

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

PREMIER KINGS, INC., *et al.*,¹

Debtors.

(Chapter 11)

Case No. 23-02871-TOM

Joint Administration Requested

**MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF
INTERIM AND FINAL ORDERS (I) AUTHORIZING POSTPETITION USE OF CASH
COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION
SECURED PARTY, (III) SCHEDULING A FINAL HEARING,
AND (IV) GRANTING RELATED RELIEF**

Premier Kings, Inc., and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (each a “Debtor” and, collectively, the “Debtors”), by their undersigned proposed counsel and pursuant to sections 105, 361, 362, 363, 507(b), and 552 of Title 11 of the United States Code (the “Bankruptcy Code”), and Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”), hereby move (the “Motion”) for the entry of an interim order in substantially the form attached hereto as **Exhibit A** (the “Interim Order”), and a final order in substantially the proposed final order that will be submitted to the Court before the Final Hearing (the “Final Order,” and, together with the Interim Order, the “Cash Collateral Orders”), (a) authorizing, but not directing, the use of Cash Collateral (as defined in section 363 of the Bankruptcy Code), including the Cash Collateral of the Prepetition Lenders (as defined herein), (b) granting adequate protection to the Prepetition Lenders, (c) modifying the automatic stay imposed under section 362 of the Bankruptcy Code to the extent

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification numbers, are: Premier Kings, Inc. (3932); Premier Kings of Georgia, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors’ address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071. The Debtors have filed a motion for joint administration with the Court.



necessary to permit the Debtors to implement the terms of the Cash Collateral Orders, and (d) scheduling a final hearing for approval of the Motion on a final basis. In support of the Motion, the Debtors rely upon and hereby incorporate by reference the *Declaration of David M. Baker in Support of First-Day Motions* (the “Baker Declaration”), filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:²

INTRODUCTION

1. The Debtors seek authority to use the Cash Collateral of the Prepetition Lenders (defined below) in order to fund the Debtors’ ongoing business operations, as well as the fees and expenses of administering these Chapter 11 cases, to the extent approved by the Court.

2. Entry of the Cash Collateral Orders will significantly contribute to the success of these cases by providing the Debtors with the liquidity necessary to preserve their businesses as a going concern and allow for a sale process to maximize the value of their assets for the benefit of the Debtors, their estates, and their creditors. The Debtors require immediate authority to use the Cash Collateral to permit, among other things, (a) the orderly operation of the Debtors’ businesses, (b) the management and preservation of the Debtors’ assets, (c) the maintenance of the Debtors’ business relationships with customers, vendors, and contract parties, and (d) the satisfaction of other working capital and operational needs including the fees and expenses of the Chapter 11 Cases.

3. The Debtors seek authority to use \$11,118,311 of the Cash Collateral upon entry of the proposed Interim Order, for use during the interim period prior to entry of the Final Order. Without immediate access to at least \$11,118,311 of the Cash Collateral prior to entry of the Final

² Capitalized terms used but not immediately defined shall have the meanings ascribed to them later in the Motion, in the Interim Order, or the Prepetition Credit Agreement, as applicable.

Order, subject to an appropriate budget, the Debtors lack the ability to maintain and continue their business operations and the value of their estates will be irreparably harmed.

4. Accordingly, the Debtors have moved for authorization to use the Cash Collateral on an interim basis subject to a final hearing.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

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

7. The statutory predicates for the relief sought herein are sections 105(a) 361, 362, 363, 507(b), and 552 of the Bankruptcy Code.

BACKGROUND

8. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

9. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

10. No official committee of unsecured creditors has been appointed.

11. No request for a trustee or examiner has been made in these Chapter 11 Cases.

12. Information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the Baker Declaration. Those facts are incorporated herein by reference.

I. The Debtors’ Prepetition Capital Structure.

A. Secured Debt.

13. On February 25, 2021, Premier Kings, Inc. (“PK Inc.”), Premier Kings of Georgia, Inc. (“PKGA Inc.”), and Premier Kings of North Alabama, LLC (“PKNA LLC”), each in its

capacity as Borrower, the “Debtor Loan Parties”), entered into that certain Second Amended and Restated Credit Agreement (as amended by that certain First Amendment to Credit Agreement, dated as of May 18, 2023, and as further amended, supplemented, or modified from time to time prior to the date hereof, the “Prepetition Credit Agreement”) with, among others, Wells Fargo National Bank, in its capacity as administrative agent (the “Prepetition Agent”) and the lenders thereunder (the “Prepetition Lenders,” , and together with the Prepetition Agent, the “Prepetition Secured Parties”).

14. Also on February 25, 2021, PK Inc., PKGA Inc., and PKNA LLC entered into that certain Pledge and Security Agreement (as amended, supplemented, or modified from time to time prior the date hereof, the “Prepetition Security Agreement”, and together with all mortgage, security, pledge, guaranty and collateral agreements and the Prepetition Credit Agreement, the “Prepetition Loan Documents”) with the Prepetition Agent. Pursuant to the Prepetition Security Agreement, each of the Debtor Loan Parties granted to the Prepetition Agent, for the benefit of the Prepetition Secured Parties, security interests in and liens on substantially all of their assets (the “Prepetition Collateral”).

15. The Prepetition Loan Documents are valid, binding, and, subject to applicable bankruptcy law, enforceable against each of the Debtors. The Prepetition Lenders have a first-priority security interest in and lien on all of the Debtors’ assets, including cash and accounts receivable. As of the Petition Date, the principal amount outstanding owed under the Prepetition Loan Documents to the Prepetition Lenders is not less than \$86,991,003.68.

II. Events Leading to Bankruptcy.

16. PK was founded in 2009 by Manraj “Patrick” Sidhu (“Mr. Sidhu”) for the purpose of owning and operating Burger King restaurants (each, a “Restaurant” or “Store,” and, collectively, the “Restaurants” or the “Stores”) as franchisee pursuant to a franchise agreement

with Burger King Corporate, Inc. (“BKCI”). Beginning with six (6) Restaurants in or around Birmingham, Alabama in early 2010, the Debtors later added 34 locations to the portfolio throughout Alabama, Georgia, and Tennessee over the course of 2014. The Debtors opened an eighth (8) store in September of 2015 and expanded to 32 stores in Huntsville, Alabama and 22 in Birmingham, Alabama. PK continued to grow between 2015 and 2021, opening 115 additional locations in Tennessee, Florida, and South Carolina. As of the Petition Date, PK Inc. owns 53 Restaurants, PKGA Inc. owns 82 Restaurants, and PKNA LLC owns 39 Restaurants. Operating these Restaurants, the Debtors achieved sales of \$233.3 and \$255 million in calendar years 2021 and 2020, respectively, while employing nearly 3,600 employees.

