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Loan Documents, and to execute, deliver, and perform under all instruments,

certificates, agreements, and documents which may be required or necessary for the performance by the Debtor under the DIP Loan Documents, and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Loan Documents. The Debtor is hereby authorized to pay, in accordance with this Interim Order, the DIP Loan Documents, and the Approved Budget (subject only to Permitted Variances), any principal, interest, fees, expenses, and other amounts described in the DIP Loan Documents and this Interim Order, as such amounts become due and owing, without need to obtain further Court approval (except as otherwise provided herein or in the DIP Loan Documents) subject to and in accordance with the terms hereof and thereof, including, without limitation, any reasonable and documented fees and disbursements of counsel to the DIP Lender, as set forth herein and in the DIP Loan Documents, subject to paragraph 27 of this Interim Order, whether or not such professional fees and disbursements arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order and the DIP Loan Documents. Upon execution and delivery, the DIP Loan Documents shall represent legal, valid, and binding obligations of the Debtor, enforceable against the Debtor and its estate in accordance with their terms. Each officer of the Debtor acting individually is hereby authorized to execute and deliver each of the DIP Loan Documents.

3. **DIP Obligations.** The DIP Loan Documents and this Interim Order shall constitute and evidence the validity and binding effect of the Debtor's DIP Obligations. All DIP Obligations shall be enforceable against the Debtor, its estate, and any successor thereto, including without limitation, any trustee appointed in the Chapter 11 Case, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of the Chapter 11 Case, or in any other proceeding

superseding or related to any of the foregoing (the “**Successor Case**”). Upon entry of this Interim Order, the DIP Obligations will include, but not be limited to, (a) the due and punctual payment by the Debtor of (i) the unpaid principal amount of and interest on (including interest accruing after the maturity of the DIP Loans and interest accruing after the Petition Date) the DIP Loans, as and when due, whether at maturity, by acceleration or otherwise, and (ii) all other monetary obligations, including advances, debts, liabilities, obligations, fees, including, but not limited to, costs, expenses and indemnities, whether primary, secondary, direct, indirect, absolute or contingent, due or to become due, now existing or hereafter arising, fixed or otherwise, of the Debtor to the DIP Lender under the DIP Loan Documents and this Interim Order, and (b) the due and punctual payment and performance of all covenants, duties, agreements, obligations and liabilities of the Debtor to the DIP Lender under or pursuant to the DIP Loan Documents and this Interim Order. The Debtor shall be liable for the DIP Obligations. Absent an Event of Default, the DIP Obligations shall become due and payable, without notice or demand, on the Maturity Date. No obligation, payment, transfer, or grant of collateral as security hereunder or under the DIP Loan Documents (including any DIP Obligation or DIP Liens) to the DIP Lender shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547–550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or be subject to any disgorgement, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), claim, counterclaim, charge, assessment, cross-claim, defense, or any other liability or challenge under

the Bankruptcy Code or any applicable law or regulation by any person or entity for any reason, subject to paragraph 31 of this Interim Order.

4. **Authorization to Borrow.** To prevent immediate and irreparable harm to the Debtor's estate, and to enable the Debtor to continue to operate its businesses and preserve and maximize the value of its estate, subject to the terms and conditions set forth in the DIP Loan Documents and this Interim Order, the Debtor is hereby authorized to borrow under the DIP Facility, subject to any limitations on, or conditions to, borrowing under the DIP Loan Documents, which borrowings shall be used solely for purposes permitted under the DIP Loan Documents, including, without limitation, to provide working capital for the Debtor and to pay interest, fees, costs, charges, and expenses, in each case, in accordance with this Interim Order, the DIP Loan Documents, and the Approved Budget (subject only to Permitted Variances). Subject to the terms, conditions, and limitations on availability set forth in the DIP Loan Documents and this Interim Order, the Debtor is hereby authorized to (i) borrow borrowings up to an aggregate principal amount of \$3.42 million of DIP Loans, of which the Interim Advance, in the amount of \$1.92 million shall be made available to the Debtor and may be drawn in a single draw on the Closing Date; and (ii) use the Cash Collateral for the purposes described in this Interim Order. Under no circumstances shall the DIP Lender have any obligation to lend any amounts above the DIP Commitments (as such term is defined in the DIP Term Sheet).

5. **DIP Collateral.** To secure the DIP Obligations, effective immediately upon entry of this Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Lender is hereby granted, subject only to the Carve Out and Permitted Prior Liens, continuing, valid, binding, enforceable, nonavoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the "**DIP Liens**") the DIP

Collateral. The term “**DIP Collateral**” means, collectively, the Debtor’s right, title, and interest in, to and under all the Debtor’s assets, including, but not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located: any and all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables, chattel paper, contract rights, inventory (wherever located), instruments (including, without limitation, promissory notes), documents, securities (whether or not marketable) and investment property (including, without limitation, all of the issued and outstanding capital stock of the Debtor, all securities accounts and security entitlements related thereto, and financial assets carried therein, and all commodity accounts and commodity contracts), hedge agreements, ships and vessels, furniture, fixtures, equipment (including documents of title), goods, vehicles, franchise rights, trade names, trademarks, service marks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles and hedging arrangements), rights to the payment of money (including, without limitation, tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action (including, subject to the entry of a Final Order granting such relief, Avoidance Actions (as defined herein)), and all substitutions, indemnification rights, all present and future intercompany debt, fee interests in real property owned by the Debtor, books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks, and other electronic storage media and related data processing software related to the foregoing, and accessions, products, rents, profits, and proceeds of the foregoing, wherever located, including insurance proceeds or other proceeds; (b) all owned real property interests and all proceeds of leased real property; (c) actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP

Collateral; (d) subject to and upon entry of the Final Order granting such relief, the proceeds of any avoidance actions (such actions, “**Avoidance Actions**”) brought pursuant to chapter 5 of the Bankruptcy Code or section 724(a) of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or applicable state law or foreign law equivalents.

6. **Disposition of Collateral.** Notwithstanding anything otherwise provided herein, it shall be an Event of Default within the meaning of the DIP Loan Documents if the Debtor sells, transfers, leases, encumbers or otherwise disposes of any portion of the DIP Collateral, other than in the ordinary course of business or in connection with the payments contemplated under this Interim Order or the Approved Budget (subject only to Permitted Variances), without the prior written consent of the DIP Lender (and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Lender or from any order of this Court), which consent shall not unreasonably be withheld or delayed. Notwithstanding anything otherwise provided herein, 100% of any net cash proceeds of any sale of DIP Collateral outside of the ordinary course of business shall be used to immediately satisfy the DIP Obligations any applicable Permitted Prior Liens.

7. **DIP Liens.** To secure the DIP Obligations, immediately upon and effective as of entry of this Interim Order, the DIP Lender is hereby granted on a final basis, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected first priority DIP Liens in the DIP Collateral as follows, in each case subject to the Carve-Out and Permitted Prior Liens:

(i) **Liens Priming the Prepetition Liens.** Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, binding, continuing, enforceable, non-avoidable automatically and fully perfected first priority senior priming liens and security interests in all DIP Collateral, regardless of where located, which senior priming liens and security interests in favor of the DIP Lender shall be senior to Prepetition Liens. For the avoidance of doubt, as a result of the priming of the Prepetition Loan

Obligations and Prepetition Liens pursuant to this Interim Order, the DIP Lender shall have a first priority senior priming lien on all DIP Collateral, including but not limited to the Prepetition Collateral;

(ii) **Liens on Unencumbered Property.** Pursuant to section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, non-avoidable, automatically, and fully perfected first priority liens on and security interests in all DIP Collateral that is not otherwise subject to any valid, enforceable, and non-avoidable liens on and security interests; and

(iii) **Liens Junior to Certain Other Liens.** Pursuant to section 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable automatically and fully perfected junior liens on and security interests in all DIP Collateral (other than as set forth in clauses (a) and (b)) junior only to the “**Permitted Prior Liens**” which shall be limited to valid, enforceable, and non-avoidable liens that are (a) either perfected as of the Petition Date or perfected on or after the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code, (b) not subject to avoidance, disallowance, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (c) senior in priority to the DIP Lender’s Liens under applicable law and after giving effect to any lien release, subordination or inter-creditor agreements; *provided* that Permitted Prior Liens shall not include the liens of Avidbank or the Prepetition Liens.

Other than as set forth herein or in the DIP Loan Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Case or any Successor Case, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Case or any Successor Case, upon the conversion of any of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Case or Successor Case. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any of the Debtor’s estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

8. **DIP Superpriority Claims.** Subject to payment of the Carve Out, upon entry of this Interim Order, the DIP Lender is hereby granted, pursuant to section 364(c)(1) of the

Bankruptcy Code, allowed superpriority administrative expense claims in the Chapter 11 Case and any Successor Case (collectively, the “**DIP Superpriority Claims**”) for all DIP Obligations (a) with priority over any and all administrative expense claims and unsecured claims against the Debtor’s or its estate in the Chapter 11 Case and any Successor Case, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, and in each case to the extent authorized by the Bankruptcy Code, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code, and (b) which shall at all times be senior to the rights of the Debtor and its estate, and any successor trustee or other estate representative to the extent permitted by law.

9. **No Obligation to Extend Credit.** The DIP Lender shall have no obligation to make any loan or advance under the DIP Loan Documents unless all of the conditions precedent under the DIP Loan Documents and this Interim Order have been satisfied in full or waived by the DIP Lender (in its sole discretion) in accordance with the terms of the DIP Loan Documents.

10. **Use of DIP Facility Proceeds.** From and after the Petition Date, the Debtor shall be permitted to use advances of credit under the DIP Facility only for the purposes specifically set forth in this Interim Order and the DIP Loan Documents, and only in compliance with the Approved Budget (subject only to Permitted Variances) and the terms and conditions in this Interim Order and the DIP Loan Documents. Notwithstanding anything herein, the extensions of credit under the DIP Facility shall not constitute Cash Collateral of the Prepetition Secured Noteholder. The Debtor is permitted to pay and satisfy in full the secured claim of Avidbank so long as the amount of Avidbank’s secured claim does not exceed \$411,000.

11. **No Monitoring Obligation.** The DIP Lender shall not have any obligation or responsibility to monitor the Debtor's use of the DIP Facility, and the DIP Lender may rely upon the Debtor's representation that the use of the DIP Facility at any time is in accordance with the requirements of this Interim Order and the DIP Loan Documents, including but not limited to the Approved Budget.

12. **Authorization to Use Cash Collateral.** Subject to the terms and conditions of this Interim Order and the DIP Loan Documents, and in accordance with the Approved Budget (subject only to Permitted Variances), the Debtor is authorized to use Cash Collateral until the DIP Termination Date. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtor outside the ordinary course of business, or the Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted by this Interim Order, the DIP Loan Documents, and in accordance with the Approved Budget (subject only to Permitted Variances), as applicable.

