

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

In re:

NEW RUE21 HOLDCO, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10939 (BLS)

(Joint Administration Requested)

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

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) hereby file this motion (the “Motion”) for the entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Interim Order”), and a final order² (the “Proposed Final Order,” and, together with the Proposed Interim Order, the “Proposed Orders”) ³, pursuant to sections 105, 361, 362, 363, 506(c), and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (a) authorizing the Debtors to use Cash Collateral (as defined herein) subject to the terms and conditions set forth in the Proposed Orders, (b) granting adequate protection to the Prepetition Secured Creditors (as

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of their federal tax identification numbers, are New rue21 Holdco, Inc. (4668), r21 Holdings, Inc. (1618), New rue21 Intermediate, Inc. (9166), New rue21, LLC (4521), New RSC, LLC (4690), and r services llc (9425). The Debtors’ headquarters is located at 800 Commonwealth Drive, Warrendale, PA 15086.

² The Debtors will file the form of Proposed Final Order prior to the Final Hearing (as defined below).

³ Capitalized terms, including those in the Summary of Material Terms chart below, used but not otherwise defined herein shall have the meanings given to them in the Proposed Orders. To the extent there are any discrepancies between the Proposed Interim Order and Proposed Final Order, the Proposed Final Order, as approved by the Court, will control.

defined herein) in the form and manner provided for in the Proposed Orders, (c) scheduling a final hearing on this Motion (the “Final Hearing”) to consider entry of the Proposed Final Order on a final basis and approving the form of notice with respect to such Final Hearing, and (d) granting related relief. The facts and circumstances supporting the Motion are set forth in the *Declaration of Michele Pascoe in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) and the declaration of Colin M. Adams in support of the Motion (the “Adams Declaration”), both of which were filed concurrently herewith. In further support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent the consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

3. The statutory and legal predicates for the relief sought herein are sections 105(a), 361, 362, 363, 506(c), and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, and 6004, and Local Rule 4001-2.

PRELIMINARY STATEMENT

4. Like many companies entering bankruptcy, the Debtors are facing an acute liquidity crisis. As such, in the weeks leading up to the Petition Date, the Debtors and their advisors engaged in negotiations with their lenders in an effort to secure financing and/or consensual use of cash collateral.

5. By way of background, the Debtors have a senior secured asset-based revolving credit facility with the Prepetition ABL Lenders (as defined herein), which is secured by, among other things, the Debtors' cash, store-level inventory, and accounts receivable. In addition, the Debtors have a term loan facility with the Prepetition Term Loan Lenders (as defined herein), which is secured by, among other things, the Debtors' intellectual property and furniture, fixtures, and equipment. When asked, the Prepetition ABL Agent (as defined herein) readily agreed to support the Debtors and consent to their use of Cash Collateral to preserve and dispose of the ABL Priority Collateral and pay the related freight of these Chapter 11 Cases by, among other things, agreeing to subordinate the Prepetition ABL Agent's first priority liens on the ABL Priority Collateral to the Carve-Out (as defined herein), consistent with a budget. Thus far, the Prepetition Term Loan Lenders have reserved their rights.⁴ As such, by this Motion, the Debtors seek approval to use Cash Collateral on a consensual basis so that they can take all necessary steps to promptly liquidate the ABL Priority Collateral.

⁴ As of the Petition Date, the Debtors do not yet have an agreement with the Prepetition Term Loan Lenders regarding how the preservation or disposition of the Term Priority Collateral (as defined herein) will be funded. The Debtors recently received time sensitive bids and indications of interest to purchase certain of the Term Priority Collateral. If upon review of such bids, the Prepetition Term Loan Lenders commit to paying administrative and other expenses related to preserving and disposing of the Term Priority Collateral, the Debtors will immediately pursue these offers, negotiate agreements, and file motions seeking approval of sale procedures in a manner designed to maximize the recovery of the Prepetition Term Loan Lenders. Pending such a commitment from the Prepetition Term Loan Lenders, however, it would be imprudent for the Debtors to push all of their other stakeholders further in a hole by incurring administrative expenses that may not be paid.

6. Cash Collateral is necessary not only to fund the chapter 11 process, but also to allow the Debtors to maximize value for the benefit of their estates. During these cases, the Debtors intend, subject to Court approval, to conduct “going out of business” sales at all of their retail locations. The proceeds of those inventory sales—on which the Prepetition ABL Agent holds a first lien interest—will not only be used to pay down the Prepetition ABL Lenders’ prepetition balance, but will also help fund operating disbursements over the course of these cases. Bottom line, the funds provided under the consensual Cash Collateral arrangement with the Prepetition ABL Lenders provide a crucial lifeline to the Debtors and, thus, should be approved.

BACKGROUND

I. General Background

7. On the date hereof (the “Petition Date”), each of the Debtors filed voluntary petitions in the Court under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors are authorized to operate their business and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. No official committee of unsecured creditors has been appointed in these Chapter 11 Cases, and no request has been made for the appointment of a trustee or an examiner.

9. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the First Day Declaration.