17. Unfortunately, Mr. Sidhu passed away unexpectedly on May 24, 2022, which triggered great operational instability for the Debtors’ existing Restaurants, as Mr. Sidhu was not only the sole stockholder or member, but also sole manager. Upon Mr. Sidhu’s tragic death, Joginder Sidhu became the Personal Representative of Mr. Sidhu’s estate (the “Estate Representative”) and, as such, gained legal and operational control over the Debtors. The Estate Representative hired Aurora Management Partners, Inc. (“Aurora”) on June 2, 2022 to provide financial advisory services, and later engaged David Baker of Aurora as Chief Restructuring Officer (“CRO”).

18. As of the Petition Date, the Debtors continue to operate 172 Restaurants pursuant to limited license agreements with BKCI (the “Franchise Agreements”) that were negotiated prior to the Petition Date.

19. Like many other businesses, particularly restaurants, the Debtors have faced significant challenges over the past few years, especially the sudden and unexpected passing of its sole member, Mr. Sidhu, on May 24, 2022. This tragic loss, coupled with various macroeconomic factors, has caused tremendous uncertainty and disruption within the business. Those factors

include, among others, the national impact of the COVID-19 pandemic on restaurant operations, high inflation, increased borrowing rates, and an increasingly limited qualified labor force.

20. Due to low performance and increasing losses, the Debtors, with the advice of its professionals, made the difficult decision to close several Restaurants throughout Alabama and Tennessee in an attempt to avoid further losses and to stabilize the business (another location was closed due to fire). Unfortunately, these cost-cutting measures have not been sufficient to correct or prevent the Debtors' insolvency. Facing increased pressure from BCKI, landlords, vendors, and the Prepetition Lenders, the Debtors have no choice but to seek relief in this Court in order to reorganize its business in chapter 11.

RELIEF REQUESTED

21. By this Motion, the Debtors seek entry of an Interim Order, in substantially the form attached hereto as **Exhibit A**, *inter alia*:

- (a) Authorizing the use of Cash Collateral consistent with the Cash Collateral Orders and the Initial Budget, attached hereto as **Exhibit B** (as updated from time to time in accordance with the Cash Collateral Orders, the "Approved Budget");
- (b) Providing for adequate protection to the Prepetition Lenders in connection with the use of the Cash Collateral;
- (c) Scheduling a final hearing on the Motion; and
- (d) Granting related relief.

CONCISE STATEMENT OF RELIEF REQUESTED³

³ A full description of all terms associated with the Debtors' use of Cash Collateral is set forth in the proposed Interim Order attached hereto as **Exhibit A**. While those terms are summarized in this Motion, to the extent that any discrepancies exist between the provisions of this Motion and the provisions in the Cash Collateral Orders, the terms in the Cash Collateral Orders entered by the Court shall govern.

22. In accordance with Bankruptcy Rule 4001(b), the following is a summary of the material terms of the proposed form of Interim Order, together with references to the applicable sections of the Interim Order.

<p>Entities with Interest in the Cash Collateral <i>Bankruptcy Rule 4001(b)(1)(B)(i)</i></p>	<p>The Prepetition Secured Parties (Interim Order, ¶ 5(a))</p>
<p>Purposes for Use of Cash Collateral <i>Bankruptcy Rule 4001(b)(1)(B)(ii)</i></p>	<p>Subject to the Budget Covenant, the Debtors shall be authorized to use Cash Collateral for: (a) working capital requirements; (b) general corporate purposes; and (c) paying the costs and expenses of administering the Chapter 11 Cases, including fees and expenses of estate professionals; <u>provided that</u> the Debtors shall not be authorized to use Cash Collateral to pay fees or expenses (x) in excess of \$25,000 per month (the “<u>Committee Monthly Cap</u>”), on account of Professional Persons (as defined herein) retained by any official committee appointed in these Chapter 11 Cases, including any Creditors’ Committee, (y) in excess of \$7,500 (the “<u>Investigation Budget</u>”) for the Creditors’ Committee to investigate (but not prepare, initiate or prosecute) Claims and Defenses (as defined herein) against the Prepetition Secured Parties before the termination of the Challenge Period (as defined herein), or (z) to initiate or prosecute proceedings or actions on account of any Claims and Defenses against the Prepetition Secured Parties.</p> <p>(Interim Order, ¶ 8)</p>
<p>Material Terms: Duration and Use of Cash Collateral/Termination Events <i>Bankruptcy Rule 4001(b)(1)(B)(iii)</i></p>	<p>The Debtors’ right to use the Cash Collateral pursuant to the Interim Order shall automatically terminate (the date of any such termination, the “<u>Termination Date</u>”) without further notice or court proceeding on the earliest to occur of (i) December 8, 2023 (or, if consented to in writing by the Prepetition Agent acting in its sole discretion, such later date not to exceed seven (7) days therefrom), if the Final Order (provided that such Final Order has not been reversed, vacated, stayed, unless such stay has been vacated, or appealed, unless such appeal has been dismissed or otherwise finally resolved and affirms entry of the Final Order), which Final Order shall be consistent with this Interim Order or otherwise acceptable to the Prepetition Agent (acting at the direction of the Required Prepetition Lenders, in their sole discretion), has not been entered by this Court on or before such date, (ii) November 30, 2023 (or, if consented to in writing by the Prepetition Agent acting in its sole discretion, such later date not to exceed seven (7) days therefrom), (iii) the effective date of any confirmed chapter 11 plan in any of the Chapter 11 Cases, (iv) the date of the consummation of the last sale</p>

or other disposition resulting in all or substantially all of the assets of the Debtors having been sold or disposed of, and (v) the occurrence of any of the events set forth in this paragraph 12(a) through (q) below, unless waived by the Prepetition Agent (acting at the direction of the Required Prepetition Lenders, in their sole discretion) (each of the following events, a "Termination Event" and collectively, the "Termination Events"):

(a) on or before October 27, 2023, the Debtors shall not have filed a motion seeking entry of an order (the "Bidding Procedures Order"), in form and substance satisfactory to the Prepetition Agent, approving a sale process for all or substantially all of the Debtors' assets;

(b) on or before the date that is November 30, 2023 (or, if consented to in writing by the Prepetition Agent acting in its sole discretion, such later date not to exceed seven (7) days therefrom), the Bidding Procedures Order shall not have been approved by order of the Court, in form and substance acceptable to the Prepetition Agent;

(c) on or before December 19, 2023 (or, if consented to in writing by the Prepetition Agent acting in its sole discretion, such later date not to exceed seven (7) days therefrom), an auction (to the extent necessary) for the sale of substantially all of the Debtors' assets shall not have occurred in accordance with the requirements of the Bidding Procedures Order (such process, the "Auction");

(d) on or before December 30, 2023 (or, if consented to in writing by the Prepetition Agent acting in its sole discretion, such later date not to exceed seven (7) days therefrom), the Court shall not have approved the results of the Auction and an agreement or agreements for the sale of the assets (the "Approved Sale(s)"), which order and agreement shall be in form and substance acceptable to the Prepetition Agent (acting at the direction of the Required Prepetition Lenders, in their sole discretion);

(e) the Approved Sale(s) shall not have been consummated by January 8, 2024 (or, if consented to in writing by the Prepetition Agent acting in its sole discretion, such later date not to exceed seven (7) days therefrom);