13. **Adequate Protection for Prepetition Secured Noteholder.** As adequate protection solely to the extent of any Diminution of the Prepetition Secured Noteholder's asserted interest in the Prepetition Collateral resulting from the subordination of the Prepetition Secured Noteholder Subordinated Liens to the DIP Liens and the Carve Out, the Prepetition Secured Noteholder shall receive the following ("**Adequate Protection Obligations**"), *provided, however*, that such Adequate Protection Obligations shall be subject to the same validity, priority, and extent as any Prepetition Secured Noteholder Liens or claims asserted by the Prepetition Secured Noteholder.

a. **Adequate Protection Liens.** Continuing valid, binding, enforceable, and perfected postpetition replacement liens pursuant to sections 361, 363(e), and 364(d)(l) of the Bankruptcy Code on the DIP Collateral, which shall be subject and subordinated only to the Carve

Out, the DIP Liens, and Permitted Prior Liens (the “**Adequate Protection Liens**”) and which (a) shall otherwise be senior to all other security interests in, liens on, or claims against the DIP Collateral, and (b) shall not otherwise be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Case or any Successor Case and shall be valid and enforceable against any trustee appointed in the Chapter 11 Case or any Successor Case, and shall not be subject to sections 510, 549 or 550 of the Bankruptcy Code.

b. **Adequate Protection Superpriority Claim.** Administrative superpriority expense claims in the Chapter 11 Case (the “**Adequate Protection Superpriority Claims**”), junior and subordinate only to the Carve Out and the DIP Superpriority Claims, pursuant to section 507(b) otherwise with priority over any and all other administrative expenses and unsecured claims against the Debtor or its estate, now existing or hereafter arising, of any kind or nature whatsoever as to and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code. The Prepetition Secured Noteholder shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection Superpriority Claims unless and until the DIP Obligations have indefeasibly been paid in cash in full and all commitments to extend credit under the DIP Facility and Prepetition Loan Documents have been terminated.

14. **Amendments of the DIP Loan Documents.** The Debtor and the DIP Lender may enter into one or more amendments, waivers, consents, or other modifications to and under the DIP Loan Documents, in each case in accordance with the terms of the applicable DIP Loan Documents and in such form as the Debtor and the DIP Lender agree and no further approval of this Court shall be required for any amendment, waiver, consent, or other modification to and under the DIP Loan Documents (and any fees paid in connection therewith) that does not materially and adversely affect any of the Debtor or which does not (i) shorten the maturity of the

DIP Facility, (ii) increase the principal amount of, the rate of interest on, or the fees payable in connection with the DIP Facility, or (iii) change any Event of Default (as defined in the DIP Loan Documents), add any covenants, or amend the covenants in each case to be materially more restrictive (any such amendment, a “**Non-Material Amendment**”); *provided, however*, notice of any such Non-Material Amendment shall be provided by the Debtor to the U.S. Trustee and the Creditors’ Committee (if any) seven days in advance of its effectiveness, to the extent reasonably practicable. The U.S. Trustee and the Creditors’ Committee (if any) shall each retain the right to object to any such Non-Material Amendment on the grounds that the proposed amendment is material and should be subject to the notice procedures with respect to material amendments. No consent to any such amendment, waiver, consent, or modification set forth in this paragraph shall be implied by any action, inaction, or acquiescence of the DIP Lender. After obtaining the DIP Lender’s prior written consent, the Debtor are authorized and empowered, without further notice and hearing or approval of this Court, to amend, modify, supplement, or waive any provision of the DIP Loan Documents to reflect a Non-Material Amendment in accordance with the provisions thereof. Any material amendment of the DIP Loan Documents shall be subject to approval by the DIP Lender and this Court upon notice and a hearing.

15. **DIP Budget and DIP Facility Reporting.** Except as otherwise provided herein or approved by the DIP Lender, the proceeds from the DIP Facility shall be used only in compliance with the terms of the DIP Term Sheet (and/or the DIP Loan Documents) and the Approved Budget (subject only to Permitted Variances). The Debtor shall comply with the reporting requirements and obligations set forth in the DIP Term Sheet (and/or the DIP Loan Documents).

16. **Perfection of DIP Liens and Adequate Protection Liens.** This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all

liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens or to entitle the DIP Lender and the Prepetition Secured Noteholder to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender and the Prepetition Secured Noteholder are authorized, but not required, to file, as each deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Adequate Protection Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The DIP Lender and the Prepetition Secured Noteholder may each, in its discretion, file an electronic copy or photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office in addition to or in lieu of such financing statements, notices of lien or similar instruments. To the extent that the Prepetition Secured Noteholder is, with respect to the DIP Collateral, the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements or any other Prepetition Loan Documents or is listed as loss payee, lenders' loss payee or additional insured under any of a Debtor's insurance policies, the DIP Lender shall also be

deemed to be the secured party or mortgagee, as applicable, under such documents or to be the loss payee or additional insured, as applicable.

17. **Modification of Automatic Stay.** The automatic stay of section 362 of the Bankruptcy Code is hereby modified and vacated to the extent necessary to permit the Debtor, the DIP Lender and/or the Prepetition Secured Noteholder to accomplish the transactions contemplated by this Interim Order.

18. **Proceeds of Subsequent Financing.** If any of the Debtor, any trustee, any examiner, or any responsible officer subsequently appointed in any of the Chapter 11 Case or any Successor Case, shall obtain credit or incur debt pursuant to sections 364(b), 364(c), or 364(d) of the Bankruptcy Code in violation of the DIP Loan Documents at any time prior to the indefeasible repayment in full in cash of all DIP Obligations (other than unasserted contingent obligations that expressly survive termination of the DIP Loan Documents) and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, then, after satisfaction of the Carve Out, and unless otherwise agreed by the DIP Lender, all cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Lender to be distributed in accordance with this Interim Order and the DIP Loan Documents.

19. **Payments Held in Trust.** Except as expressly permitted in this Interim Order or the DIP Loan Documents or otherwise ordered by this Court, including in respect of the Carve Out, in the event that any person or entity receives any payment on account of a security interest in the DIP Collateral or receives any DIP Collateral or any proceeds of DIP Collateral prior to indefeasible payment in full in cash of all DIP Obligations under the DIP Loan Documents, and termination of the DIP Facility in accordance with the DIP Credit Agreement, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral

and shall immediately turn over such proceeds to the DIP Lender, for application in accordance with the DIP Credit Agreement and this Interim Order.

20. **Maintenance of DIP Collateral.** Until the payment in full of the DIP Obligations, the Debtor shall: (a) insure the DIP Collateral as required under the DIP Loan Documents or the Prepetition Loan Documents, as applicable; and (b) maintain the cash management system consistent with the terms and conditions of any order(s) governing the Debtor's cash management systems and the DIP Loan Documents.

21. **Right to Credit Bid.** Subject to section 363(k) of the Bankruptcy Code, the DIP Lender may credit bid all or any portion of its claims, including, without limitation, the DIP Obligations and the DIP Superpriority Claim, in connection with any proposed sale of any, all, or substantially all of the Debtor's assets, whether occurring pursuant to section 363 of the Bankruptcy Code or included as part of a reorganization plan under section 1123 of the Bankruptcy Code, including a plan subject to confirmation under section 1129(b)(2)(A)(ii) of the Bankruptcy Code, or a sale or disposition by a chapter 7 trustee for any of the Debtor under section 725 of the Bankruptcy Code. In connection with any such credit bid by the DIP Lender, the Debtor shall, upon reasonable advance notice by the DIP Lender, provide for the assignment of such DIP Lender's right to purchase the acquired assets to one or more of the DIP Lender's sub-agents or a newly formed acquisition vehicle.

22. **DIP Termination Event; Exercise of Remedies.**

(a) **DIP Termination Events.** An "Event of Default" shall exist upon the occurrence of any of the events listed in Section 27 of the DIP Term Sheet that triggers the DIP Termination Date (as defined in the DIP Term Sheet).

(b) **Exercise of Remedies.** Upon the occurrence of a DIP Termination Event, without further notice to, hearing of, application to, or order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the DIP Lender to take any of the following actions, at the same or different time: (i) deliver a written notice (which may be via electronic mail) to counsel for the Debtor, the U.S. Trustee, and counsel for the Creditors Committee, if any, (the “**Remedies Notice**”) declaring the occurrence of a DIP Termination Event (such date, the “**DIP Termination Declaration Date**”) and/or deliver a Carve Out Trigger Notice (as defined and in the manner described below), (ii) declare the termination, reduction or restriction of the commitments under the DIP Facility (to the extent any such commitment remains), (iii) declare all DIP Obligations to be immediately due and payable, without presentment, demand or protest or other notice of any kind, all of which are expressly waived by the Debtor, (iv) declare the termination, restriction or reduction of the DIP Facility and the Term Sheet (and/or the DIP Loan Documents) as to any further liability or obligation thereunder, but without affecting the DIP Liens, the DIP Superpriority Claims, or the DIP Obligations, (v) charge default interest at the default rate set forth in the DIP Term Sheet, and (vi) declare the termination, restriction, or revocation of the ability of the Debtor to use Cash Collateral.

(c) **Waiting Period Procedures.** The Debtor may seek an emergency hearing during the period beginning on the DIP Termination Date and prior to the expiration of the five (5) days following the DIP Termination Date (such period, the “**Waiting Period**”). During the Waiting Period, the Debtor shall continue to have the right to use DIP Collateral (including Cash Collateral) in accordance with the terms of this Interim Order, solely to pay any expenses which are necessary to (a) preserve the Debtor’s going-concern value or (b) contest in good faith the

occurrence of the Maturity Date or Event of Default; provided, however, that the professional fees and expenses of the Professional Persons (as defined below) shall be governed by Paragraph 24 and subject to the Approved Budget. The DIP Lender shall not (x) object to any motion filed by the Debtor during the Waiting Period seeking an expedited hearing with respect to the Remedies Notice or (y) seek to reduce such Waiting Period.

(d) **Rights and Remedies Following Termination Date.** Following a DIP Termination Date and unless this Court has entered an order prior to the expiration of the Waiting Period finding that an Event of Default has not occurred, the DIP Lender shall be entitled to exercise all rights and remedies in accordance with the DIP Term Sheet (and/or the DIP Loan Documents), this Interim Order, and applicable law and the automatic stay of section 362 of the Bankruptcy Code shall automatically, without further order, be lifted, to allow the DIP Lender to pursue all rights and remedies in accordance with the Term Sheet (and/or the DIP Loan Documents), this Interim Order, and applicable law; *provided, however*, that if an emergency hearing is requested before the end of the Waiting Period but is scheduled for a later date by this Court, then the Waiting Period shall be automatically extended until this Court issues an order or ruling with respect thereto.