II. The Debtors’ Prepetition Indebtedness

10. As of the Petition Date, the Debtors have approximately \$194.4 million in principal amount outstanding under their funded debt obligations, consisting of: (i) approximately \$29.7 million in aggregate principal amount outstanding under their asset based revolving loan facility

(the “ABL Facility” and, the obligations thereunder, the “Prepetition ABL Obligations”), and (ii) approximately \$164.7 million in aggregate principal amount outstanding under their senior secured term loan credit facility (the “Term Loan Facility” and, the obligations thereunder, the “Prepetition Term Loan Obligations” and, the Prepetition Term Loan Obligations together with the Prepetition ABL Obligations, the “Prepetition Secured Obligations”), each of which are further described herein.⁵ The Debtors’ outstanding principal borrowings are summarized below:

Facility Size	Maturity	Outstanding Principal Amount
ABL Facility	December 2025	\$29.7 million
Term Loan Facility	January 2026	\$164.7 million
Total:		\$194.4 million

A. ABL Facility

11. New rue21 Holdco, Inc., as Holdings, New rue21, LLC, as Borrower, the other guarantors party thereto, Bank of America, N.A as Administrative Agent, Collateral Agent, L/C Issuer and Swing Line Lender, and the lenders from time to time party thereto (the “Prepetition ABL Lenders”), are parties to that certain ABL Credit Agreement, dated as of June 7, 2021 (as amended, amended and restated, supplemented, or otherwise modified, refinanced, or replaced from time to time prior to the Petition Date, the “ABL Credit Agreement” and, collectively with the Loan Documents (as defined therein), the “Prepetition ABL Documents”). The Prepetition ABL Documents provide for a senior secured revolving credit facility, maturing December 2025, in an amount up to \$90 million (subject to borrowing base availability). Amounts borrowed by New rue21, LLC under the ABL Credit Agreement are guaranteed by New rue21 Holdco, Inc., r services llc, and New RSC, LLC.

⁵ Together, the lenders under the ABL Credit Agreement (as defined herein) (the “Prepetition ABL Lenders”) and the lenders under the Term Loan Credit Agreement (the “Prepetition Term Loan Lenders”) are referred to herein as the “Prepetition Secured Creditors.”

12. As of the Petition Date, and subject to the terms of the Intercreditor Agreement (as defined herein), the Prepetition ABL Obligations are secured by: (x) a first priority interest in and lien on substantially all personal property of the Debtors, including, but not limited to, accounts receivable, credit card receivables, other payment rights, inventory, cash, deposit accounts, securities and commodity accounts, documents and supporting obligations related to the foregoing (collectively, the “ABL Priority Collateral”); and (y) a second priority security interest in and lien on the Term Priority Collateral (as defined herein).

B. Term Loan Facility

13. New rue21, LLC, as Borrower, and New rue21 Holdco, Inc., as Parent, are parties to that certain *Financing Agreement*, dated as of January 24, 2022 (as amended, amended and restated, supplemented, or otherwise modified, refinanced, or replaced from time to time prior to the Petition Date, the “Term Loan Credit Agreement”), by and among Borrower, Parent, each other Guarantor (as defined therein) from time to time party thereto, each Lender (as defined therein) from time to time party thereto, and Blue Torch Finance, LLC, as Administrative Agent and Collateral Agent (in such capacities, the “Prepetition Term Loan Agent”). The Term Loan Credit Agreement provides the Term Loan Facility, which was issued in the original aggregate principal amount of \$85 million and subsequently increased to \$165 million, and which matures in January 2026.

14. As of the Petition Date, and subject to the terms of the Intercreditor Agreement, the Term Loan Facility is secured by a (x) first priority security interest in and lien on all the equity interests of New rue21, LLC and its subsidiaries, (y) first priority lien on substantially all tangible and intangible real and personal property of New rue21, LLC and its subsidiaries (other than the ABL Priority Collateral) (the “Term Priority Collateral” and, together with the ABL Priority

Collateral, the “Prepetition Collateral”), and (z) second priority lien on all of the ABL Priority Collateral.

C. Intercreditor Agreement

15. The Prepetition ABL Agent and the Prepetition Term Loan Agent are parties to that certain Intercreditor Agreement, dated as of January 24, 2022, (the “Intercreditor Agreement” and, together with the ABL Credit Agreement and Term Loan Credit Agreement, the “Prepetition Credit Documents”), pursuant to which the Prepetition ABL Agent and the Prepetition Term Loan Agent set forth, among other things, (a) their (and the Prepetition Secured Creditors’) relative lien priorities in the Prepetition Collateral and enforcement rights and obligations related thereto, (b) the method by and the order in which proceeds of the Prepetition Collateral shall be applied by the Prepetition ABL Agent and Prepetition Term Loan Agent, respectively, and (c) the impact on the respective liens of the Prepetition ABL Agent and Prepetition Term Loan Agent arising from the sale or disposition of Collateral.

16. Section 2.06 of the Intercreditor Agreement provides that, on behalf of the Prepetition Secured Creditors, the Prepetition ABL Agent may approve—and the Prepetition Term Loan Lenders shall, in turn, be deemed to consent to—the Debtors’ use of the Prepetition Secured Creditors’ “cash collateral,” as such term is defined in section 363 of the Bankruptcy Code (the “Cash Collateral”), on which the Prepetition ABL Agent holds a senior lien, in accordance with the terms of the Intercreditor Agreement.

III. The Debtors’ Immediate Need to Use Cash Collateral

17. As described in the First Day Declaration and Adams Declaration, the Debtors commenced these Chapter 11 Cases to implement value maximizing transactions for the benefit of their stakeholders. After a comprehensive prepetition marketing process, the Debtors and their advisors determined that liquidating the majority of their store-level inventory and assets through

large-scale store closing or “going out of business” sales, together with conducting an expedited sale process to sell their remaining assets at a going concern value, would result in their creditors receiving the maximum recovery possible under the circumstances (the “Sale Process”).

18. Parallel to the marketing process, the Debtors and their advisors engaged in discussions with the Prepetition ABL Agent concerning the Debtors’ liquidity constraints and potential funding needs to implement the Sale Process through the chapter 11 process. The Prepetition ABL Agent informed the Debtors that they would consent to the use of the Cash Collateral in order to fund the Debtors’ day-to-day business operations during these Chapter 11 Cases and through the completion of the Sale Process, all in accordance with the parties’ agreed-upon budget (the “Approved Budget”), which is attached to the Proposed Interim Order as **Exhibit 4**.