(f) the Debtors' failure to: (i) use the Collateral, including without limitation Cash Collateral, in a manner consistent with the Approved Budget, but subject to the Budget Covenant, and otherwise comply in any respect with any provision of this Interim Order (including, without limitation, the failure to make the

payments identified in paragraph 11(a) when due in accordance with and under the terms thereof); or (ii) comply with any other covenant or agreement specified in this Interim Order (including any obligations to comply with the provisions of paragraph 11 or the covenants and other obligations of the Debtors contained therein); in each case where such failure shall have continued unremedied for five (5) business days following receipt of written notice by the Debtors from the Prepetition Agent of such failure;

(g) (i) an application, motion or other pleading shall have been filed by any Debtor seeking to amend, stay, supplement, vacate, extend or modify in any manner this Interim Order; or (ii) an order shall have been entered reversing, amending, supplementing, extending, staying, vacating, or otherwise modifying in any manner this Interim Order, in each case, without the prior written consent of the Prepetition Agent in its sole discretion;

(h) the date any provision of this Interim Order (or the Final Order, as applicable) shall for any reason cease to be valid and binding or any Debtor shall so assert in any pleading filed in any court;

(i) the date (i) any Chapter 11 Case shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking the dismissal or conversion of any Chapter 11 Case pursuant to Bankruptcy Code section 1112; (ii) a trustee, responsible officer, or an examiner (other than a fee examiner) pursuant to Bankruptcy Code section 1104 is appointed or elected, as applicable, in any Chapter 11 Case, any Debtor applies for, consents to, or acquiesces in, any such appointment, or the Court shall have entered an order providing for such appointment, in each case without the prior written consent of the Prepetition Agent (acting at the direction of the Required Prepetition Lenders, in their sole discretion); or (iii) the date that the Debtors file a Chapter 11 plan of reorganization in the Chapter 11 Case that is not, prior to such filing, confirmed in writing by the Prepetition Agent (acting at the direction of the Required Prepetition Lenders, in their sole discretion) to be in form and substance acceptable to the Prepetition Lenders;

(j) the Court shall have entered an order granting relief from the automatic stay to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure of the like) on any of the Debtor's assets (other than in respect of insurance proceeds or with respect to assets having a fair market value of less than \$250,000);

(k) any Debtor shall have filed a motion or application for the approval of any superpriority claim or any lien in the Chapter 11 Cases (other than such claim or lien granted or permitted pursuant to this Interim Order), which is pari passu with or senior to any of the Adequate Protection Liens, Superpriority Claims or Prepetition Liens, without the prior consent of the Prepetition Agent (acting at the direction of the Required Prepetition Lenders, in their sole discretion);

(l) other than with respect to the Approved Liens, any Debtor shall create or incur, or the Court enters an order granting, any claim which is pari passu with or senior to any of the Prepetition Liens or Prepetition Secured Obligations or the Adequate Protection Liens and Adequate Protection Obligations granted under this Interim Order;

(m) unless otherwise agreed to in writing by the Prepetition Agent (acting at the direction of the Required Prepetition Lenders, in their sole discretion), the consummation of a sale or disposition of any material assets of the Debtors other than in the ordinary course of business;

(n) commencement of any action, including the filing of any pleading, by any Debtor, or direct or indirect non-debtor affiliate or subsidiary of a Debtor, against any of the Prepetition Secured Parties with respect to any of the Prepetition Secured Obligations or Prepetition Liens;

(o) the Court shall have entered an order avoiding, disallowing, subordinating or recharacterizing any claim, lien, or interest held by a Prepetition Secured Party arising under the Prepetition Credit Agreement, unless (i) the Debtor has sought a stay of such order within five (5) business days after the date of such issuance, and such order is stayed, reversed or vacated within ten (10) business days after the date of such issuance or (ii) the Prepetition Secured Party has consented to such order in writing;

(p) at any time prior to the Termination Date, the amount of unrestricted cash and cash equivalents, as reported in any Liquidity Report, shall be less than \$650,000 as determined by the Prepetition Agent;

(q) unless otherwise agreed to in writing by the Prepetition Agent (acting at the direction of the Required Prepetition Lenders, in their sole discretion), incurrence by the Debtors of any new secured debt or any unsecured debt, which unsecured debt is incurred outside of the ordinary course of business; or

(r) any motion, pleading, or application is filed by any Debtor seeking the entry of an order, or an order is entered in any of the Chapter 11 Cases, approving any debtor-in-possession financing for borrowed money or other extensions of credit, whether pursuant to section 364 of the Bankruptcy Code or otherwise, unless such financing and such order expressly provide for the indefeasible payment and complete satisfaction in full in cash of all Prepetition Secured Obligations prior to, or concurrently with, any initial borrowings or other extensions of credit under or in connection with such financing.

(Interim Order, ¶ 12)

Upon a Termination Event, the Debtors shall immediately provide notice to the Prepetition Agent (with a copy to counsel for the Creditors' Committee (if any) and the Bankruptcy Administrator), of the occurrence of any Termination Event, at which time the Debtors' ability to use Cash Collateral hereunder shall terminate and the Adequate Protection Obligations shall become due and payable. Upon the occurrence of a Termination Event and following the giving of not less than four (4) business days' advance written notice (the "Enforcement Notice") to counsel to the Debtors, counsel to the Creditors' Committee (if any) and the Bankruptcy Administrator (the "Notice Period"), the Debtors shall immediately cease using Cash Collateral, the Prepetition Secured Parties may exercise any remedies available to them under this Interim Order, the Prepetition Loan Documents and applicable non-bankruptcy law, including but not limited to (a) set off and apply immediately any and all amounts in accounts maintained by the Debtors against the Adequate Protection Obligations and Prepetition Secured Obligations owed to the Prepetition Secured Parties and otherwise enforce rights against the Collateral for application towards the Adequate Protection Obligations and Prepetition Secured Obligations; (b) take any and all actions necessary to take control of the Prepetition Collateral and/or the Collateral, including any Cash Collateral; and (c) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the Prepetition Loan Documents or applicable law, including foreclosure on and sale of all Prepetition Collateral and Postpetition Collateral, to effect the repayment and satisfaction of the Adequate Protection Obligations and Prepetition Secured Obligations owed to the Prepetition Secured Parties. The rights and remedies of the Prepetition Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that they may otherwise have. The only permissible basis for the Debtors, the Creditors' Committee (if any), the Bankruptcy Administrator or any other party to contest, challenge or object to an Enforcement Notice