23. **No Waiver by Failure to Seek Relief.** The rights and remedies of the DIP Lender specified herein are cumulative and not exclusive of any rights or remedies that the DIP Lender may have under this Interim Order, the DIP Term Sheet (and/or the DIP Loan Documents), applicable law, or otherwise. The failure or delay on the part of the DIP Lender to seek relief or otherwise exercise its rights and remedies under this Interim Order, the DIP Term Sheet (and/or the DIP Loan Documents), or applicable law, as the case may be, shall not constitute a waiver of any of its respective rights hereunder, thereunder, or otherwise. Except as expressly set forth

herein, none of the rights or remedies of the DIP Lender under this Interim Order or the DIP Term Sheet (and/or the DIP Loan Documents) shall be deemed to have been amended, modified, suspended, or waived unless such amendment, modification, suspension, or waiver is express, in writing and signed by the DIP Lender. No consents required hereunder by the DIP Lender shall be implied by any inaction or acquiescence by the DIP Lender.

24. **Carve Out.**

(a) **Priority of Carve Out.** The DIP Liens and the DIP Superpriority Claims shall be subject and subordinate to payment of the Carve Out. The Carve Out shall be senior to all claims and liens over the Professional Fee Reserve and, all assets of the Debtor in an amount not in excess of the Post-Carve Out Trigger Notice Cap, including any DIP Collateral, as set forth in this Interim Order.

(b) **Carve Out.** The term “Carve Out” shall mean the sum of (i) all fees required to be paid to the Clerk of this Court and to the U.S. Trustee under 28 U.S.C. § 1930(a), together with any interest thereon pursuant to 31 U.S.C. § 3717 (“**Statutory Fees**”), which shall not be subject to any Approved Budget; (ii) Court-allowed fees and expenses of a trustee appointed under section 726(b) of the Bankruptcy Code in an amount not to exceed \$25,000; (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “**Allowed Professional Fees**”) incurred by persons or firms retained by the Debtor pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the “**Debtor Professionals**”), or any Creditors’ Committee(s), pursuant to sections 328 or 1103 of the Bankruptcy Code (the “**Committee Professionals**,” together with the Debtor Professionals, the “**Professional Persons**”), at any time before or on the first business day following delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by this Court

prior to or after delivery of a Carve Out Trigger Notice (the “**Pre-Trigger Date Fees**”), subject to and not to exceed the Approved Budget and any limits by this Interim Order, provided that Professional Persons may carry forward budgeted but unused disbursements set forth in the Approved Budget for any week for use in any subsequent week; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$125,000 incurred after the first calendar day following delivery by the DIP Lender of the Carve Out Trigger Notice (the “**Trigger Date**”), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “**Post-Carve Out Trigger Notice Cap**” and together with the Pre-Trigger Date Fees, the “**Carve Out Cap**”); *provided, however*, that nothing herein shall be construed to impair the ability of the DIP Lender to object to the fees, expenses, reimbursement, or compensation described in clauses (iii) or (iv) above, on any grounds.

(c) For purposes of the foregoing, “**Carve Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by the DIP Lender or its counsel to the Debtor, its counsel, the U.S. Trustee, counsel to any Creditors’ Committee, and counsel to the Prepetition Secured Noteholder, which notice may be delivered only following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Loans, stating that the Post-Carve Out Trigger Notice Cap has been invoked. On the day on which a Carve Out Trigger Notice is received by the Debtor, the Carve Out Trigger Notice shall constitute a demand to the Debtor to transfer cash to the Professional Fee Reserve (defined below) in an amount equal to the Carve Out Cap and upon such transfer the Carve Out with respect to Allowed Professional Fees shall exclusively relate to funds in the Professional Fee Reserve.

(d) On a weekly basis, the fees of the Professional Persons provided in the Approved Budget shall be funded into an escrow account with Kurtzman Carson Consultants, LLC dba Verita Global to satisfy the professional fees included within the Carve Out (the “**Professional Fee Reserve**”). The funds on deposit in the Professional Fee Reserve shall be available to satisfy the obligations owed to the Professional Persons benefiting from the Carve Out, and the DIP Lender shall have a security interest upon the Professional Fee Reserve, which will be available to the DIP Lender following satisfaction in cash in full of all obligations benefiting from the Carve Out. The Professional Person’s right to the Carve Out shall be satisfied exclusively from the Professional Fee Reserve unless the DIP Obligations have been fully paid.

(e) **Carve Out Account.** Immediately upon the delivery of a Carve Out Trigger Notice, and prior to the payment of any DIP Obligations, the Debtor shall be required to deposit cash in an amount up to the Carve Out Cap into the Professional Fee Reserve. The Professional Fee Reserve shall be available only to satisfy amounts included in the Carve Out until such amounts are paid in full, and thereafter available to the DIP Lender. The amount in the Professional Fee Reserve shall be reduced on a dollar-for-dollar basis for amounts included in the Carve Out that are paid after the delivery of the Carve Out Trigger Notice, and the Professional Fee Reserve shall not be replenished for such amounts so paid.

(f) **Carve Out Draw.** Subject to exhaustion of the DIP Commitments, the Debtor shall be permitted to use proceeds of the DIP Facility in the amount of the Carve Out less the amounts contained in the Professional Fee Reserve, notwithstanding any default, Event of Default, or the occurrence of a Trigger Date; provided, however, the DIP Lender shall not have any obligation to fund any Carve Out shortfall beyond what it is obligated to fund under the DIP Commitments. Any Carve Out Trigger Notice shall be deemed a consent by the DIP Lender to

the Debtor depositing Cash Collateral or proceeds of the DIP Facility into the Professional Fee Reserve up to amounts set forth in the Approved Budget so that the amount in the Professional Fee Reserve equals the sum of the Carve Out Cap.

(g) **Payment of Allowed Professional Fees Prior to the Trigger Date.** Any payment or reimbursement made prior to the occurrence of the Trigger Date in respect of any Allowed Professional Fees shall be made from the Professional Fee Reserve.

(h) **No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees.** The DIP Lender shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any of the Professional Persons incurred in connection with the Chapter 11 Case or any Successor Case under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender in any way to pay compensation to, or to reimburse expenses of, any of the Professional Persons, or to guarantee that the Debtor or its estate has sufficient funds to pay such compensation or reimbursement. Notwithstanding any provision in this paragraph to the contrary, no portion of the Carve Out, any Cash Collateral, any DIP Collateral or any proceeds of the DIP Facility (including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve Out) shall be utilized for the payment of professional fees and disbursements to the extent restricted under paragraph 24 herein. Nothing herein shall be construed as consent to the allowance of any fees and/or expenses of any Professional Persons in the Chapter 11 Case or any Successor Case, or of any other person or entity, or shall affect the right of the Debtor, the DIP Lender and the Prepetition Secured Noteholder, or any other party in interest to object to the allowance and/or payment of any such fees and expenses or amounts incurred or requested.

25. **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order.** The DIP Lender has acted in good faith in connection with the DIP Facility, the DIP Loan Documents, and this Interim Order, and is entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, and notwithstanding any modification, amendment or vacatur of any or all of the provisions of this Interim Order by a subsequent order of this Court or any other court, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code.

26. **Approval of DIP Fees.** In consideration for the DIP Facility, the DIP Lender shall be paid all fees, expenses and other amounts payable under the DIP Loan Documents as such become due, including, without limitation, the Exit Fee⁴, and reasonable and documented fees and expenses of the DIP Lender in connection with the DIP Facility, without regard to whether or not the transactions contemplated hereby are consummated (all such fees, together, the “**DIP Fees**”). The DIP Fees are hereby deemed to be fully earned and payable in accordance with the terms of the DIP Loan Documents without the need for any further order of this Court. The DIP Fees shall be part of the DIP Obligations.

27. **DIP Lender’s Professionals’ Fees.** Professionals for the DIP Lender (Moore & Van Allen PLLC and Chipman Brown Cicero & Cole, LLP)) (the “**DIP Lender’s Professionals**,” and each a “**DIP Lender’s Professional**”) shall provide summary copies of its invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent

⁴ The Exit Fee will only be payable by the Debtor if the DIP Lender is not approved as the stalking horse for the purchase of the Debtor’s assets or the break up fee and expense reimbursement provisions of the Debtor’s bidding procedures motion have been otherwise denied.

necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) by electronic mail to counsel to the Debtor, counsel to the Creditors' Committee (if appointed), and the U.S. Trustee. Upon the maturity of the DIP Facility, if the DIP Lender is not the successful bidder for the Debtor's assets or the sale of the assets to the DIP Lender is not consummated, the Debtor shall promptly pay in full in cash all such invoiced fees and expenses at the conclusion of the Review Period (as defined below) other than the Disputed Invoiced Fees (as defined below). Any objections raised by the Debtor, the U.S. Trustee or the Creditors' Committee (if appointed) with respect to such invoices (the "**Disputed Invoiced Fees**") must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) days of the receipt of such invoice (the "**Review Period**") (to be followed by the filing with this Court, if necessary, of a motion or other pleading, with at least ten (10) days' prior written notice by the submitting party of any hearing on such motion or other pleading). The U.S. Trustee reserves the rights to seek copies of invoices containing the detailed time entries of any professional and to seek to obtain unredacted copies of any invoices. No DIP Lender's Professionals shall be required to file an application seeking compensation for services or reimbursement of expenses with this Court. Any and all fees, costs, and expenses paid prior to the Petition Date by the Debtor to the DIP Lender in connection with the DIP Facility (including payment to the DIP Lender's Professionals and funding retainers) are hereby approved in full. For the avoidance of doubt, if the DIP Lender is the successful bidder for the Debtor's assets, then any amounts payable in respect of these obligations will be credit bid by the DIP Lender as part of the purchase price for the assets.

28. **Indemnification.** The DIP Lender (and its affiliates and respective officers, directors, employees, advisors, and agents, solely in such capacity) (each such person, an “**Indemnatee**”) will have no liability for, and will be indemnified and held harmless against, any losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof, except to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the gross negligence, bad faith or willful misconduct of the relevant indemnified person (or any of its affiliates or any of its or its respective officers, directors, employees, advisors or agents). Such indemnity shall not be available (a) to the extent arising from a material breach of any obligation of such Indemnatee under the DIP Loan Documents or (b) to the extent arising out of any loss, claim, damage, liability or expense that does not involve an act or omission of the Debtor and that is brought by an Indemnatee against another Indemnatee (other than claims against an Indemnatee in its capacity or in fulfilling its role as DIP Lender or any similar role under the DIP Loan Documents). Notwithstanding the foregoing, the Debtor shall not indemnify any Indemnatee for any costs, expenses, losses, claims, damages, or liabilities incurred in connection with a successful Challenge brought in accordance with paragraph 31 hereof.