19. Access to the Cash Collateral is an essential component to completing the Sale Process. In the normal course of business, the Debtors use cash on hand and cash flow from operations and other sources to fund working capital and capital expenditures, as well as to operate and maintain their business and properties. In other words, the Debtors must obtain the ability to use Cash Collateral in order to continue the operation of their business and stores, maintain business relationships with vendors and suppliers, honor payroll obligations to employees, satisfy other working capital and operational needs, and preserve the value of their assets until the Sale Process can be completed.

20. Absent immediate access to Cash Collateral, the Debtors will not have adequate unencumbered cash on hand to pay the expenses necessary to administer these Chapter 11 Cases and will run out of cash in a matter of days—which would force the Debtors to convert these cases, close their stores prematurely and liquidate on a piecemeal basis immediately and without the

organization and structure provided by conducting the Sale Process through these Chapter 11 Cases. That would be a value destructive result for the Debtors and their stakeholders.

21. Accordingly, the continued use of Cash Collateral on a consensual basis, including pending the Final Hearing, is necessary to avoid immediate and irreparable harm to the Debtors and is critical to the Debtors' efforts to maximize value for their stakeholders.

RELIEF REQUESTED

22. By the Motion, the Debtors respectfully request entry of the Proposed Orders granting, among other things, the following relief, as applicable:

- (a) authorizing the Debtors to use Cash Collateral;
- (b) authorizing and approving the form of adequate protection to be provided by the Debtors to the Prepetition Secured Creditors, including with respect to the extent of any Diminution in Value (as defined below), if any;
- (c) approving certain stipulations by the Debtors with respect to the Prepetition Credit Documents and Prepetition Collateral;
- (d) scheduling the Final Hearing; and
- (e) granting related relief.

23. Bankruptcy Rule 4001(d) provides that the Court may fix the time within which objections to the approval of an agreement relating to Cash Collateral and adequate protection pursuant to section 363 of the Bankruptcy Code must be filed. In addition, the Court is empowered to conduct an expedited preliminary hearing on the Motion and authorize the use of Cash Collateral to the extent necessary to avoid immediate and irreparable harm to the Debtors' estates.

SUMMARY OF USE OF CASH COLLATERAL

24. In accordance with Bankruptcy Rules 4001(b)(1) and Local Rule 4001-2(ii), a summary of certain key terms of the proposed use of Cash Collateral is set forth below. The below summary is qualified in its entirety by reference to the applicable provisions of the Proposed

Interim Order, and the Proposed Interim Order will control in the event of any inconsistency between the below summary and the Proposed Interim Order.

Summary of Material Terms	
<p>Parties with Interest in Cash Collateral</p> <p>Bankruptcy Rule 4001(b)(1)(B)(i)</p> <p>Proposed Interim Order, ¶ F, 3</p>	<p>The Prepetition Secured Creditors hold interests in the Cash Collateral.</p>
<p>Purposes for Use of Cash Collateral</p> <p>Bankruptcy Rule 4001(b)(1)(B)(ii)</p> <p>Local Rule 4001-2(a)(i)(A)</p> <p>Proposed Interim Order, ¶ H(i), 3</p>	<p>The Debtors seek authorization to use Cash Collateral for the purpose of funding expenses that are incurred (including estate professional fees and employee costs) during these Chapter 11 Cases to preserve the value of the ABL Collateral in accordance with the Approved Budget.</p>
<p>Budget</p> <p>Bankruptcy Rule 4001(b)(1)(B)(ii)</p> <p>Local Rule 4001-2(a)(i)(E)</p> <p>Proposed Interim Order, ¶ 5(a)</p>	<p>An Approved Budget setting forth the Debtors' projected cash receipts and disbursements on a consolidated basis for the period commencing on the Petition Date. The Debtors' use of Cash Collateral shall be limited to the items set forth in the Approved Budget, subject to Permitted Variances (as defined in the Proposed Interim Order). The Approved Budget shall be updated, modified, or supplemented by the Debtors not less than every four (4) weeks.</p>
<p>Proposed Adequate Protection</p> <p>Bankruptcy Rule 4001(b)(1)(B)(iv)</p> <p>Local Rules 4001-2(a)(i)(F)-(G)</p>	<p>The Proposed Orders will provide that, as adequate protection for the interests of the Prepetition Secured Creditors in the Prepetition Collateral (including Cash Collateral), the Prepetition Secured Creditors will receive, on account of their agreement to subordinate the Prepetition Liens to the Carve-Out, the Debtors' use of Cash Collateral, and any other diminution in value arising out of the imposition of the automatic stay or the Debtors' use, sale, lease, depreciation, or disposition of the Prepetition Collateral and Cash</p>