	<p>shall be solely with respect to the validity of the Termination Event(s) giving rise to such Enforcement Notice (i.e. whether such Termination Events occurred). The automatic stay pursuant to Bankruptcy Code section 362 shall be automatically terminated at the end of the Notice Period, without further notice or order of the Court, unless the Prepetition Secured Parties elect otherwise in a written notice to the Debtors, and the Prepetition Secured Parties shall be permitted to exercise all rights and remedies, including with respect to the Collateral (including, without limitation, any Cash Collateral), set forth in this Interim Order and the Prepetition Loan Documents, and as otherwise available at law without further order or application or motion to the Court, and without restriction or restraint by any stay under Bankruptcy Code sections 362 or 105 or otherwise. Notwithstanding the foregoing, the Debtors shall retain the right after a Termination Event to request emergency relief from the Court to continue to use Cash Collateral and the automatic stay over the Prepetition Secured Parties' objection, consistent with the requirements of the Bankruptcy Code</p> <p>(Interim Order, ¶ 13)</p>
<p>Liens, Cash Payments or Adequate Protection Provided for Use of Cash Collateral <i>Bankruptcy Rule 4001(b)(1)(b)(iv)</i></p>	<p>(a) As adequate protection, the Prepetition Secured Parties shall be granted:</p> <p>(i) Subject to the Carve-Out, allowed joint and several superpriority administrative expense claims (the "<u>Superpriority Claims</u>") against the Debtors with priority over any and all administrative expenses and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, as provided under section 507(b) of the Bankruptcy Code. (Interim Order, ¶ 10(a)(i))</p> <p>(ii) Subject to the Carve-Out and Approved Liens (as defined below), senior replacement liens, senior liens on unencumbered property, junior liens on prepetition and postpetition property of the Debtors which is subject to certain existing permitted liens and, subject to entry of a Final Order, a lien on the proceeds of Avoidance Actions (the "<u>Adequate Protection Liens</u>"). (Interim Order, ¶ 10(a)(ii))</p> <p>(b) The Adequate Protection Liens shall not be (1) subject or subordinate to, or pari passu with, (a) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551 or (b) any lien or security interest arising on or after the Petition Date, subject to the Carve-Out, or (2) except as otherwise set forth in paragraphs 10(a)(ii)(A) and 10(a)(ii)(B) thereof, subordinated to or made pari passu with any</p>

other lien, claim or security interest under Bankruptcy Code sections 363 or 364 or otherwise. (Interim Order, ¶ 10(a)(ii)(C))

(c) Prepetition Agent Fees and Expenses. The Debtors shall promptly pay, in cash, upon presentment of an applicable invoice to the Debtors (with a copy of such invoice to be presented contemporaneously to both the Bankruptcy Administrator and counsel for the Creditors' Committee, if any), all reasonable, actual, and documented fees, costs and expenses incurred by the Prepetition Agent and payable or reimbursable under the Prepetition Loan Documents, including, without limitation, the fees, costs and expenses of lead counsel, King & Spalding LLP, local counsel, Bradley Arant Boult Cummings LLP, and CR3 Group, as financial advisor to the Prepetition Agent, in each case in accordance with the Prepetition Loan Documents and without further order of, or application to, the Court or notice to any party other than as provided in this paragraph 11(a); provided, however, that, prior to consummation of the Approved Sale(s), the Debtors shall only be permitted to pay the fees and expenses of the professionals engaged by the Prepetition Agent to the extent such fees and expenses do not exceed, in any month, the amounts set forth in the Approved Budget for payment of such professional fees and expenses, and any fees and expenses incurred by such professionals in excess of the amounts in the Approved Budget for the applicable month (the "Agent Professional Fee Excess") shall be payable, at such professional's election, (x) to the extent that the budgeted amounts for such professional for any monthly period exceeds the actual fees and expenses incurred by such professional for that period, by carrying forwards or backwards such excess and applying it to the Agent Professional Fee Excess, or (y) upon consummation of any Approved Sale(s), by applying the net proceeds therefrom to the Agent Professional Fee Excess. For the avoidance of doubt, none of the fees, costs and expenses of Prepetition Agent and the Prepetition Lenders shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Court.

(d) Credit Bidding. The Prepetition Agent (on behalf of the Prepetition Lenders) shall have the right to credit bid (x) up to the full amount of the remaining Prepetition Secured Obligations under the Prepetition Loan Documents and (y) the Superpriority Claims and any unpaid amounts due and owing under paragraph 11(a) thereof, as applicable, in the sale of any of the Collateral, including, without limitation, pursuant to (a) Bankruptcy Code section 363, (b) a plan of reorganization or a plan of liquidation under Bankruptcy

Code section 1129, or (c) a sale or disposition by a chapter 7 trustee for any Debtor under Bankruptcy Code section 725.

(e) Executory Contracts and Unexpired Leases. The Debtors will consult with the Prepetition Agent and its advisors to determine which executory contracts and unexpired leases should be assumed or rejected by the Debtors, provided that the Debtors ultimately reserve the right to make such decisions based on the Debtors' business judgment.

(f) Employee Incentive/Retention Plans. The Debtors shall not seek approval of any employee incentive or retention plans (or any similar sort of retention or incentive program) without the prior written consent of the Prepetition Agent (at the direction of the Required Prepetition Lenders), which consent shall be in its sole discretion.

(g) Other Covenants.

(i) The Debtors shall maintain their cash management arrangements in a manner consistent in all material respects with that described in the Debtors' motion for authority to maintain its existing cash management system.

(ii) Except as expressly permitted in the Bidding Procedures Order (as defined below) or other "first day" pleadings, the Debtors shall not use, sell or lease any assets outside the ordinary course of business, or seek authority of this Court to the extent required by Bankruptcy Code section 363, without obtaining the prior written consent of the Prepetition Agent, which consent shall be in its sole discretion, and prior consultation with the Prepetition Agent at least five (5) business days prior to the date on which the Debtors seek the Court's authority for such use, sale or lease. Subject to paragraph 10(a)(iii) thereof and the rights of any holder of a Permitted Priority Lien thereon, in the event of any such sale, lease, transfer, license, or other disposition of property of the Debtors (other than a disposition of all or substantially all of the Debtors' assets) that constitutes Collateral outside the ordinary course of business (to the extent permitted by the Prepetition Loan Documents and this Interim Order) the Debtors are authorized and directed, without further notice or order of this Court, to immediately pay to the Prepetition Agent for the benefit of the Prepetition Secured Parties, 100% of the net cash proceeds resulting therefrom no later than the second business day following receipt of such proceeds. In