29. **Proofs of Claim.** The DIP Lender and the Prepetition Secured Noteholder shall not be required to file a proof of claim in the Chapter 11 Case or Successor Case, and the entry of this Interim Order shall be deemed to constitute a timely filed proof of claim. Any order entered by this Court in relation to the establishment of a bar date for any claim (including without limitation, administrative claims) in the Chapter 11 Case or Successor Case shall not apply to the DIP Lender and the Prepetition Secured Noteholder. Notwithstanding the foregoing, the DIP Lender, or the Prepetition Secured Noteholder, as applicable, may, in its sole discretion, but is not

required to, file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in the Chapter 11 Case for any claim allowed herein.

30. Limitations on Use of DIP Proceeds, Cash Collateral, the Carve Out and Other Funds. Except as otherwise permitted in this Interim Order and the Approved Budget, the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, and the Carve Out may not be used, directly or indirectly, by any of the Debtor, the Creditors' Committee, if any, or any trustee or other estate representative appointed in the Chapter 11 Case (or any Successor Case) or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith) in connection with (a) preventing, hindering, or delaying any of the DIP Lender and/or Prepetition Secured Noteholder's enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (b) using or seeking to use Cash Collateral without the permission of the DIP Lender, and the Prepetition Secured Noteholder or selling or otherwise disposing of DIP Collateral without the consent of the DIP Lender or as permitted by the DIP Loan Documents; (c) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Lender or the Prepetition Secured Noteholder; (e) seeking to amend or modify any of the rights granted to the DIP Lender or the Prepetition Secured Noteholder under this Interim Order, the DIP Loan Documents, or the Prepetition Loan Documents, including seeking to use Cash Collateral and/or DIP Collateral on a contested basis; (f) litigating, objecting to, challenging or contesting in any manner in any way the DIP Liens, DIP Obligations, DIP Superpriority Claims, the Prepetition Secured Obligations, the Prepetition Liens, DIP Collateral (including Cash Collateral) or, as the case may be, the Prepetition Collateral, or any other claims held by or on behalf of any of the DIP Lender or the Prepetition Secured Noteholder, respectively; (g) asserting, commencing or prosecuting any claims or causes of action whatsoever, including,

without limitation, Avoidance Actions or applicable state law equivalents or actions to recover or disgorge payments, against any of the DIP Lender, Prepetition Secured Noteholder, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees;

(h) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Secured Obligations, the Prepetition Secured Noteholder Liens, or any other liens or interests of any of the DIP Lender, or the Prepetition Secured Noteholder; or

(i) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations, the Prepetition Secured Obligations; provided, however, that the Carve Out and such collateral proceeds and loans under the DIP Loan Documents may be used for allowed fees and expenses, in an amount not to exceed \$10,000 in the aggregate (the “**Investigation Budget Amount**”), incurred solely by a Creditors’ Committee (if appointed), in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority or extent of the Prepetition Liens within thirty (30) calendar days following appointment of the Creditors’ Committee. For the avoidance of doubt, no portion of the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, or the Carve Out may be used, directly or indirectly, by the Debtor or a Creditors’ Committee (if appointed), or any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, any creditors, or parties in interest to investigate or Challenge (as defined below) any of the Prepetition Loan Lien and Claim Matters (as defined below) as they relate to the DIP Lender or to the Prepetition Secured Noteholder.

31. Effect of Stipulation on Third Parties.

(a) **Generally.** The admissions, stipulations, agreements, releases, and waivers set forth in this Interim Order (collectively, the “**Prepetition Loan Lien and Claim Matters**”)

are and shall be binding on the Debtor, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including, without limitation, a Creditors' Committee (if appointed), unless, and solely to the extent that, a party in interest that has sought and obtained standing and the requisite authority to commence a Challenge (as defined below) (other than the Debtor, as to which any Challenge is irrevocably waived and relinquished) (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 31 of this Interim Order) challenging the Prepetition Loan Lien and Claim Matters (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a **"Challenge"**) by no later than, subject to entry of the Proposed Final Order granting such relief, (a) one (1) business day before the hearing approving a sale of substantially all of the Debtor's assets and (b) seventy-five (75) days following the entry of the Interim Order (each the **"Challenge Deadline"**), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition Secured Noteholder, as applicable, or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal. The filing of a motion before the expiration of the Challenge Deadline seeking standing to file a Challenge, which attaches a proposed pleading commencing such Challenge, shall extend the Challenge Deadline with respect to that movant until two business days after this Court approves the standing motion, or such other

time period ordered by this Court in approving the standing motion. If a chapter 11 trustee is appointed or the Chapter 11 Case is converted to a case under chapter 7 prior to the expiration of the Challenge Deadline, the chapter 11 trustee or chapter 7 trustee, as applicable, shall have until the later of (i) the expiration of the Challenge Deadline and (ii) the thirtieth (30th) day after the appointment of the chapter 11 trustee or conversion of the Chapter 11 Case to a case under chapter 7, as applicable, to commence a Challenge; *provided* that if any adversary proceeding or contested matter is timely filed and is pending on the date, if any, on which the Chapter 11 Case is converted to chapter 7, the chapter 7 trustee may continue to prosecute such adversary proceeding or contested matter on behalf of the Debtor's estate without any further authorization or order of this Court. For the avoidance of doubt, any trustee appointed or elected in these Chapter 11 Case shall, until the expiration of the Challenge Deadline, and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtor's estate), be deemed to be a party other than the Debtor and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtor in this Interim Order.

(b) **Binding Effect.** To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Loan Lien and Claim Matters, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Loan Lien and Claim Matters shall, pursuant to this Interim Order, become binding, conclusive, and final on any person, entity, or party in interest in the Chapter 11 Case, and their

successors and assigns, and in any Successor Case for all purposes and shall not be subject to challenge or objection by any party in interest, including, without limitation, a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtor's estate. Notwithstanding anything to the contrary herein, if any such proceeding is properly and timely commenced, the Prepetition Loan Lien and Claim Matters shall nonetheless remain binding on all other parties in interest and preclusive as provided in subparagraph (a) above except to the extent that any of such Prepetition Loan Lien and Claim Matters is expressly the subject of a timely and properly filed Challenge, which Challenge is successful as set forth in a final, non-appealable judgment as provided in subparagraph (a) above, and only as to plaintiffs or movants that have complied with the terms hereof; *provided that* this provision shall not limit other parties in interest from benefitting from any successful Challenge of any statutory committee (if any) or chapter 7 or chapter 11 trustee. Upon a successful Challenge brought pursuant to this paragraph 31, this Court may fashion any appropriate remedy.

32. **Releases.** Subject to a timely Challenge under paragraph 31 hereof (in the case of the Prepetition Secured Noteholder) and immediately (in the case of the DIP Lender), upon entry of this Interim Order, the Debtor, on its own behalf and its estate, forever and irrevocably: (a) release, discharge, and acquit the DIP Lender and the Prepetition Secured Noteholder and each of their respective former or current officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors-in-interest, in each case solely in their capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every type, including, without limitation, any so-called "lender liability" or equitable subordination claims or defenses, solely with respect to or

relating to the negotiation of and entry into the DIP Loan Documents; and (b) waive, discharge and release any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and avoidability of the DIP Liens, the DIP Obligations, the Prepetition Secured Obligations and the Prepetition Liens.

33. **Waivers.** Subject to entry of a Final Order granting such relief and as a further condition of the DIP Loan Documents and any obligation of the DIP Lender to make credit extensions pursuant to the DIP Loan Documents (and the consent of the DIP Lender and Prepetition Secured Noteholder to the payment of the Carve Out to the extent provided herein):

(a) **Limitation on Charging Expenses.** No costs or expenses of administration of the Chapter 11 Case or any Successor Case shall be charged against or recovered from or against the DIP Lender or the Prepetition Secured Noteholder with respect to the DIP Collateral or Prepetition Collateral, pursuant to section 105 or section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Lender and Prepetition Secured Noteholder, and no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the DIP Lender or Prepetition Secured Noteholder.

(b) **No Marshalling.** In no event shall the DIP Lender or Prepetition Secured Noteholder be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral, DIP Obligations, Prepetition Collateral, and the Prepetition Secured Obligations, as applicable, and all proceeds shall be received and applied in accordance with this Interim Order and the DIP Credit Agreement.

(c) **Section 552(b).** The DIP Lender and the Prepetition Secured Noteholder shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception thereunder shall not apply to the DIP Lender and the Prepetition

Secured Noteholder with respect to the proceeds, product, offspring and profits of any of the Prepetition Collateral.

34. **No Lender Liability.** In determining to make any loan (whether under the DIP Loan Documents or otherwise) or to permit the use of Cash Collateral, the DIP Lender, and the Prepetition Secured Noteholder shall not owe any fiduciary duty to the Debtor, its creditors, shareholders, or estate, and the DIP Lender shall not be deemed to be in control of the operations of the Debtor or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtor by virtue of making the DIP Loans. Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or the Prepetition Secured Noteholder of any liability for any claims arising from the prepetition or postpetition activities of the Debtor and its affiliates, if any (as defined in section 101(2) of the Bankruptcy Code).

35. **Limitation of Liability.** Nothing in this Interim Order, the DIP Loan Documents, the Prepetition Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender and/or the Prepetition Secured Noteholder of (a) any liability for any claims arising from the prepetition or postpetition activities of the Debtor in the operation of its business, or in connection with its restructuring efforts or (b) any fiduciary duties to the Debtor, its creditor, shareholders, or estate. The DIP Lender and the Prepetition Secured Noteholder 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 all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the Debtor.

36. **No Third-Party Beneficiaries.** Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any Professional Persons, third-party, creditor, landlord, lessor, equity holder, or any direct, indirect, or incidental beneficiary.

37. **Insurance Proceeds and Policies.** Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Lender and the Prepetition Secured Noteholder 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 by the Debtor that in any way relates to the DIP Collateral or Prepetition Collateral.

38. **No Waivers or Modifications of Interim Order.** The Debtor have agreed not to, and shall not seek any modification or extension of this Interim Order without the prior written consent of the DIP Lender and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Lender.

39. **Binding Effect of this Interim Order.** Immediately upon entry of this Interim Order by this Court, the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtor, the DIP Lender, the Prepetition Secured Noteholder, all other creditors of any of the Debtor, the Creditors' Committee, if any, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Chapter 11 Case, any Successor Case, or upon dismissal of any of the Chapter 11 Case or any Successor Case; provided, that neither the DIP Lender nor the Prepetition Secured Noteholder shall have an obligation to permit the use of DIP Collateral or

Prepetition Collateral (including Cash Collateral) or to extend any financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the Debtor's estate.

40. **Discharge.** Except as otherwise agreed in writing by the DIP Lender, the DIP Obligations and the obligations of the Debtor with respect to the adequate protection provided herein to the DIP Lender shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Case, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash, on or before the effective date of such confirmed plan of reorganization.