<p>4001-2(a)(i)(J)-(K) 4001-2(a)(i)(N) 4001-2(a)(i)(P) 4001-2(a)(i)(U)</p> <p>Proposed Interim Order, ¶ 4(a) – 4(d)</p>	<p>Collateral during the pendency of the Chapter 11 Cases (the “<u>Diminution in Value</u>”):</p> <p><u>Adequate Protection Liens</u>: Valid, binding, enforceable, non-avoidable, and perfected replacement and additional postpetition security interests in and liens on the Prepetition Collateral and the Postpetition Collateral (the “<u>Adequate Protection Liens</u>”).</p> <p><u>Adequate Protection Payments</u>: Payment in cash, at the applicable default contract rate of interest, of all claims (including interest and letter of credit fees) arising or related to the Prepetition ABL Obligations, until such time as the Prepetition ABL Obligations are Paid in Full. The Prepetition ABL Agent shall also be entitled to payment of all reasonable and document fees, expenses, and charges of the advisors to the Prepetition ABL Agent</p> <p><u>Adequate Protection Superpriority Claims</u>: Superpriority claims, to the extent that the Adequate Protection Liens do not adequately protect against any Diminution in Value of the Prepetition Agents’ interests in the Prepetition Collateral, of claims with priority in payment to the extent provided by section 507(b) of the Bankruptcy Code, subject and subordinate to the Carve-Out (“<u>Adequate Protection Superpriority Claims</u>”).</p>
<p>Carve-Out</p> <p>Bankruptcy Rule 4001(b)(1)(B)(iii)</p> <p>Local Rule 4001-2(a)(i)(F)</p> <p>Proposed Interim Order, ¶ 18</p>	<p>The “Carve-Out” shall be comprised of (i) all fees required to be paid to the Clerk of this Court and to the United States Trustee for the District of Delaware (the “<u>U.S. Trustee</u>”) under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (ii) all reasonable Court-allowed fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) all unpaid fees and expenses, other than any restructuring, sale, success, or other transaction fee, incurred by Persons or firms retained by the Professional Persons (as defined in the Proposed Interim Order) at any time before or on the first Business Day following delivery by the Prepetition ABL Agent of a Carve Out Trigger Notice (as defined in the Proposed Interim Order), whether allowed by this Court prior to or after delivery of a Carve Out Trigger Notice, but subject in all instances to and capped by the Approved Budget; and (iv) Allowed Professional Fees (as defined in the Proposed Interim Order) of Professional Persons in an aggregate amount not to exceed \$500,000 incurred after the first Business Day following delivery by the Prepetition ABL Agent of a Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise.</p>

<p>Events of Default/Cash Collateral Termination Events</p> <p>Bankruptcy Rule 4001(b)(1)(B)(iii)</p> <p>Local Rule 4001-2(a)(i)(M)</p> <p>Proposed Interim Order, ¶ 11-12. Ex. 2</p>	<p>Subject to the terms of the Proposed Orders, the Debtors' right to use Cash Collateral pursuant to the Proposed Orders shall terminate upon (i) the Debtor's failure to comply with the "Milestones" set forth on <u>Exhibit 3</u> of the Proposed Interim Order, or (ii) the occurrence of any of the events of default set forth on <u>Exhibit 2</u> of the Proposed Interim Order.</p>
<p>Milestones</p> <p>Local Rule 4001-2(a)(i)(H)</p> <p>Proposed Interim Order, ¶ 11, Ex. 3</p>	<p>As a condition to the use of Cash Collateral, the Debtors shall materially comply with the milestones attached to the Proposed Interim Order as <u>Exhibit 3</u>.</p>
<p>Stipulations</p> <p>Local Rule 4001-2(a)(i)(Q)</p> <p>Proposed Interim Order, ¶ F</p>	<p>The Proposed Orders include customary stipulations concerning the indebtedness owed to the Prepetition Secured Creditors and the liens and collateral securing such indebtedness.</p>
<p>506(c) Waiver</p> <p>Bankruptcy Rule 4001(c)(1)(B)(x)</p> <p>Local Rule 4001- 2(a)(i)(V)</p> <p>Proposed Interim Order, ¶ K, 22, 23</p>	<p>The Proposed Orders include a waiver of rights under section 506(c) for the benefit of the Prepetition ABL Lenders and Prepetition ABL Agent, subject to entry of the Proposed Final Order.</p> <p>There is <u>no</u> waiver of rights under section 506(c) with respect to the Term Priority Collateral or the Prepetition Term Loan Lenders or Prepetition Term Loan Agent.</p>
<p>Section 552(b)(1) "Equities of the Case" Waiver</p> <p>Local Rule 4001- 2(a)(i)(W)</p> <p>Proposed Interim Order, ¶ 25</p>	<p>The Proposed Orders include a waiver of rights under sections 552(b) for the benefit of the Prepetition ABL Lenders and Prepetition ABL Agent, subject to entry of the Proposed Final Order.</p> <p>There is <u>no</u> waiver of rights under section 552(b) with respect to the Term Priority Collateral or the Prepetition Term Loan Lenders or Prepetition Term Loan Agent.</p>

<p>Waiver of Marshaling</p> <p>Local Rule 4001-2(a)(i)(X)</p> <p>Proposed Interim Order, ¶ 24</p>	<p>The Proposed Orders include a waiver of the equitable doctrine of “marshaling” and similar equitable relief for the benefit of the Prepetition ABL Lenders and Prepetition ABL Agent, subject to entry of the Proposed Final Order.</p> <p>There is <u>no</u> waiver of the equitable doctrine of “marshaling” and similar equitable relief for the benefit of the Term Priority Collateral or the Prepetition Term Loan Lenders or Prepetition Term Loan Agent.</p>
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BASIS FOR RELIEF

I. The Use of Cash Collateral Is Warranted and Necessary

25. As described in the First Day Declaration and Adams Declaration, the Debtors require the use of Cash Collateral to continue operating and conducting an orderly disposition of their store-level assets through “going out of business sales” on an accelerated timeline, to maximize the value thereof, and to simultaneously conduct a going-concern sale for substantially all of their remaining assets. Without continued access to Cash Collateral, the Debtors would face an immediate and disorderly liquidation to the detriment of all their estates and creditors, including the collateral positions of the Prepetition Secured Creditors. The Debtors submit that, under the circumstances, their request to use Cash Collateral should be approved. The Debtors’ use of property of their estates, including Cash Collateral, is governed by section 363(c) of the Bankruptcy Code. Section 363(c) provides, in pertinent part, that:

The trustee 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 a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section [363].