	<p>the event of any casualty, condemnation, or similar event with respect to property that constitutes Collateral, the Debtors are authorized and directed to pay to the Prepetition Agent for the benefit of the Prepetition Secured Parties, any insurance proceeds, condemnation award, or similar payment (excluding any amounts on account of any D&O policies) in excess of \$25,000 no later than the second business day following receipt of payment by the Debtors unless the Prepetition Secured Parties have consented, in their sole discretion, in writing, to the funds being reinvested by the Debtors.</p> <p>(iii) All Cash Collateral and all proceeds from the sale, transfer or other disposition of any Prepetition Collateral of any kind which is now or shall come into any Debtor's possession, custody or control, or to which any Debtor is now or shall become entitled, shall be promptly deposited in the same bank accounts into which the collections and proceeds of the Prepetition Collateral were deposited under the Prepetition Credit Agreement (or in such other accounts as are designated by the Prepetition Agent from time to time in writing to the Debtors). Such collections and proceeds shall remain subject to the Prepetition Liens and shall be treated in accordance with the terms and conditions of this Interim Order. The Prepetition Liens against, on and in the Prepetition Collateral shall continue to attach to the Cash Collateral irrespective of the commingling of the Cash Collateral with other cash of the Debtors. Any failure by the Debtors on or after the Petition Date to comply with the segregation requirements of section 363(c)(4) of the Bankruptcy Code in respect of any Cash Collateral shall not be used as a basis to challenge the Prepetition Secured Obligations, or the extent, validity, enforceability or perfected status of the Prepetition Liens.</p> <p>(iv) As of the last Friday included in each Liquidity Report, the amount of unrestricted cash and cash equivalents held by the Debtors in all deposit accounts shall not, in the aggregate, be less than \$650,000.</p>
<p>Stipulations of the Debtors <i>Bankruptcy Rule 4001(c)(1)(B)(iii) and (d)(1)(B)</i></p>	<p>Subject to the Challenge Period, the Interim Order contains certain stipulations and releases by the Debtors, including, as to the amount and validity of the claims and liens of the Prepetition Secured Parties. (Interim Order, ¶ 5)</p>

<p>Modification of the Automatic Stay <i>Bankruptcy Rule 4001(b)(1)(B)(iii)</i></p>	<p>The automatic stay is modified as necessary to effectuate the terms of the Interim Order, including the granting of liens contemplated by the Interim Order and to allow for the exercise of remedies following a Termination Event. (Interim Order, ¶ 27)</p>
<p>Carve-Out <i>Bankruptcy Rule 4001(b)(1)(B)(iii)</i></p>	<p>The Prepetition Liens, Adequate Protection Liens and Superpriority Claims will be subject and subordinate to the Carve-Out. The “<u>Carve- Out</u>” shall mean the sum of:</p> <p>(A) all fees required to be paid to the clerk of the Court and the Bankruptcy Administrator (without regard to the Carve-Out Trigger Notice (as defined herein));</p> <p>(B) reasonable fees and expenses up to \$25,000 in the aggregate incurred by a trustee appointed under Bankruptcy Code section 726(b) (without regard to the Carve-Out Trigger Notice);</p> <p>(C) subject in all respects to the Approved Budget, and the Committee Monthly Cap with respect to Professional Fees incurred by Professional Persons retained by the Creditors’ Committee or any other statutory committee appointed in the Chapter 11 Cases, and subject to any Professional Fees permitted to be incurred under the Investigation Budget, to the extent allowed, whether by interim order, procedural order or otherwise, all accrued and unpaid reasonable fees, costs, and expenses (the “<u>Professional Fees</u>”) incurred by persons or firms retained by the Debtors, the Creditors’ Committee or any other statutory committee appointed in the Chapter 11 Cases (if any) pursuant to Bankruptcy Code section 327, 328, or 363 (collectively, the “<u>Professional Persons</u>”) at any time before or on the day of delivery by the Prepetition Agent of a Carve-Out Trigger Notice (the “<u>Pre-Trigger Date Fees</u>”); and</p> <p>(D) after the delivery by the Prepetition Agent of the Carve-Out Trigger Notice (such date of delivery, the “<u>Trigger Date</u>”), to the extent allowed at any time, whether by interim order, procedural order or otherwise, the payment of (1) all Professional Fees of Professional Persons retained by the Debtors and (2) subject to the Committee Monthly Cap, the payment of Professional Fees of Professional Persons incurred by the Creditors’ Committee or any other statutory committee appointed in the Chapter 11 Cases, not to exceed \$100,000 in the aggregate for clauses (1) and (2) incurred after the Trigger Date (the amount set forth in this clause (D) being the “<u>Post-Carve Out Trigger Notice Cap</u>”); <u>provided, that</u>, with respect to the foregoing clause (C), any Professional Fees thereunder incurred in excess of the aggregate amount permitted for such</p>

	<p>Professional Persons in the Approved Budget shall not be included in the Carve-Out;</p> <p>provided, further, that nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in clauses (C) or (D) above, on any grounds. On the day on which a Carve-Out Trigger Notice is given to the Debtors, such Carve-Out Trigger Notice also shall constitute a demand to the Debtors, and the Debtors agree, to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an aggregate amount equal to the accrued and unpaid Pre-Trigger Date Fees plus the Post-Carve Out Trigger Notice Cap, and the Debtors shall deposit and hold any such amounts in the “<u>Carve-Out Reserve Account</u>”, as defined below, which shall be a segregated account at a financial institution selected by the Debtors for such purpose and solely for the benefit of the Professional Persons entitled thereto. The reserved funds shall be released from time to time from the segregated account to pay when due any Pre-Trigger Date Fees and any fees and expenses incurred after Post-Carve Out Trigger Notice that are included in the Post-Carve Out Trigger Notice Cap under clause (D) above. The Carve-Out Reserve Account and amounts therein shall be free and clear of all liens, claims and interests of any party other than the Professional Persons entitled thereto; provided, however, that if the amount in such reserve exceeds the actual amount of fees and expenses incurred of the type described in clause (C) and clause (D), then such excess will be paid to the Prepetition Agent and applied in accordance with the Prepetition Loan Documents. Notwithstanding the foregoing, (X) the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (1) the investigation, preparation, initiation or prosecution of any claims, causes of action, proceeding, adversary proceeding or other litigation against any of the Prepetition Secured Parties (in such capacity), including challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the Prepetition Secured Obligations and the Prepetition Liens granted under the Prepetition Loan Documents in favor of the Prepetition Secured Parties, including, without limitation, for lender liability or pursuant to Bankruptcy Code sections 105, 510, 544, 547, 548, 549, 550 or 552, applicable nonbankruptcy law or otherwise; (2) attempts to modify any of the rights granted to the Prepetition Secured Parties in this Interim Order (other than with the consents contemplated hereunder); (3) attempts to prevent, hinder or otherwise delay any of the Prepetition Secured Parties’ enforcement or realization upon any Collateral in accordance with the Prepetition Loan Documents and this Interim Order; or (4) paying any amount on account of any claims arising before the Petition Date unless such</p>
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payments are approved by an order of this Court, in the Approved Budget or otherwise consented to by the Prepetition Agent in its sole discretion, and (Y) so long as the Carve Out Trigger Notice shall not have been delivered, the Carve Out shall not be reduced by the payment of Professional Fees allowed at any time by this Court. Any claim incurred in connection with any of the activities described above (other than as permitted in connection with the Investigation Budget in an amount not exceeding such Investigation Budget) shall not be allowed, treated or payable as an administrative expense claim for purposes of section 1129(a)(9)(A) of Bankruptcy Code. For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by the Prepetition Agent to the Debtors, Debtors’ counsel, the Bankruptcy Administrator, and counsel to the Creditors’ Committee (if any), upon the occurrence and during the continuance of a Termination event (as defined below), stating that the Post-Carve Out Trigger Notice Cap has been invoked. For the avoidance of doubt and notwithstanding anything to the contrary herein or in the Prepetition Loan Documents, the Carve-Out shall be senior to all liens and claims arising out of the Prepetition Loan Documents, including the Prepetition Liens, the Adequate Protection Liens, the Superpriority Claims, and any and all other forms of adequate protection, liens or claims securing or relating to the Prepetition Secured Obligations. For the avoidance of doubt, to the extent that the budgeted amounts for a Professional Person for any Approved Budget period ending prior to the Trigger Date exceeds the actual fees and expenses incurred by such Professional for that period, such excess may be carried forwards, or backwards, to the immediately prior or subsequent payment period under the Approved Budget (but only for periods ending prior to the Trigger Date), and be applied to any fees or expenses that exceeded the budgeted amounts for such prior or later period(s). In addition to the foregoing, the Carve-Out shall include, solely to the extent earned and incurred prior to the Trigger Date and approved by the Bankruptcy Court without objection by the Prepetition Agent, all (i) investment banking fees earned by the Debtors’ investment banker and (ii) break-up fees and expense reimbursements to which stalking horse bidders are entitled under their respective purchase agreements.