41. **Survival.** The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any chapter 11 plan in any of the Chapter 11 Case; (b) converting any of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Case or any Successor Case; or (d) pursuant to which this Court abstains from hearing the Chapter 11 Case or Successor Case. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the DIP Lender pursuant to this Interim Order and the DIP Loan Documents, and the adequate protection provided to the Prepetition Secured Noteholder pursuant to this Interim Order, shall continue in the Chapter 11 Case, in any Successor Case, or following dismissal of any of the Chapter 11 Case or any Successor Case, and shall maintain their priority as provided by this Interim Order until, in respect of the DIP Facility, all the DIP Obligations, pursuant to the DIP Loan Documents and this Interim Order, have been paid in full (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms). The terms and provisions concerning the indemnification of the DIP Lender shall continue in the Chapter 11 Case, in any Successor Case, following dismissal of

any of the Chapter 11 Case or any Successor Case, following termination of the DIP Facility and/or the indefeasible repayment of the DIP Obligations.

42. **Necessary Actions.** The Debtor is authorized and directed to take any and all such necessary actions as are reasonable and appropriate to implement the terms of this Interim Order.

43. **Enforceability.** This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon entry thereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9014 of the Bankruptcy Rules, any applicable Local Rules, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

44. **Rights Reserved.** Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the rights of the DIP Lender to seek any other or supplemental relief in respect of the Debtor; (b) the rights of the DIP Lender under the DIP Loan Documents, or the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Case, conversion of any of the Chapter 11 Case to a case under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan; or (c) any other rights, claims, or privileges (whether legal, equitable or otherwise) of the DIP Lender.

45. **Interim Order Controls.** In the event of any conflict or inconsistency between or among the terms or provisions of this Interim Order, any of the DIP Loan Documents, unless such

term or provision in this Interim Order is phrased in terms of “defined in” or “as set forth in” the DIP Loan Documents, the terms and provisions of this Interim Order shall govern and control.

46. **Headings.** All paragraph headings used in this Interim Order are for ease of reference only and are not to affect the construction hereof or to be taken into consideration in the interpretation hereof.

47. **Final Hearing.** The Final Hearing is scheduled for _____, at :00 .m. **(prevailing Eastern Time)**, at which time any party in interest may present any timely filed objections to the entry of the Proposed Final Order. The Debtor shall promptly serve a copy of this Interim Order and a notice of the Final Hearing by regular mail upon (a) the parties that were provided notice of the Interim Hearing; (b) any party that has filed prior to such date a request for notices with this Court; and (c) counsel for the Creditors’ Committee, if any appointed. Such notice shall state that objections to the entry of the Proposed Final Order shall be in writing and shall be filed with this Court no later than at :00 .m. **(prevailing Eastern Time)**, which objections shall be served so as to be received on or before such date by (i) proposed counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor (mnestor@ycst.com), Kara Hammond Coyle (kcoyle@ycst.com), Elizabeth S. Justison (ejustison@ycst.com), S. Alexander Faris (afaris@ycst.com), and Andrew M. Lee (alee@ycst.com); (ii) counsel to the DIP Lender, (a) Moore & Van Allen PLLC, 100 N. Tryon Street, Suite 4700, Charlotte, North Carolina 28202, Attn: James R. Langdon (jimlangdon@mvalaw.com), and (b) Chipman Brown Cicero & Cole, LLP, Hercules Plaza, 1313 N. Market Street, Suite 5400, Wilmington, Delaware 19801, Attn: William Chipman (chipman@chipmanbrown.com); and (iii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801,

Attn: Benjamin A. Hackman (Benjamin.A.Hackman@usdoj.gov). Any objections by creditors or other parties in interest to any of the provisions of the Proposed Final Order incorporating the terms of this Interim Order, or including any other or different provisions, shall be deemed waived unless filed and served in accordance with this paragraph.

48. **Retention of Jurisdiction.** This Court shall retain jurisdiction to hear, determine and, if applicable, enforce the terms of, any and all matters arising from or related to the DIP Loan Documents and/or this Interim Order.

EXHIBIT 1

DIP Term Sheet

[Intentionally omitted; filed as exhibit to the Motion]

EXHIBIT 2

Approved Budget

[Intentionally omitted; filed as exhibit to the Motion]

EXHIBIT B

DIP Term Sheet

December 29, 2025

**Food52, Inc.
\$3,420,000
Debtor-in-Possession Term Loan Facility
Summary of Terms and Conditions**

This term sheet (together with the exhibits and schedules hereto, the “Term Sheet”) sets forth a summary of the terms and conditions with respect to the DIP Facility (as defined below) from and after, and subject to, the entry of the Interim Order (as defined below). This Term Sheet shall be a binding agreement from and after, and subject to, the entry of the Interim Order with respect to the DIP Loans (as defined below) but does not purport to summarize all of the terms, conditions, representations and other provisions with respect to the DIP Facility, which will be set forth in the DIP Documents (as defined below). The obligation of the DIP Lender (as defined below) to provide financing pursuant to this Term Sheet is conditioned upon the execution and delivery of signature pages to this Term Sheet by each of the parties hereto and shall be subject to the conditions precedent and other terms and conditions set forth herein. In the event of any conflict between this Term Sheet and the terms of the Interim Order or the Final Order (as defined below), the terms of the Interim Order or the Final Order (as applicable) shall govern.

1.	<i>Borrower:</i>	<ul style="list-style-type: none"> Food52, Inc. (“Borrower”). The Borrower is expected to be a debtor and debtor-in-possession in the anticipated chapter 11 case (the “Chapter 11 Case” (Borrower shall be referred to herein under the Chapter 11 Case, as “Debtor”) under chapter 11 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) to be commenced in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on or around December 29, 2025 (the “Petition Date”).
2.	<i>DIP Lender:</i>	<ul style="list-style-type: none"> F52, LLC and/or its affiliates, designees or its assignees.
3.	<i>Type and Amount of the DIP Facility:</i>	<ul style="list-style-type: none"> A non-amortizing, priming, super-priority senior secured term loan facility in an aggregate principal amount not to exceed \$3,420,000 consisting of up to \$3,420,000 in term loan commitments (the “DIP Facility”; the definitive documentation evidencing the DIP Facility, the “DIP Documents”; the DIP Lender’s commitments under the DIP Facility, the “DIP Commitments”; and the loans under the DIP Facility, the “DIP Loans”). The DIP Commitments shall consist of \$3.42 million in respect of new money funding. The borrowing of DIP Loans shall permanently decrease the DIP Commitments, and DIP Loans repaid may not be reborrowed. Initial net proceeds of the DIP Loan shall be funded in accordance with a funds flow.

		<ul style="list-style-type: none"> Subsequent DIP Loan proceeds shall be funded into Borrower's DIP Bank Account maintained at Silicon Valley Bank (with an account number ending in 4610) and the Borrower shall obtain a satisfactory control agreement in favor of the DIP Lender to be entered into within 15 business days of the entry of the Final Order, subject to a 15 business day cure period if the Borrower is using commercially reasonable efforts to obtain a satisfactory control agreement; <u>provided</u> that the Carve-Out shall be funded as described below.
4.	<i>Initial Availability:</i>	<ul style="list-style-type: none"> Upon the Bankruptcy Court's entry of the Interim Order, and satisfaction of all applicable conditions precedent described in Section 16 herein, the DIP Lender shall make available an aggregate amount of \$1.92 million of the DIP Loans and the Borrower shall be entitled to make a draw of the DIP Loans as described in Section 6 below immediately upon entry of the Interim Order (the "First Draw", the date of such first First Draw shall be referred to herein as the "Closing Date"). The closing of definitive DIP Documents shall occur as soon after the First Draw as reasonably possible but in any event no later than two (2) business days prior to the hearing to consider entry of the Final Order.
5.	<i>Full Availability:</i>	<ul style="list-style-type: none"> Upon (i) the Bankruptcy Court's entry of the Final Order (as defined below) and (ii) the satisfaction of all applicable conditions precedent described in Section 17 herein, the remaining amount of the DIP Facility totaling an additional \$1.5 million shall be available to the Debtor, subject to compliance with the terms, conditions, and covenants described in the DIP Documents, in an additional draw in accordance with Section 6 below (the "Second Draw," and together with the First Draw, each a "Draw" and together, the "Draws").
6.	<i>Draws:</i>	<ul style="list-style-type: none"> Subject to satisfaction of the conditions precedent to the First Draw or Second Draw, as applicable, and availability under the DIP Commitments, the Borrower shall be entitled to make Draws of the DIP Loans in accordance with the Budget (as defined below). Each Draw shall be made (in an aggregate minimum amount of \$100,000 (and multiples thereof)) upon two (2) business days' written notice, up to the aggregate amount of the undrawn DIP Commitments at any time prior to three (3) business days before the DIP Termination Date (as defined below); <u>provided</u> that the First Draw shall be in the amount of \$1.92 million (in respect of new money funding) and deemed requested in accordance with the terms of this Term Sheet, and funded within two (2) business days following the entry of the Interim Order and shall not require any further advance written notice but shall require a customary notice of borrowing. Subject to entry of the Final Order (defined below), the Second Draw shall be funded no later than January 23, 2026.

7.	<i>Maturity and Termination:</i>	<ul style="list-style-type: none"> • All DIP Obligations shall be due and payable in full in cash (“Payment in Full”¹ or such other form of consideration as the DIP Lender and the Borrower may mutually agree) on the earliest of: <ul style="list-style-type: none"> i. February 28, 2026 (the “Maturity Date”); ii. the effective date of any chapter 11 plan of reorganization with respect to the Borrower (a “Plan”); iii. the consummation of any sale or other disposition of all or substantially all of the assets of the Borrower pursuant to section 363 of the Bankruptcy Code; iv. the date of the acceleration of the DIP Loans and the termination of the DIP Commitments following the occurrence and during the continuation of an Event of Default in accordance with the DIP Documents; v. dismissal of the Chapter 11 Case or conversion of the Chapter 11 Case into a case under chapter 7 of the Bankruptcy Code; and vi. 25 days after the Petition Date (or such later date as agreed to by the DIP Lender), unless the Final Order has been entered by the Bankruptcy Court on or prior to such date (such earliest date, the “DIP Termination Date”). • The occurrence of the DIP Termination Date shall terminate the ability of the Borrower to borrow the Draws and shall terminate any further obligation the DIP Lender has to make any DIP Loans under the DIP Documents. • For the avoidance of doubt, any of the above conditions from (i) through (vi) automatically triggers the Maturity Date.
8.	<i>Interest Rate:</i>	<ul style="list-style-type: none"> • The DIP Loans shall bear interest at a per annum rate equal to 15% payable in kind (the “Non-Default Interest”). • Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default (as defined below), the DIP Loans shall bear interest at an additional per annum rate of 5%, in each case payable in kind, together with the Non-Default Interest, on the first day of each month in arrears. • If the DIP Lender is the successful bidder for the assets of the Debtor and the successful bid is consummated, then any amounts payable in respect of these obligations will constitute part of the credit bid component of the purchase price for the assets.
9.	<i>Exit Fee:</i>	<ul style="list-style-type: none"> • The DIP Lender shall be entitled to payment of an exit fee the (“Exit Fee”) of six percent (6%) of the DIP Commitments, which amount shall

¹For purposes hereof, the term “**Payment in Full**” means, with respect to the DIP Obligations, the irrevocable and indefeasible payment in full in cash of all DIP Obligations, other than contingent indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated, cancelled and discharged.