11 U.S.C. § 363(c)(2).

26. Here, the Debtors have negotiated consensual use of Cash Collateral with the Prepetition ABL Agent and, thus, the Court should approve such use under section 363(c)(2)(A)

of the Bankruptcy Code. In re Sorenson Communications, Inc., No. 14-10454 (BLS), 2014 WL 929351, at *5 (Bankr. D. Del. Mar. 4, 2014) (“The Debtors’ access to sufficient working capital and liquidity through the use of Cash Collateral . . . is vital to the preservation and maintenance of the Debtors’ going concern values and successful reorganization.”); In re WP Steel Venture LLC, No. 12-11661 (KJC), 2012 WL 5288123, at *3 (Bankr. D. Del. 2012) (“The ability of the Debtors to obtain sufficient working capital and liquidity through the use of Cash Collateral . . . is vital to the preservation and maintenance of the value of the Debtors’ assets.”). Likewise, courts have recognized that “[a] debtor, attempting to reorganize a business under Chapter 11, clearly has a compelling need to use ‘cash collateral’ in its effort to rebuild. Without the availability of cash to meet daily operating expenses . . . the congressional policy favoring rehabilitation over economic failure would be frustrated.” In re George Ruggiere Chrysler-Plymouth, Inc., 727 F.2d 1017, 1019 (11th Cir. 1984); In re MFM Delaware, Inc., No. 13-11359 (PJW), 2013 WL 2434211, at *2 (Bankr. D. Del. May 28, 2013) (“The Debtors’ need to use cash collateral on an interim basis . . . is immediate and critical to enable the Debtors to continue operations and to administer and preserve the value of their estates.”).

27. Additionally, the Debtors submit that the agreed adequate protection package to be provided to the Prepetition Secured Creditors is sufficient to approve the use of Cash Collateral under section 363 of the Bankruptcy Code. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses cash collateral. Generally, courts decide what constitutes adequate protection on a case-by-case basis. See, e.g., In re Swedeland Dev. Grp., Inc., 16 F.3d 552, 564 (3d Cir. 1994) (“[A] determination of whether there is adequate protection is made on a case by case basis.”); 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.”); In re Columbia Gas Sys., Inc., Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992) (emphasizing that “the varying analyses and results contained in the . . . slew of cases demonstrate that what interest is entitled to adequate protection and what constitutes adequate protection must be decided on a case-by-case basis”); see also In re Dynaco Corp., 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”) (internal citation omitted). Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. See 11 U.S.C. § 362(d)(1); see also In re Cont’l Airlines, 91 F.3d 553, 556 (3d Cir. 1996).

28. Adequate protection may be provided in various forms, including payment of adequate protection fees, payment of interest, or a grant of replacement liens or administrative claims. See, e.g., In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) (“The determination of adequate protection is a fact specific inquiry . . . left to the vagaries of each case.”); In re Realty Sw. Assocs., 140 B.R. 360, 366 (Bankr. S.D.N.Y. 1992); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (application of adequate protection is case-specific, but “its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”). The critical purpose of adequate protection is to guard 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 495 Central Park Ave. 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 the value of its interest during the Chapter 11 reorganization.”); In re Hubbard Power & Light, 202 B.R. 680, 684–85 (Bankr. E.D.N.Y. 1996) (holding secured creditor adequately

protected for priming loan by anticipated increase in value of the debtor's property due to use of loan proceeds); In re Aqua Assocs., 123 B.R. at 192, 198–99 (Bankr. E.D. Pa. 1982) (holding secured creditor adequately protected for priming loan based on small equity cushion and increase in going concern value versus liquidation value).

29. Here, the Proposed Interim Order provides the Prepetition Secured Creditors with various forms of adequate protection, including adequate protection liens to the extent of any Diminution in Value of their interests in the Prepetition Collateral, a superpriority administrative expense claim, and certain adequate protection payments (in the form of expense reimbursements for Debtors' Prepetition ABL Lenders). The proposed adequate protection is permissible under the Prepetition Secured Creditors' prepetition agreements and will sufficiently protect the Prepetition Secured Creditors from any Diminution in Value of their respective Prepetition Collateral during the pendency of these proceedings. See In re Cont'l Airlines, Inc., 146 B.R. 536, 539 (Bankr. D. Del. 1992) ("If the creditor is oversecured many courts hold that the equity cushion alone satisfies the adequate protection requirement of section 362(d)(1)."), aff'd, 91 F.3d 553 (3d Cir. 1996).

II. The Proposed Adequate Protection Is Reasonable and Appropriate

30. The terms and conditions on which the Debtors may use Cash Collateral have been carefully designed to meet the dual goals of sections 361 and 363 of the Bankruptcy Code. If the Proposed Interim Order is entered, the Debtors will have working capital to operate their business as a going-concern during the "going out of business" sales and parallel going concern sale process and, thus, maximize the value of the assets for the benefit of their stakeholders. At the same time, the Prepetition Secured Creditors will be adequately protected in a manner that they have agreed to for consenting to the Debtors' use of Cash Collateral. Therefore, since the use of Cash Collateral on the terms set forth in the attached Proposed Interim Order provides the Prepetition Secured

Creditors with adequate protection and is in the best interest of the Debtors, their estates, their creditors, and all parties in interest, the Debtors respectfully submit that the use of such Cash Collateral on the terms set forth in the attached Proposed Interim Order should be authorized by the Court.

31. In light of the foregoing, the Debtors submit that the proposed adequate protection to be provided for the benefit of the Prepetition Secured Creditors is appropriate. Thus, the Debtors' proposed adequate protection not only is necessary to protect the Prepetition Secured Creditors against any Diminution in Value, but also is fair and appropriate on an interim basis under the circumstances of these Chapter 11 Cases to ensure that the Debtors are able to continue using Cash Collateral in the near term, for the benefit of their estates and all parties in interest.

III. The Section 506(c) and "Equities of the Case" Waivers Are Appropriate

32. In connection with consenting to the priming liens and the use of Cash Collateral, secured parties commonly request a waiver of (i) section 506(c) of the Bankruptcy Code, which permits the Debtors to surcharge collateral, and (ii) the "equities of the case" exception from the general rule of section 552 of the Bankruptcy Code that prepetition liens that attach to proceeds of collateral will continue to attach to postpetition proceeds.