(Interim Order, ¶ 10(a)(iii))

(iv) Payments from Carve-Out. The Debtors shall maintain a segregated account or accounts for the payment of allowed Pre-Trigger Date Fees and, subject to the Post-Carve Out Trigger Notice Cap, Professional Fees incurred after the Trigger Date (the “Carve-Out Reserve Account”), which account shall be funded from the Debtors’ cash receipts in accordance with the Approved Budget on

	<p>a weekly basis, in advance, until the occurrence of the Trigger Date. After the Trigger Date, the Carve-Out Reserve Account may continue to be funded, up to the Post-Carve Out Trigger Notice Cap. The Debtors shall pay Professional Persons Professional Fees using funds in the Carve-Out Reserve Account in compliance with the Approved Budget, this Interim Order and any interim compensation procedures; provided, however, that, prior to payment in full of the Prepetition Secured Obligations and the occurrence of the Trigger Date, to the extent that any Professional Fees that have accrued from the Petition Date through and including the Trigger Date are less than the amounts funded into the Carve-Out Reserve Account, the excess amounts in the Carve-Out Reserve Account shall be (A) first, applied to fund the Post-Carve Out Trigger Notice Cap; (B) second, remitted to the Prepetition Secured Parties to apply to reduce the Prepetition Secured Obligations.</p> <p>(Interim Order, ¶ 10(a)(iv))</p>
<p>Budget Covenant and Reporting: <i>Bankruptcy Rule 4001(b)(1)(B)(ii)</i></p>	<p><u>Reporting and Budget Compliance.</u> The Debtors shall comply in all respects with the provisions of this paragraph 11(c) (the “<u>Budget Covenant</u>”). The Initial Budget is approved in its entirety. The use of Cash Collateral under this Interim Order shall be in accordance with the Approved Budget, subject to Permitted Variances (as defined below) and the terms and conditions set forth in this Interim Order. Not later than 5:00 PM (Eastern Standard Time) beginning on the second Wednesday following the Petition Date and on every Wednesday following the end of each Testing Period (as defined below), the Debtors shall deliver to the Prepetition Agent (along with its professionals), (a) an updated budget, in form and substance satisfactory to the Prepetition Agent (at the direction of the Required Prepetition Lenders, in their sole discretion), and such updated budget shall become the Approved Budget for the purposes of this Interim Order upon approval of the Prepetition Agent (at the direction of the Required Prepetition Lenders, in their sole discretion); provided, that until a new Approved Budget has been so approved, the most recent Approved Budget shall govern, (b) a variance report (the “<u>Variance Report</u>”) setting forth actual cash receipts and disbursements and cash flows of the Debtors for the prior Testing Period and setting forth all disbursement and receipt variances, on a line-item and aggregate basis, from the amount set forth for such period as compared to the applicable Approved Budget, in each case, for the applicable Testing Period (and each such Variance Report shall include explanations for all material variances and shall be certified by the Chief Restructuring Officer of the Debtors), and (c) a report of the cash balances in all deposit accounts maintained by the Debtors (each such report, a “<u>Liquidity Report</u>”) as of the last Friday before the date such report is delivered</p>

(and supporting documentation for such balances acceptable to the Prepetition Agent). For purposes thereof, the term “Permitted Variances” shall mean, for (a) the period commencing on the Petition Date through and including November 24, 2023 and thereafter, (b) the trailing four (4) week period prior to the date on which each Variance Report is delivered as required hereunder, calculated on a rolling four (4) week basis to account for timing of payment variances, unless otherwise agreed by the Prepetition Agent (the applicable “Testing Period”) (i) any favorable disbursement variance, and (ii) any unfavorable variance of, as measured on a cumulative basis, no more than 10% of net operating cashflow, in each case as compared to the budgeted net operating cashflow set forth in the Approved Budget with respect to the applicable Testing Period. The Permitted Variances with respect to each Testing Period shall be determined and reported to the Prepetition Agent not later than 5:00 PM (Eastern Standard Time) on each Wednesday immediately following the end of each such Testing Period. Additional variances, if any, from the prior Approved Budget, and any proposed changes to the budget, shall be subject to the approval of the Administrative Agent (at the direction of the Required Prepetition Lenders, in their sole discretion).

(Interim Order, ¶ 11(c))

Access to Records/Financial Reporting. In addition to, and without limiting, whatever rights of access the Prepetition Secured Parties have under the Prepetition Loan Documents, upon reasonable notice, at reasonable times and subject to appropriate confidentiality protections, the Debtors shall permit representatives and agents of the Prepetition Agent, including without limitation CR3 Group, as financial advisor to the Prepetition Agent, (i) to have access to and inspect the Debtors’ properties, subject to reasonable safety precautions, (ii) to examine the Debtors’ books and records, and (iii) to discuss the Debtors’ affairs, finances and condition with the Debtors’ officers and financial advisors. In addition, the Debtors shall provide to the advisors to the Prepetition Agent, within five (5) business days after the end of each fiscal month of the Borrower beginning on November 6, 2023, reports setting forth written same-store sales report in form and substance reasonably satisfactory to the Prepetition Agent listing the (x) sales of each store for the immediately prior month, (y) the sales for such store from the same month in the prior year, and (z) the percentage change in sales between the foregoing (x) and (y).