		<p>be fully earned and due and payable when the DIP Obligations are paid in full, provided that the Exit Fee shall only be payable if the DIP Lender is not approved as the stalking horse purchaser for the purchase of the Debtor's assets as contemplated by the sale motion and bidding procedures to be filed in the Bankruptcy Case.</p>
10.	<i>Use of Proceeds:</i>	<ul style="list-style-type: none"> • The proceeds of the DIP Facility shall be used only for the disbursements forecasted as per the agreed upon Budget, which include the following: <ul style="list-style-type: none"> i. working capital and other general corporate purposes of the Borrower (with 15% permitted variances for expenditures measured in total (<i>i.e.</i>, the Total Operating Disbursements line in the cash flow forecast) and not by line item (the “Permitted Variances”)); ii. professional fees and expenses of administering the Chapter 11 Case (including payment of fees incurred prior to the Closing Date and funding the Professional Fee Reserve, which shall solely be funded in accordance with the Budget and shall not have a permitted variance, except that if the Debtor does not have sufficient funding to fund the Professional Fee Reserve in any given week, such funding may be made subsequently even if it exceeds the professional fee line item for that subsequent week) in accordance with the Bankruptcy Code and any orders of the Bankruptcy Court, as applicable; and iii. fees and expenses payable under the DIP Facility, including, without limitation, the legal expenses of the DIP Lender (including fees incurred prior to the Closing Date). • “Carve-Out” means an amount equal to the sum of the following: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717 (without regard to the notice set forth in clause (ii) below); (ii) to the extent allowed by the Bankruptcy Court at any time, whether by interim order, final order, or otherwise, all accrued and unpaid fees, disbursements, costs and expenses incurred by persons or firms retained by the Debtor pursuant to section 327, 328 or 363 of the Bankruptcy Code (the “Debtor Professionals”) and all accrued unpaid fees, disbursements, costs and expenses incurred by the Committee (if any) pursuant to section 328 and 1103 of the Bankruptcy Code (the “Committee Professionals,” together with the Debtor Professionals, the “Estate Professionals,” and such Estate Professional fees in each case in accordance with, and subject to, the Budget, the “Allowed Professional Fees”) at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice; and (iii) Allowed Professional Fees of Estate Professionals in an aggregate amount not to exceed \$125,000 incurred after the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice, to the extent allowed

		<p>at any time, whether by interim order, final order, or otherwise (the amounts set forth in this clause (iii), the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice (which may be delivered by e-mail (or other electronic means)) by the DIP Lender to the Debtor and their counsel, the United States Trustee, and lead counsel to any Committee appointed in the Chapter 11 Case, which notice may be delivered following the occurrence of an Event of Default, stating that the Post-Carve Out Trigger Notice Cap has been invoked.</p> <ul style="list-style-type: none"> • On a weekly basis, the fees of the Estate Professionals provided in the Budget shall be funded into an escrow account with Kurtzman Carson Consultants, LLC dba Verita Global to satisfy the professional fees included within the Carve-Out (the “Professional Fee Reserve”). The funds on deposit in the Professional Fee Reserve shall be available to satisfy the obligations owed to the Estate Professionals benefiting from the Carve-Out, and the DIP Lender shall have a security interest upon the Professional Fee Reserve, which will be available to the DIP Lender following satisfaction in cash in full of all obligations benefiting from the Carve-Out. • For the avoidance of doubt and notwithstanding anything to the contrary herein, the Carve-Out shall be payable from the Professional Fee Reserve and any lien or security interest in the Professional Fee Reserve held by the DIP Lender shall be subordinate to the rights of Estate Professionals to be paid from the Professional Fee Reserve. Claims of Estate Professionals in excess of the Professional Fee Reserve shall be junior to all liens and claims in the Borrower’s other assets and the DIP Lender’s superpriority claims except to the extent of an amount equal to the Post Carve Out Trigger Notice Cap which will be senior to liens and claims securing the DIP Facility, and all other forms of adequate protection, liens, or claims securing the DIP Obligations. • Notwithstanding any other provision of this Term Sheet, from and after the Closing Date, no DIP Loans or DIP Collateral (as defined below), or any portion of the Carve-Out, may be used directly or indirectly by any Debtor, any official committee appointed in the Chapter 11 Case, or any trustee appointed in the Chapter 11 Case or any successor Case, including any chapter 7 case, or any other person, party or entity: <ul style="list-style-type: none"> i. in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation <ul style="list-style-type: none"> a. against the DIP Lender, or its respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, or any action purporting to do the foregoing in respect of
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		<p>the DIP Obligations, DIP Liens (as defined below), or DIP Claims (as defined below),</p> <p>b. challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the DIP Obligations and/or the liens, claims, rights, or security interests granted under the Orders (as defined below), the DIP Documents, including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise;</p> <p>ii. to prevent, hinder, or otherwise delay the DIP Lender's enforcement or realization on the DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under the Interim Order or the Final Order, as applicable, each in accordance with the DIP Documents and the Interim Order or the Final Order, as applicable; <u>provided, however</u>, this shall not apply to (x) objections to the Final Order and (y) any challenge to whether a DIP Termination Event has occurred and/or the propriety of the DIP Lender's termination and/or acceleration of the DIP Obligations or calculation of the amounts owed thereunder;</p> <p>iii. to seek to modify any of the rights and remedies granted to the DIP Lender under the Orders (other than with the consents contemplated thereunder), or the DIP Documents, as applicable; or</p> <p>iv. to apply to the Bankruptcy Court for authority to approve superpriority claims or grant liens (other than the Carve-Out and liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Claims, unless permitted under the DIP Documents or unless all DIP Obligations, and claims granted to the DIP Lender under the Interim Order or the Final Order, as applicable, have been refinanced or Paid in Full in cash or otherwise agreed to in writing by the DIP Lender.</p>
11.	<i>Voluntary Prepayments:</i>	<ul style="list-style-type: none"> Voluntary prepayments of the DIP Loans shall be permitted at any time, subject to accrued interest on the amount prepaid.
12.	<i>Mandatory Prepayments</i>	<ul style="list-style-type: none"> Upon the occurrence of (x) the sale, transfer or other disposition of any of the Assets that constitute Collateral outside of the ordinary course of the Borrower's respective businesses and/or (y) the entrance into any equity raise, any offering or private placement of any debt securities in the debt capital markets, any bank loan and/or any other debt financing (whether structured as a debt financing or equity financing, or any combination thereof) (each, a "Liquidity Transaction"), the Borrower's shall prepay the principal of the DIP Loans in an amount equal to one

		<p>hundred percent (100%) (or such lesser portion as is necessary to repay all of the Obligations hereunder) of the net cash proceeds in respect of such sales, transfers, dispositions, or Liquidity Transaction, as applicable, to prepay (i) all accrued and unpaid interest, and (ii) all or a portion of the principal amount of the DIP Loans outstanding.</p>
13.	<i>Security:</i>	<ul style="list-style-type: none"> As security for the DIP Obligations, subject to the Carve Out and Permitted Prior Liens (as defined in Schedule 1), Borrower shall grant to the DIP Lender a priming first lien security interest (“Priming First Lien”) on all of Borrower’s right, title and interest in, to and under all the Borrower’s assets, including, but not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located: all assets and property of Borrower and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all fee-owned real properties, contracts, contract rights, licenses, general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, accounts receivables, chattel paper, letters of credit and letter of credit rights, investment property, commercial tort claims, arbitration awards, money, insurance, receivables, receivables records, deposit accounts, collateral support, supporting obligations and instruments, fixtures, all interests in leaseholds and real properties, all patents, copyrights, trademarks, all trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), together with all books and records relating to the foregoing, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (as such terms are defined in the Uniform Commercial Code as in effect from time to time in the State of New York), and, subject to the entry of a Final Order, on proceeds of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral and proceeds of actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code (collectively, the “DIP Collateral”). Negative pledge on all assets of the Borrower subject to Permitted Prior Liens (if any) to be agreed upon by the Final Order.
14.	<i>Priority and Security:</i>	<ul style="list-style-type: none"> Subject to the Carve-Out and Permitted Prior Liens, all obligations of the Borrower under the DIP Documents, including, without limitation, all principal, accrued interest, costs, fees and premiums provided for therein, and all obligations of the Borrower under the DIP Facility (the “DIP Obligations”) shall be entitled to (a) senior secured priming lien and (b) superpriority claim status pursuant to section 364(c)(1) and section 364(d)(1) of the Bankruptcy Code, with priority over any and all secured liens, administrative expense claims and unsecured claims, of any kind or nature whatsoever, now existing or hereafter arising under the Bankruptcy Code (the “DIP Claims”).

		<ul style="list-style-type: none"> Subject to the Carve-Out and the Permitted Prior Liens, all DIP Obligations in respect of the DIP Facility shall be: <ul style="list-style-type: none"> i. pursuant to section 364(c)(1) of the Bankruptcy Code, entitled to superpriority claim status in the Chapter 11 Case (which claims shall be payable from and have recourse to all DIP Collateral); and ii. secured, pursuant to (i) section 364(c)(2) of the Bankruptcy Code, by a valid, enforceable, fully perfected and automatic first-priority lien on the DIP Collateral; and iii. senior secured priming first lien, pursuant to section 364(d)(1) of the Bankruptcy Code. The liens securing the DIP Facility (the “DIP Liens”) shall mean the liens described above and in the priority set forth in the Interim Order and Final Order. The DIP Liens described herein shall, to the fullest extent permitted by applicable law, be effected and perfected upon entry of the Interim Order and without the necessity of the execution of mortgages, landlord agreements, security agreements, pledge agreements, control agreements, financing statements or other agreements.
15.	Remedies	<ul style="list-style-type: none"> Upon the occurrence and during the continuation of an Event of Default under the DIP Documents, all remedies customarily available in the Chapter 11 Case including, without limitation, those remedies customarily available to a senior secured, administrative expense claim of a debtor-in-possession lender, including, without limitation: <ul style="list-style-type: none"> i. declare that the DIP Commitments are terminated, reduced or restricted, whereupon the DIP Commitments shall be terminated, reduced, or restricted on account of any further Draws; ii. declare the unpaid amount of the DIP Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; iii. charge interest at the default rate under the DIP Documents; iv. declare the termination, restriction, or revocation of the ability of the Debtor to use Cash Collateral (as defined in the Orders); or v. take any other action or exercise any other right or remedy (including, without limitation, with respect to the liens in favor of the DIP Lender) permitted under the DIP Documents, or by applicable law. <p>Any exercise of remedies by the DIP Lender shall be subject in all respects to the terms of the Orders, including a requirement that the DIP Lender provide five (5) days written notice of such Event of Default to the Borrower prior to any exercise of remedies.</p>