33. Subject to entry of a Final Order, the Prepetition ABL Lenders shall be entitled to a waiver of the "equities of the case" exception under section 552(b) of the Bankruptcy Code and a waiver of the provisions of section 506(c) of the Bankruptcy Code in light of the Prepetition ABL Lenders' agreement to allow for the payment of expenses set forth in the Approved Budget (and in accordance with the Interim Order) and their agreement that their liens shall be subject to the Carve-Out.

34. In contrast, as set forth in paragraph 23 of the Proposed Interim Order, the Debtors shall be authorized to surcharge any Term Priority Collateral (including any proceeds thereof) in

an amount equal to the reasonable, necessary costs and expenses of preserving, or disposing of, the Term Priority Collateral. There will also be no waiver of rights under section 552(b) with respect to the Term Priority Collateral or the Prepetition Term Loan Lenders or Prepetition Term Loan Agent. Notwithstanding anything to the contrary in the Proposed Orders, the rights of all parties with respect to whether any proceeds resulting from Prepetition Collateral should be deemed proceeds resulting from ABL Priority Collateral or Term Priority Collateral are expressly preserved.

IV. The Scope of the Proposed Carve-Out Is Reasonable and Appropriate

35. The adequate protection liens and claims are subject to the Carve-Out. Without the Carve-Out, the Debtors and other parties in interest may be deprived of certain rights and powers because the services for which such professionals may be paid in these Chapter 11 Cases would be restricted. See, e.g., In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve-outs for professionals representing parties in interest because “[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced”). The Carve-Out does not directly or indirectly deprive the Debtors’ estates or other parties in interest of possible rights and powers. Additionally, the Carve-Out protects against administrative insolvency during the course of these Chapter 11 Cases by ensuring that assets remain for payment of the clerk of the Court, trustee fees, and professional fees of the Debtors and any official committee of unsecured creditors.

V. Interim Relief Should Be Granted

36. Bankruptcy Rule 4001(b) permits a court to approve a debtor’s request for use of cash collateral during the 14-day period following the filing of a motion requesting authorization to use cash collateral, “only . . . as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Bankruptcy Rule 4001(b)(2). In examining requests for interim

relief under this rule, courts apply the same business judgment standard applicable to other business decisions. See, e.g., In re Simasko Production Co., 47 B.R. 444, 449 (Bankr. D. Co. 1985); see also In re Ames Dep't Stores Inc., 115 B.R. at 38. After the 14-day period, the request for use of cash collateral is not limited to those amounts necessary to prevent destruction of the debtor's business. A debtor is entitled to use cash collateral that it believes prudent in the operation of its business. See, e.g., Simasko, 47 B.R. at 449; Ames Dep't Stores, 115 B.R. at 36.

37. As set forth above, pending the Final Hearing, the Debtors require immediate access to Cash Collateral to satisfy the day-to-day needs of the Debtors' business operations. Access to liquidity will address any concerns regarding the Debtors' financial health and ability to continue operations in light of these Chapter 11 Cases. The Debtors have an immediate need for liquidity to, among other things, continue operating as a going-concern during the Sale Process, maintain business relationships with their vendors, suppliers, and customers, pay their employees, protect the value of their assets, and otherwise finance their operations, all of which are required to preserve and maintain the Debtors' business operations for the benefit of all parties in interest. In addition, the Approved Budget establishes that the Debtors' use of Cash Collateral will not prejudice the Prepetition Secured Creditors, subject to the terms of the Proposed Interim Order.

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

38. The relief requested herein contemplates a modification of the automatic stay solely to permit the Prepetition Secured Creditors, subject to the terms of the Proposed Interim Order, to deliver written notice by electronic mail stating that the Prepetition Secured Creditors elect to commence the exercise of rights and remedies with respect of the Proposed Interim Order, the Prepetition Credit Documents, and under applicable bankruptcy and non-bankruptcy law, including, without limitation, in respect of their Prepetition Collateral and adequate assurance. Stay modifications of this kind are ordinary and standard features for the use of cash collateral

and, in the Debtors' business judgment, are reasonable and fair under the circumstances. Accordingly, the Debtors request that the Court authorize the modification of the automatic stay as set forth in the Proposed Interim Order.

BANKRUPTCY RULE 4001(a)(3) SHOULD BE WAIVED

39. The Debtors request a waiver of the stay of the effectiveness of the order granting the relief requested herein pursuant to Bankruptcy Rules 4001(a)(3). Bankruptcy Rule 4001(a)(3) provides that “[a]n order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As explained above and in the First Day Declaration and Adams Declaration, the use of Cash Collateral is essential to allow the Debtors to maintain operations during the course of the Sale Process. Accordingly, ample cause exists to justify the waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 4001(a)(3), to the extent such stay applies.

REQUEST FOR FINAL HEARING

40. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, but in no event later than thirty (30) days following the Petition Date, and fix the deadline for parties to object to the Motion.

IMMEDIATE RELIEF IS NECESSARY

41. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty one (21) days of the Petition Date requires the Debtors to demonstrate that such relief “is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. As described above, without access to Cash Collateral, the Debtors would be unable to operate their business and fund these Chapter 11 Cases.

42. For this reason and those set forth above, and in the Adams Declaration, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

43. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As provided herein, and to implement the foregoing successfully, the Debtors request that the Proposed Interim Order include a finding that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

44. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Interim Order.

RESERVATION OF RIGHTS

45. Nothing contained in the Motion or any actions taken pursuant to any order granting the relief requested by the Motion is intended or shall be construed as: (a) an admission as to the validity of any claim against a Debtor entity; (b) a waiver of the Debtors’ rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors’ rights under the Bankruptcy Code or any other applicable law; and (g) a concession by the Debtors of any liens (contractual, common law, statutory, or otherwise).