(Interim Order, ¶ 11(d))

<p>506(c), 552(b) and 1141(d)(4) Waiver <i>Bankruptcy Rule 4001(c)(1)(B)(x)</i></p>	<p>Subject to the entry of a Final Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases, which have been or may be incurred in any of the Chapter 11 Cases at any time shall be charged against or recovered from any Prepetition Secured Party, any of the Prepetition Secured Obligations, any of their respective claims, or the Collateral pursuant to Bankruptcy Code sections 105(a) or 506(c), or otherwise, without the prior written consent of the Prepetition Agent (at the direction of the Prepetition Lenders in their sole discretion), and no such consent shall be implied from any other action, inaction, or acquiescence by any of the Prepetition Secured Parties or their respective representatives.</p>
<p>Challenge Period <i>Bankruptcy Rule 4001(b)(1)(B)(iii)</i></p>	<p>The stipulations, releases and admissions by the Debtor contained in the Interim Order, including in paragraph 5 thereof, shall be binding upon the Debtors and any successor thereto in all circumstances. The stipulations, releases and admissions contained in the Interim Order, including in paragraph 5 thereof, shall be binding upon all other parties in interest, including the Creditors' Committee (if any) or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a "<u>Trustee</u>"), unless and to the extent (a) the Creditors' Committee (if any) or any other party in interest other than any Debtor (including any Trustee), in each case, after obtaining requisite standing, has duly filed an adversary proceeding challenging in whole or part the validity, enforceability, priority or extent of the Prepetition Secured Obligations or the liens on the Prepetition Collateral securing the Prepetition Secured Obligations held by or on behalf of the Prepetition Secured Parties or otherwise asserting or prosecuting any Avoidance Actions, recharacterization, subordination, "lender liability", or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "<u>Claims and Defenses</u>") against the Prepetition Secured Parties in connection with any matter related to the Prepetition Secured Obligations, or the Prepetition Collateral or the Prepetition Liens by no later than the later of (i) in the case of any such adversary proceeding filed by the Creditors' Committee, if any, or another party in interest with requisite standing, thirty (30) days after the date of entry of this Interim Order, and (ii) any such later date agreed to in writing by the Prepetition Agent (at the direction of the Prepetition Lenders, in their sole discretion) (the time period established by the later of the foregoing clauses (i) and (ii), the "<u>Challenge Period</u>"), and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such Claims and Defenses or other challenge or claim in any such duly filed adversary proceeding. If no such adversary proceeding is timely filed prior to the expiration of the Challenge Period by the Creditors' Committee or a party in interest, in any case</p>

which has been granted the appropriate standing, without further order of this Court: (x) the Prepetition Secured Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense, avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance, recovery, disgorgement, attachment, “claim” (as defined in the Bankruptcy Code), impairment, subordination (whether equitable, contractual or otherwise) or other challenge of any kind pursuant to the Bankruptcy Code or applicable nonbankruptcy law, for all purposes in these Chapter 11 Cases and any subsequent chapter 7 cases; and (y) the Prepetition Secured Obligations, the Prepetition Agent’s Prepetition Liens on the Prepetition Collateral and the respective Prepetition Secured Parties in such capacity shall not be subject to any other or further Claims and Defenses or other challenge and any party in interest shall be forever enjoined and barred from seeking to exercise the rights of the Debtors’ estates or taking any such action, including any successor thereto (including any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period). If any such adversary proceeding is timely filed by a party in interest with appropriate standing prior to the expiration of the Challenge Period, the stipulations and admissions contained in this Interim Order, including in paragraph 5 thereof, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any Creditors’ Committee and any other Person (as defined in the Prepetition Credit Agreement), including any Trustee, except as to any such findings and admissions that were expressly and successfully challenged in such adversary proceeding.

(Interim Order, ¶ 16(a))

BASIS FOR RELIEF REQUESTED

I. The Debtors’ Requested Use of Cash Collateral is Necessary

23. The Debtors require access to the Prepetition Collateral, including Cash Collateral, to satisfy payroll, pay suppliers, meet overhead, pay utility expenses, make adequate protection payments, pay professionals and to make any other payments permitted or required under the proposed Interim Order. The ability to satisfy these expenses as and when due is essential to the continued management, operation and preservation of the Debtors’ businesses and properties

during the pendency of these proceedings and avoid immediate and irreparable harm to their estates. In the normal course of business, the Debtors use cash on hand and cash flow from operations and other sources to fund working capital, capital expenditures, and for maintenance of their businesses and properties. Absent access to Cash Collateral, the Debtors will not have adequate cash on hand to pay these necessary expenses, and therefore, the uninterrupted use of Cash Collateral is critical.

24. The use of Cash Collateral by the Debtors will be subject to the Approved Budget in accordance with the Budget Provision. The Interim Budget is anticipated to be adequate, considering all available assets, to pay the amounts sought in the “first day” motions, including payment of accrued prepetition employee wages, critical vendors, and other administrative expenses due or accruing during the period covered thereby.

25. The terms and conditions of the Debtors’ use of Cash Collateral as set forth in the proposed Interim Order and the Interim Budget (a) are, taken as a whole, fair and reasonable under the circumstances; (b) reflect the Debtors’ reasonable exercise of business judgment consistent with their fiduciary duties; and (c) are supported by reasonably equivalent value and fair consideration. Accordingly, the relief is warranted under the circumstances.

II. The Adequate Protection Provisions Are Appropriate.

26. The Debtors’ use of property of its estate, including “cash collateral,” is governed by section 363 of the Bankruptcy Code.⁴ Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may use Cash Collateral as long as “(A) each entity that has an interest in such cash

⁴ The Bankruptcy Code defines “cash collateral” to mean:

Cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(C)(2).

27. In the present case, the Debtors are working to reach a consensual agreement with the Prepetition Agent regarding the use of Cash Collateral on the terms set forth herein, as more fully detailed in the proposed Interim Order. In exchange for the use of Cash Collateral and other transactions contemplated hereby, the Debtors propose, as adequate protection pursuant to sections 361 and 363 of the Bankruptcy Code, to grant the Prepetition Secured Parties the Adequate Protection Liens and Superpriority Claims, (as discussed above and defined in the proposed Interim Order) for any Diminution in Value in the Prepetition Collateral resulting from, among other things, the use of their interest in any Cash Collateral or the use, sale, or other disposition of their respective interests in other Prepetition Collateral, the establishment of the Carve-Out, or the imposition of the automatic stay.

28. Adequate protection can be provided in various forms. *See, e.g., In re Continental Airlines, Inc.*, 154 B.R. 176, 180–181 (Bankr. D. Del. 1993) (courts have discretion in determining what form of adequate protection to grant). Although the Bankruptcy Code does not define the term “adequate protection,” it provides a non-exhaustive list of types of adequate protection, including lump sum or periodic cash payments, replacement liens, administrative priority claims and “other relief” resulting in the “indubitable equivalent” of the secured creditor’s interest in such property. *See* 11 U.S.C. § 361. What constitutes adequate protection is determined on a case-by-case basis. *See, e.g., In re George Ruggiere Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11th Cir. 1984) (recognizing that there must be “an individual determination” of whether a secured creditor’s interest in cash collateral is adequately protected); *In re Columbia Gas Sys., Inc.*, 91–803, 91–804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re N.J. Affordable Homes*

Corp., No. 05-60442, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006) (“The term ‘adequate protection’ is intended to be a flexible concept.”).