16.	<i>Conditions Precedent to Initial Draw</i>	<ul style="list-style-type: none"> • Entry by the Borrower into an asset purchase agreement with F52, LLC for the sale of substantially all of the assets of Borrower on terms acceptable to the DIP Lender in its reasonable discretion; • Entry of the Interim Order within 2 business days of the Petition Date, which order shall not be stayed or subject to appeal; • Delivery of the Initial Budget acceptable to the DIP Lender in its reasonable discretion; • The representations and warranties of the Borrower under the DIP Documents shall be true and correct in all material respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all respects); • No Material Adverse Effect (as defined below) shall have occurred and be continuing; • The Debtor shall be in compliance in all respects with the Interim Order; • No Event of Default shall have occurred and be continuing under this Term Sheet; • No order has been entered reversing, amending, staying, vacating, terminating or otherwise modifying in any manner adverse to the DIP Lender the Interim Order; and • The Borrower shall have delivered to the DIP Lender a customary borrowing notice.
17.	<i>Conditions Precedent to Availability of Other Draws</i>	<ul style="list-style-type: none"> • The Bankruptcy Court shall have entered a Final Order approving the DIP Facility not later than 25 days following the Petition Date, which Final Order shall be in the form of the Interim Order with such changes as are customary for a final order or otherwise are acceptable to the DIP Lender; and • In addition, the DIP Documents shall contain conditions precedent as are usual and customary in loan documents for similar debtor-in-possession financings and other conditions precedent deemed by the DIP Lender appropriate to the specific transaction, including, without limitation: <ul style="list-style-type: none"> i. execution and delivery of a credit agreement (the “DIP Credit Agreement”), and other DIP Documents evidencing and securing the DIP Facility, in each case, which shall be in form and substance substantially consistent with this Term Sheet and otherwise in form and substance acceptable to the DIP Lender and the Borrower; ii. delivery of any Budget subsequent to the Initial Budget, acceptable to the DIP Lender in its reasonable discretion; iii. no trustee, examiner, or receiver shall have been appointed or designated with respect to the Borrower’s business, properties or assets and no motion shall be pending seeking similar relief or any other relief, which, if granted, would

		<p>result in a person other than the Borrower exercising control over their assets;</p> <p>iv. the representations and warranties of the Borrower under the DIP Documents shall be true and correct in all material respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all respects);</p> <p>v. the Borrower shall have delivered to the DIP Lender a customary borrowing notice;</p> <p>vi. the Debtor shall be in compliance in all respects with the Final Order and the Borrower shall be in compliance in all respects with the DIP Documents;</p> <p>vii. no default or event of default shall have occurred and be continuing under the DIP Documents;</p> <p>viii. no order has been entered reversing, amending, staying, vacating, terminating or otherwise modifying in any manner adverse to the DIP Lender the Interim Order or the Final Order, as applicable;</p> <p>ix. since the Petition Date, other than the Chapter 11 Case, there shall not have occurred or there shall not exist any event, condition, circumstance or contingency that, individually, or in the aggregate, (a) has had or could reasonably be expected to have a material adverse effect on the business, operations, properties, assets, performance or financial condition of the Borrower, (b) has resulted in, or could reasonably be expected to result in, a material adverse effect on the validity or enforceability of, or the rights, remedies or benefits available to the DIP Lender, or (c) has had or could reasonably be expected to have, a material adverse effect on the ability of the Borrower to perform their obligations under any DIP Document (each of the foregoing being a “Material Adverse Effect”);</p> <p>x. the Debtor shall have all insurance policies maintained by Borrower name the DIP Lender as additional insured and lender/mortgagee loss payee, as applicable (for the avoidance of doubt, if the Debtor are unable to name the DIP Lender on such policies as required hereunder, the Debtor shall cooperate with the DIP Lender in order to reach a workaround to ensure that the DIP Lender is adequately protected with respect to the relevant properties);</p> <p>xi. all costs, fees, expenses (including, without limitation, legal fees and expenses) set forth in the DIP Documents or otherwise to be paid to the DIP Lender shall have been paid when due; and</p>
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		xii. a granting to the DIP Lender of a Priming First Lien (subject to the Carve-Out and Permitted Prior Liens) for all DIP Obligations pursuant to section 364(d)(1) of the Bankruptcy Code.
18.	Documentation	<ul style="list-style-type: none"> Definitive financing documentation (including the Orders) with respect to the DIP Loans shall be reasonably satisfactory to the DIP Lender and the Borrower's (the "DIP Documents"). For the avoidance of doubt, DIP Documents (other than this Term Sheet and the Interim Order) shall be documented prior to entry of the Final Order.
19.	Representations and Warranties:	<ul style="list-style-type: none"> The DIP Documents shall contain representations and warranties with respect to the Borrower as are usual and customary in loan documents for similar debtor-in-possession financings and as acceptable to the DIP Lender and Borrower, including without limitation, due organization and authorization, enforceability, financial condition, no material adverse changes, title to properties, liens, litigation, payment of taxes, compliance with laws and regulations, employee benefit liabilities, environmental liabilities, and perfection and priority of liens securing the DIP Facility. Borrower represents and warrants that none of its assets and properties are subject to any liens, security interests or encumbrances as of the Petition Date and no liens, security interests or encumbrances will be created on or after the Petition Date except, in each case, for liens set forth on <u>Schedule 1</u> hereto.
20.	Affirmative Covenants:	<ul style="list-style-type: none"> The DIP Documents shall contain affirmative covenants as are usual and customary with respect to the Borrower in loan documents for similar debtor-in-possession financings and as are acceptable to the DIP Lender and the Borrower, including the requirement to repay and satisfy all outstanding amounts to Avidbank with the proceeds of the First Draw, which amounts shall not exceed \$411,000.
21.	Negative Covenants:	<ul style="list-style-type: none"> The DIP Documents shall contain negative covenants with respect to the Borrower as are usual and customary in loan documents for debtor-in-possession financings and as are acceptable to the DIP Lender and the Borrower; <u>provided</u> that the DIP Documents will permit: (i) the Debtor to continue to pursue a sale process for all or substantially all of the Borrower's assets and consummate any sale or sales related thereto subject to Bankruptcy Court approval and provided that such sale or sales and/or related transactions are acceptable to the DIP Lender and the proceeds of such sale are satisfactory to pay the DIP Obligations in full, (ii) the ability to reject or modify contracts, (iii) post-petition employment arrangements subject to maximum thresholds agreed upon by the DIP Lender and the Borrower, and (iv) provide for adequate protection in accordance with the Budget and reasonably acceptable to the DIP Lender.
22.	DIP Budget / Variance Reporting:	<ul style="list-style-type: none"> The DIP Lender shall receive an extended weekly budget commencing with the week during which the Interim Order is entered, containing line items of sufficient detail to reflect the consolidated operating cash flow of the Debtor for the period from the Petition Date through a date agreed

		<p>to by the Borrower and the DIP Lender (the “Initial Budget”) (the Initial Budget, as modified from time to time in accordance herewith, shall be the “Budget”).</p> <ul style="list-style-type: none"> On a weekly basis after the delivery of the first Budget, the Borrower shall deliver to the DIP Lender a variance report for the four-week period ending the prior Friday comparing the difference/variance, expressed as a percentage (each, a “Budget Variance”), between actual net operating cash flow for such period to projected net operating cash flow for such period as set forth in the Budget on a cumulative 4 week rolling basis (each a “Measuring Period”) and explaining in reasonable detail all material variances. For the avoidance of doubt, net operating cash flow shall not include professional fees and restructuring charges (including trustee fees or other statutory fees) related to the Chapter 11 Case. The Budget Variance report shall be measured based on Total Operating Disbursements and not by line item.
23.	<i>Credit Bidding</i>	<ul style="list-style-type: none"> The DIP Lender shall have the absolute right to credit bid, in its discretion, all or any portion of the aggregate outstanding amount of DIP Obligations in connection with a sale of the Borrower pursuant to section 363 of the Bankruptcy Code.
24.	<i>Interim Order:</i>	<ul style="list-style-type: none"> The interim order approving the DIP Facility, which shall be in form and substance acceptable to the DIP Lender and its counsel (the “Interim Order”), shall, among other things, authorize and approve: <ul style="list-style-type: none"> i. the Initial Draws; ii. the making of the DIP Loans; iii. the granting of the superpriority claims and liens against the Debtor and its assets in accordance with this Term Sheet and the DIP Documents with respect to the DIP Collateral; iv. the payment of all fees and expenses (including the fees and expenses of outside counsel and any financial advisors) required to be paid to the DIP Lender as described herein under the heading “<i>Indemnification and Reimbursement of Expenses</i>” by the Debtor; v. the payment of the Exit Fee set forth in Section 9 of this Term Sheet, which amount shall be fully earned and due and payable upon entry of the Interim Order, but deemed forgiven if the DIP Lender is approved as the stalking horse for the purchase of the Debtor’s assets as contemplated by the sale motion and bidding procedures; and v. upon entry of the Final Order, the Debtor’s waiver of (a) any right to surcharge the DIP Collateral pursuant to sections 105(a) and 506(c) of the Bankruptcy Code or otherwise, and (b) the equitable doctrine of marshaling and other similar doctrines, in each case, with respect to the DIP Collateral and the DIP Obligations.