NOTICE

46. Notice of this Motion has been or will be provided to: (i) the U.S. Trustee; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) counsel to the Prepetition ABL Agent; (v) counsel to the Prepetition Term Loan Agent; (vi) the Banks; (vii) those creditors holding the thirty (30) largest unsecured claims against the Debtors' estates; and (viii) the state attorneys general for all states in which the Debtors conduct business. The Debtors will serve copies of this Motion and an order entered in respect of this Motion as required by Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

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CONCLUSION

WHEREFORE, the Debtors respectfully request entry of the Proposed Interim Order, substantially in the form annexed hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: May 2, 2024
Wilmington, Delaware

**YOUNG CONAWAY STARGATT & TAYLOR,
LLP**

/s/ Shane M. Reil

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*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

Exhibit A

Proposed Interim Order

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

In re:

NEW RUE21 HOLDCO, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10939 (BLS)

(Joint Administration Requested)

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO USE
CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO
PREPETITION SECURED CREDITORS, (III) MODIFYING AUTOMATIC STAY,
(IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”)² of New rue21 Holdco, Inc. and its affiliated debtors, as debtors and debtors in possession (collectively, the “*Debtors*”) in the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”), pursuant to sections 105, 361, 362, 363, 503, 506, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “*Bankruptcy Code*”), rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and rules 2002-1(b), 4001-2, and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), seeking entry of this interim order (this “*Interim Order*”), among other things:

- a. authorizing the Debtors to use Prepetition Collateral and Postpetition Collateral (each as defined herein), including all property constituting “cash collateral” (as defined in section 363(a) of the Bankruptcy Code) of the Prepetition ABL Lenders and the Prepetition Term Loan Lenders (the “*Cash Collateral*”), that the Debtors are holding or may obtain, pursuant to sections 361 and 363 of the Bankruptcy Code and Bankruptcy Rules 4001(b) and 6004 and in accordance with the Approved Budget (as defined herein);

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of their federal tax identification numbers, are New rue21 Holdco, Inc. (4668), r21 Holdings, Inc. (1618), New rue21 Intermediate, Inc. (9166), New rue21, LLC (4521), New RSC, LLC (4690), and r services llc (9425). The Debtors’ headquarters is located at 800 Commonwealth Drive, Warrendale, PA 15086.

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

- b. authorizing the Debtors to provide adequate protection to the Prepetition Secured Creditors, including with respect to the extent of any Diminution in Value (each as defined herein), which adequate protection shall include certain adequate protection liens, claims, and payments described herein;
- c. approving certain stipulations by the Debtors with respect to the Prepetition Credit Documents and the Prepetition Collateral (each as defined herein) as set forth herein;
- d. waiving any applicable stay and provisions for immediate effectiveness of this Interim Order;
- e. vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order;
- f. granting related relief; and
- g. scheduling a final hearing (the “**Final Hearing**”) to consider final approval of the use of Cash Collateral pursuant to a proposed final order (the “**Final Order**”), as set forth in the Motion filed with this Court (as defined herein).

This Court having considered the interim relief requested in the Motion, the exhibits attached thereto, the declaration of Colin M. Adams in support of the Motion and the First Day Declaration, each filed concurrently with the Motion, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on May 3, 2024 (the “**Interim Hearing**”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), 9014, and all applicable Local Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by this Court; and it appearing to this Court that, pursuant to Bankruptcy Rule 4001(c)(2), granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors and their estates, and is essential for the continued operation of the Debtors’ businesses and the preservation of the value of the Debtors’ assets; and it appearing that the

Debtors' use of Cash Collateral in accordance with the provisions of this Interim Order is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and upon good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING BY THE DEBTORS, INCLUDING THE SUBMISSIONS OF DECLARATIONS AND THE REPRESENTATIONS OF COUNSEL, THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. Petition Date. On May 2, 2024 (the "*Petition Date*"), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "*Court*") commencing the Chapter 11 Cases.

B. Debtors in Possession. The Debtors are continuing in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

C. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. § 1334, over these proceedings and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2), and this Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief sought in the Motion and granted in this Interim Order are sections 105, 361, 362, 363, 503, 506, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014, and Local Rules 2002-1(b), 4001-2, and 9013-1(m).

D. Committee Formation. As of the date hereof, the United States Trustee for the District of Delaware (the "*U.S. Trustee*") has not yet appointed any committee, including an

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. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such.

official committee of unsecured creditors, in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (to the extent appointed in the Chapter 11 Cases, the “**Committee**”).

E. Notice. The Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

F. Debtors’ Stipulations, Releases, and Acknowledgements. In requesting the use of Cash Collateral, and in exchange for and as a material inducement to the Prepetition Secured Creditors consenting to the Debtors’ access to and use of the Cash Collateral, and without prejudice to the rights of the parties-in-interest as set forth in paragraph 29 herein, the Debtors admit, stipulate, acknowledge, and agree, as follows (collectively, the admissions, stipulations, acknowledgements, and agreements set forth in this paragraph F, the “**Debtors’ Stipulations**”):