29. The essential purpose of adequate protection is to protect against the diminution of a secured creditor’s collateral during the period when such collateral is being used by the debtor in possession. *See In re Delta Res., Inc.*, 54 F.3d 722, 730 (11th Cir. 1995) (“[A] creditor’s interest in property which must be adequately protected encompasses the decline in the value of the collateral only, rather than perpetuating the ratio of the collateral to the debt.”); *In re Cent. Park Avenue Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (“The goal of adequate protection is to safeguard the secured creditor from diminution in value of its interest during the chapter 11 reorganization.”); *In re Monroe Park*, 17 B.R. 934 (D. Del. 1982) (adequate protection requires a debtor to propose some form of relief that will preserve the secured creditor’s interest in collateral during the case).

30. Courts recognize that the preservation of the going concern value of secured lenders’ collateral constitutes adequate protection of such secured lenders’ interest in such collateral. *See, e.g., In re Wrecclesham Grange, Inc.*, 221 B.R. 978, 981 (Bankr. M.D. Fla. 1997) (“[A]s long as the debtor generates a continuous income stream, the debtor’s use of the rental income does not diminish the value of the collateral.”); *In re 499 W. Warren St. Assocs., Ltd. P’ship*, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992) (finding a secured creditor’s interest in collateral adequately protected when cash collateral was applied to normal operating and maintenance expenditures on the collateral property); *In re Cardinal Indus. Inc.*, 118 B.R. 971, 981 (Bankr. S.D. Ohio 1990) (ruling that secured lenders were adequately protected by debtor’s use of funds to maintain and manage encumbered properties).

31. The Debtors submit that the foregoing protections as well as the fact that the use of Cash Collateral will enable the Debtors to preserve value by maintaining their businesses and

adequately protecting the Prepetition Lenders from any Diminution in Value. Therefore, the Debtors' requested use of Cash Collateral and the protections afforded the Prepetition Lenders are reasonable and appropriate under the circumstances.

32. Finally, the terms of the proposed Interim Order, which were negotiated in good faith and at arm's length, with the relevant parties represented by experienced counsel, are fair and reasonable. Accordingly, the Prepetition Lenders should be provided with the benefit and protection of section 363(m) of the Bankruptcy Code, such that if any provision of the Cash Collateral Orders are later modified, vacated, stayed, or terminated by subsequent order of this Court or any other court, such reversal, stay, modification or vacatur should not affect: (i) the validity, priority, or enforceability of any Adequate Protection Liens arising or incurred prior to the date of the entry of an order granting such reversal, stay, modification, or vacatur; or (ii) the validity, priority, or enforceability of the Adequate Protection Liens securing such Prepetition Obligations.

33. In sum, the Debtors, with the assistance of their financial and legal advisors, have concluded in the sound exercise of their business judgment that the use of Cash Collateral as contemplated under the proposed Interim Order and the forthcoming proposed Final Order will help preserve the Debtors' value as a going concern.

34. For the foregoing reasons, the Debtors submit that the requested use of Cash Collateral and the proposed protections afforded to the Prepetition Lenders are reasonable and appropriate, and in the best interests of the Debtors, their estates and creditors, and therefore should be authorized and approved by this Court.

III. Modification of the Automatic Stay is Appropriate.

35. Section 362 of the Bankruptcy Code provides for an automatic stay upon the filing of a bankruptcy petition. The Debtors request, as contemplated in the proposed Interim Order, a

modification of the automatic stay (to the extent applicable) to permit the Debtors to (i) grant the security interests, liens, and claims described above as well as to perform such acts as may be requested to assure the perfection and priority of such security interests and liens, and (ii) otherwise implement the terms of the Cash Collateral Orders, including the termination and remedies provisions.

36. Stay modification provisions of this kind are ordinary and standard features of post-petition debtor-in-possession cash collateral orders and are, in the Debtors' business judgment, reasonable under the present circumstances. Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the proposed Interim Order.

IV. Immediate Relief is Necessary to Avoid Immediate and Irreparable Harm.

37. Bankruptcy Rule 4001(b)(2) governs the procedures for obtaining authorization to use cash collateral and provides, in relevant part:

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(b)(2).

38. With little to no unencumbered cash, the Debtors have an immediate need to use Cash Collateral, otherwise the Debtors will have no ability to pay vendors, suppliers, or employees, or to otherwise satisfy its on-going obligations. The Debtors also will not be able to pay the professionals necessary for a successful Chapter 11 process. Thus, funds are urgently needed to meet all of the Debtors' working capital and other liquidity needs.

39. The Debtors' ability to fund its operations through the use of Cash Collateral is crucial to the preservation and maintenance of the going-concern value of the Debtors' estates. Accordingly, the Debtors request that the Court conduct an interim hearing on the Motion and authorize the Debtors to use Cash Collateral on an emergency interim basis on the terms set forth in the proposed Interim Order to prevent immediate and irreparable harm to their estates pending the Final Hearing pursuant to Bankruptcy Rule 4001(b).

40. In light of the foregoing, the Debtors have satisfied the requirements of Bankruptcy Rule 4001(b) to support immediate use of Cash Collateral pending the Final Hearing. Accordingly, to prevent the irreparable harm that will inure to the Debtors' estates, creditors, and parties in interest absent Court approval of this Motion, the Debtors respectfully request that the Court grant the relief requested herein and authorize the immediate use of the Cash Collateral pursuant to the terms and conditions set forth in the proposed Interim Order.

BANKRUPTCY RULE 6003 IS SATISFIED

41. Bankruptcy Rule 6003(b) empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." Fed R. Bankr. P. 6003. The Debtors' access to the Cash Collateral is essential to the effective administration of these Chapter 11 Cases. If the Debtors are not permitted to use the Cash Collateral, they would be incapable of operating their businesses as a going concern for the benefit of their estates and creditors. Accordingly, the Debtors meet the "immediate and irreparable harm" standard of Bankruptcy Rule 6003(b).

REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS

42. The Debtors seek a waiver of (i) the notice requirements under Bankruptcy Rule 6004(a), and (ii) the stay of the order authorizing the use, sale, or lease of property under

Bankruptcy Rule 6004(h), to the extent they are applicable, because the relief requested herein is necessary to avoid immediate and irreparable harm.

NOTICE

43. The Debtors will provide notice of this Motion to (a) the Office of the Bankruptcy Administrator for the Northern District of Alabama; (b) the holders of the consolidated forty (40) largest unsecured claims against the Debtors; (c) counsel to BKCI; (d) counsel to Wells Fargo Bank, National Association, as Prepetition Agent; (e) the Bankruptcy Administrator for the Northern District of Alabama; (f) the Internal Revenue Service; (g) the office of the Attorney General for the State of Alabama; (h) the Securities and Exchange Commission; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court (i) enter the proposed Interim Order, substantially in the form attached hereto as Exhibit A, granting the relief sought herein; and (ii) grant such other and further relief as the Court may deem proper.

Dated: October 25, 2023
Birmingham, Alabama

/s/ Jesse S. Vogtle, Jr.

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**pro hac vice admissions pending*

EXHIBIT A

PROPOSED INTERIM ORDER

TO BE SUBMITTED SEPARATELY

EXHIBIT B

INITIAL BUDGET

TO BE SUBMITTED SEPARATELY