25.	<i>Final Order:</i>	<ul style="list-style-type: none"> The final order approving the DIP Facility, which shall be substantially in the same form as the Interim Order (with such modifications as are necessary to convert the Interim Order into a final order) and otherwise in form and substance reasonably acceptable to the DIP Lender (the “Final Order” and together with the Interim Order, the “Orders”), shall, among other things, authorize and approve the DIP Facility on a final basis, the total amount of the DIP Commitments.
26.	<i>Carve Outs:</i>	<ul style="list-style-type: none"> The liens and security interests in the Professional Fee Reserve shall be subject in all respects to the Carve-Out, which shall be defined in the Orders.
27.	<i>Events of Default:</i>	<ul style="list-style-type: none"> The DIP Documents shall contain events of default (collectively, “Events of Default”) consistent with this Term Sheet and customary for debtor-in-possession financing facilities of this type, including, without limitation: <ul style="list-style-type: none"> i. payment, non-compliance with covenants set forth in the DIP Documents, judgements in excess of specified amounts, impairment of security interest in the DIP Collateral and other customary defaults, subject to any applicable grace and/or cure periods to be agreed for non-payment defaults only and as are customary for transactions of this nature; ii. the entry of the Final Order shall have not occurred within 25 days after the Petition Date; iii. the entry of an order approving F52, LLC as the stalking horse purchaser for substantially all of the assets of the Debtor shall not have occurred prior to January 9, 2026; iv. the entry of an order approving the sale of substantially all of the assets of Debtor shall have not occurred before February 2, 2026; v. the dismissal of the Chapter 11 Case or the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; vi. non-compliance, subject to any applicable grace and/or cure periods, by Borrower with the terms of the Interim Order or the Final Order; vii. the entry of an order staying, reversing, vacating or otherwise modifying the Interim Order or the Final Order, in each case without the prior written consent of the DIP Lender; viii. the entry of an order appointing a trustee, responsible officer, or an examiner having expanded powers (beyond those set forth under sections 1106(a)(3) and (4) of the Bankruptcy Code) under section 1104 of the Bankruptcy Code (other than a fee examiner) in the Chapter 11 Case, or the Bankruptcy Court shall have entered an order providing

		<p>for such appointment, in each case without the prior written consent of the DIP Lender in its sole discretion;</p> <p>ix. the entry of an order in the Chapter 11 Case granting relief from any stay or proceeding (including, without limitation, the automatic stay) so as to allow a third party to proceed with foreclosure against any material assets of the Borrower to which the fair market value of which exceeds \$50,000;</p> <p>x. the entry of an order (a) surcharging any of the DIP Collateral under sections 105, 506(c), or any other section of the Bankruptcy Code, (b) allowing any administrative expense claim having priority over or ranking in parity with the DIP Claims or the rights of the DIP Lender (subject to the Carve-Out and the Permitted Prior Liens), or (c) otherwise materially adversely impacting the DIP Lender's liens and priority in the DIP Collateral as set forth in this Term Sheet;</p> <p>xi. any action by any Debtor to (a) challenge the rights and remedies of the DIP Lender under the DIP Facility in the Chapter 11 Case or acting in a manner inconsistent with the DIP Documents or (b) avoid or require disgorgement by the DIP Lender of any amounts received in respect of the obligations under the DIP Facility;</p> <p>xii. entry of an order without the express written consent of the DIP Lender obtaining additional financing from a party other than the DIP Lender under section 364(d) of the Bankruptcy Code except if such financing contemplates Payment in Full of the DIP Obligations;</p> <p>xiii. the making of any material payments in respect of prepetition obligations other than (a) as permitted by the Interim Order or the Final Order, (b) as permitted by any "first day" or "second day" orders reasonably satisfactory to the DIP Lender, (c) as permitted by any other order of the Bankruptcy Court reasonably satisfactory to the DIP Lender, (d) as permitted under the DIP Documents in accordance with the Budget, or (e) as otherwise agreed to by the DIP Lender;</p> <p>xiv. entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Debtor to file a chapter 11 plan pursuant to section 1121 of the Bankruptcy Code, without the prior written consent of the DIP Lender;</p> <p>xv. the Debtor shall seek to, or support any other person's motion to, (a) disallow in whole or in part the DIP Obligations, (b) challenge the validity and enforceability of the DIP Liens, or (c) contest any material provision of any DIP Document;</p>
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		<p>xvi. the Debtor files a plan of reorganization that is not in form and substance satisfactory to the DIP Lender, it being understood that a plan will be satisfactory to the DIP Lender if it provides for the Payment in Full of the DIP Obligations pursuant to a signed commitment to lend from a recognized lender or another source of funding sufficient to allow for the indefeasible payment in cash of the full amount of the outstanding DIP Obligations;</p> <p>xvii. the Debtor files a motion seeking to settle a controversy or claim on account of the DIP Collateral without the prior written consent of the DIP Lender;</p> <p>xviii. the Debtor files a motion for the Bankruptcy Court to approve a sale of the DIP Collateral pursuant to section 363 of the Bankruptcy Code which proposed sale is not reasonably acceptable to the DIP Lender, it being understood that the Debtor's proposed sale to F52, LLC pursuant to the asset purchase agreement, dated December 29, 2025, by and between the Debtor and F52, LLC, is acceptable to the DIP Lender; or</p> <p>xix. the Debtor shall fail to execute and deliver to the DIP Lender any agreement, financing statement, trademark filing, copyright filing, notices of lien or similar instruments or other documents that the DIP Lender may reasonably request from time to time to more fully evidence, confirm, validate, perfect, preserve and enforce the DIP Liens created in favor of the DIP Lender, subject to the time periods and terms set forth in this Term Sheet which includes a post-closing period for delivery of the mortgages as set forth herein.</p>
28.	<i>Indemnification and Reimbursement of Expenses:</i>	<ul style="list-style-type: none"> • The DIP Documents shall contain customary indemnification provisions for the benefit of the DIP Lender, and its related parties, including, without limitation, indemnification against losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated by the DIP Documents or the use or the proposed use of proceeds thereof; provided that if the DIP Lender is the successful bidder for the assets of the Debtor and the successful bid is consummated, then any amounts payable in respect of these obligations will constitute part of the credit bid component of the purchase price for the assets. • Subject to the DIP Documents, all documented out-of-pocket accrued and unpaid fees, costs, disbursements, and expenses of the DIP Lender, including the fees and expenses of Moore & Van Allen PLLC, as counsel to the DIP Lender, and any other local Delaware counsel retained in their capacity as counsel to the DIP Lender for bankruptcy matters, incurred in connection with the DIP Facility and the Chapter 11 Case shall accrued and be paid at maturity; provided that if the DIP Lender is the successful bidder for the assets of the Debtor and the successful bid is consummated, then any amounts payable in respect of

		these obligations will constitute part of the credit bid component of the purchase price for the assets.
29.	<i>Release:</i>	<ul style="list-style-type: none"> The Orders shall include a customary release of the DIP Lender, with respect to any and all claims and causes of action arising from or related to the DIP Facility.
30.	<i>Waivers:</i>	<ul style="list-style-type: none"> The Final Order shall include terms and conditions customary for final DIP financing orders and shall be reasonably acceptable to the DIP Lender, including, without limitation, waiver of the automatic stay, credit-bidding rights, “no marshaling” provisions and other similar doctrines, and waivers of the imposition of costs or right to surcharge the DIP Collateral pursuant to sections 105(a) and 506(c) of the Bankruptcy Code or otherwise, in each case, to the extent applicable.
31.	<i>Governing Law:</i>	<ul style="list-style-type: none"> New York (and to the extent applicable, the Bankruptcy Code).

IN WITNESS WHEREOF, the parties hereto have caused this Term Sheet to be executed as of the date first set forth above.

FOOD52, INC., as a Borrower

By: Erika Badan
Name: Erika Badan
Title: Chief Executive Officer

F52, LLC

By: 
Name: Daniel Suratt
Title: Chief Executive Officer

[Signature Page to Term Sheet]

SCHEDULE 1

Permitted Prior Liens

1. None

EXHIBIT C

Budget

Food52*DIP Budget**(\$ in 000s)**12/29 File**Weeks:***Receipts**

	Forecast 1 1/2	Forecast 2 1/9	Forecast 3 1/16	Forecast 4 1/23	Forecast 5 1/30	Forecast 6 2/6	Forecast 7 2/13	Forecast 8 2/20	Forecast 9 2/27	Forecast 10 3/6	Forecast 10 Week Total
Cash Receipts - Schoolhouse	\$ 600	\$ 525	\$ 525	\$ 525	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,175
Cash Receipts - F52	20	-	-	-	-	-	-	-	-	-	20
Cash Receipts - Media/Other	-	104	200	200	150	150	225	200	250	200	1,679
Other receipts	-	-	280	50	-	-	-	-	-	-	330

Total Receipts

	\$ 620	\$ 629	\$ 1,005	\$ 775	\$ 150	\$ 150	\$ 225	\$ 200	\$ 250	\$ 200	\$ 4,204
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Operating Disbursements

Employee Costs	\$ (89)	\$ (47)	\$ (192)	\$ (2)	\$ (154)	\$ (2)	\$ (227)	\$ -	\$ -	\$ -	\$ (715)
Rent & Utilities	(12)	-	-	-	(22)	-	(13)	-	-	-	(47)
Taxes	(265)	-	-	(206)	-	-	(158)	-	-	-	(629)
Insurance	-	-	(50)	-	-	-	(50)	-	-	-	(100)
IT	-	(50)	-	(90)	-	-	-	-	(45)	-	(185)
3PL Warehousing	-	-	(250)	(225)	(150)	(100)	(25)	(25)	-	-	(775)
Vendor Payments	(1,170)	(275)	-	-	-	-	-	-	-	-	(1,445)
Other operating disbursements	(226)	(170)	(175)	(75)	(70)	(170)	(20)	(15)	(15)	(15)	(953)

Total Operating Disbursements

	\$ (1,762)	\$ (542)	\$ (667)	\$ (598)	\$ (397)	\$ (272)	\$ (493)	\$ (40)	\$ (60)	\$ (15)	\$ (4,848)
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Operating Cash Flow

	\$ (1,142)	\$ 87	\$ 338	\$ 177	\$ (247)	\$ (122)	\$ (268)	\$ 160	\$ 190	\$ 185	\$ (644)
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BK-Related Expenses

Professional Fees	\$ (395)	\$ (360)	\$ (350)	\$ (350)	\$ (285)	\$ (340)	\$ (200)	\$ (190)	\$ (200)	\$ (205)	\$ (2,875)
US Trustee Fees	-	-	-	-	-	-	-	-	-	(53)	(53)
Utility Deposits	(25)	-	-	-	-	-	-	-	-	-	(25)
503(b)(9) Claims	-	-	-	-	-	-	-	-	-	(270)	(270)
Avid	(411)	-	-	-	-	-	-	-	-	-	(411)

Total BK-Related Disbursements

	\$ (831)	\$ (360)	\$ (350)	\$ (350)	\$ (285)	\$ (340)	\$ (200)	\$ (190)	\$ (200)	\$ (528)	\$ (3,634)
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Total Disbursements

	\$ (2,593)	\$ (902)	\$ (1,017)	\$ (948)	\$ (682)	\$ (612)	\$ (693)	\$ (230)	\$ (260)	\$ (543)	\$ (8,482)
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Net Cash Flow

	\$ (1,973)	\$ (273)	\$ (12)	\$ (173)	\$ (532)	\$ (462)	\$ (468)	\$ (30)	\$ (10)	\$ (343)	\$ (4,278)
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Beginning Book Cash Balance

	\$ 858	\$ 805	\$ 532	\$ 520	\$ 1,846	\$ 1,315	\$ 852	\$ 384	\$ 354	\$ 344	\$ 858
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(+/-) Net Cash Flow

	(1,973)	(273)	(12)	(173)	(532)	(462)	(468)	(30)	(10)	(343)	(4,278)
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(+) DIP Draw

	1,920	-	-	1,500	-	-	-	-	-	-	3,420
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Ending Book Cash Balance

	\$ 805	\$ 532	\$ 520	\$ 1,846	\$ 1,315	\$ 852	\$ 384	\$ 354	\$ 344	\$ 0	\$ 0
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