(i) Prepetition ABL Obligations. New Rue21, LLC (“**Borrower**”), New rue21 Holdco, Inc. (“**Holdings**”), and certain of the other Debtors (together with the guarantors of the Prepetition ABL Facility (as defined herein), collectively, the “**Prepetition ABL Obligors**”), Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the “**Prepetition ABL Agent**”), for its own benefit and the benefit of the lenders and letter of credit issuers from time to time party under the Prepetition ABL Facility (and together with the Prepetition ABL Agent, the “**Prepetition ABL Lenders**”), are party to that certain *Third Amended and Restated ABL Credit Agreement*, dated as of June 7, 2021 (as amended, restated, amended and restated, supplemented, replaced, or otherwise modified from time to time, the “**ABL Credit Agreement**,” and together with the Loan Documents (as defined therein), collectively, the “**Prepetition ABL Documents**,” the revolving facility thereunder, the “**Prepetition ABL Facility**”). Pursuant to the Prepetition ABL Documents, the Prepetition ABL Lenders provided

revolving credit, certain banking products, and other financial accommodations to, and issued letters of credit for the account of, the Prepetition ABL Obligors. Under the Prepetition ABL Documents, the Prepetition ABL Lenders provided the Prepetition ABL Obligors with, among other things, up to \$90 million in Revolving Credit Commitments (as defined in ABL Credit Agreement), including a \$25 million Letter of Credit Sublimit (as defined in the ABL Credit Agreement). As of the Petition Date, the following amounts were outstanding under the Prepetition ABL Facility: (a) an aggregate outstanding principal amount of not less than approximately \$29.7 million in Revolving Credit Loans (as defined in the ABL Credit Agreement); (b) approximately \$2.45 million in outstanding Letters of Credit (as defined in the ABL Credit Agreement); and (c) other outstanding obligations under the Prepetition ABL Documents, including, without limitation, all accrued, accruing, and unpaid interest with respect thereto and any additional fees, costs, premiums, expenses (including, without limitation, attorneys' fees, accountants' fees, auditor fees, appraisers' fees, and financial advisors' fees, and related expenses and disbursements), reimbursement obligations (contingent or otherwise) in respect of letters of credit, treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, arising, due, owing or chargeable in respect of any of the Prepetition ABL Obligors' obligations pursuant to, or secured by, the Prepetition ABL Documents, in each case constituting "Obligations" (as defined in the ABL Credit Agreement) and due and payable pursuant to the terms and conditions of the ABL Credit Agreement (collectively, the "***Prepetition ABL Obligations***"). Subject to the terms of the Intercreditor Agreement, the Prepetition ABL Obligations are secured by: (x) a first priority interest in and lien on the ABL Priority Collateral (as defined in the Intercreditor

Agreement (as defined herein)); and (y) a second priority security interest in and lien on the Term Priority Collateral (as defined in the Intercreditor Agreement) (the ABL Priority Collateral and the Term Priority Collateral together, the “*Prepetition Collateral*” and the liens and security interests in clauses (x) and (y), the “*Prepetition ABL Liens*”).

(ii) *Prepetition Term Loan Obligations*. The Borrower, Holdings, certain of the other Debtors (together with the guarantors of the Prepetition Term Loan Facility, collectively, the “*Prepetition Term Loan Obligors*”), Blue Torch Finance, LLC, as administrative agent and collateral agent (in such capacities, the “*Prepetition Term Loan Agent*” and, together with the Prepetition ABL Agent, the “*Prepetition Agents*”) (collectively with the Prepetition Term Loan Agent, the “*Prepetition Term Loan Lenders*” and, together with the Prepetition ABL Lenders and the Prepetition ABL Agent, the “*Prepetition Secured Creditors*”) are party to that certain *Financing Agreement*, dated as of January 24, 2022 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “*Prepetition Term Loan Credit Agreement*,” and together with the Loan Documents (as defined therein), the “*Prepetition Term Loan Documents*” and, together with the Prepetition ABL Documents and the Intercreditor Agreement, the “*Prepetition Credit Documents*”) and the term loan facility thereunder, the “*Prepetition Term Loan Facility*” and, together with the Prepetition ABL Facility, the “*Prepetition Loan Facilities*”). As of the Petition Date, the Prepetition Term Loan Obligors were obligated under the Prepetition Term Loan Credit Agreement to the Prepetition Term Loan Lenders in the aggregate outstanding principal amount of not less than approximately \$164.7 million, plus all accrued, accruing, and unpaid interest with respect thereto and any additional fees, costs, premiums, expenses (including, without limitation, attorneys’ fees, accountants’ fees, auditor fees, appraisers’ fees, and financial

advisors' fees, and related expenses and disbursements), indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, arising, due, owing or chargeable in respect of any of the Prepetition Term Loan Obligors' obligations pursuant to, or secured by, the Prepetition Term Loan Documents, in each case constituting "Obligations" (as defined in the Prepetition Term Loan Credit Agreement) and due and payable pursuant to the terms and conditions of the Prepetition Term Loan Credit Agreement (the "***Prepetition Term Loan Obligations***" and, together with the Prepetition ABL Obligations, the "***Prepetition Secured Obligations***"). The Prepetition Term Loan Obligations are secured by: (a) first priority security interests in and liens on the Term Priority Collateral; and (b) second priority security interests in and liens on the ABL Priority Collateral (the liens and security interest in clauses (a) and (b), the "***Prepetition Term Loan Liens***" and, together with the Prepetition ABL Liens, the "***Prepetition Liens***"), subject in all respects to the Intercreditor Agreement.

(iii) *Intercreditor Agreement*. Pursuant to that certain *Intercreditor Agreement*, dated as of January 24, 2022, by and among the Prepetition ABL Agent, the Prepetition Term Loan Agent, and the Debtors (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "***Intercreditor Agreement***"), the Prepetition Agents have agreed, among other things, and as more specifically set forth therein, on the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Creditors with respect to the Prepetition Collateral.

(iv) *Prepetition Secured Obligations*. Each of the Debtors acknowledge that the Prepetition Secured Obligations owing to the Prepetition Secured Creditors, respectively, (a) constitute legal, valid, binding, and non-avoidable obligations of the Debtors and their

applicable affiliates, enforceable against them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and (b) no portion of the Prepetition Secured Obligations owing to the Prepetition Secured Creditors, respectively, is subject to avoidance, recharacterization, reduction, set-off, offset, counterclaim, cross-claim, recoupment, defenses, disallowance, disgorgement, impairment, recovery, subordination (equitable or otherwise), or any other challenges pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity, including in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases (collectively, “*Successor Cases*”).

(v) *Prepetition Liens*. The Debtors acknowledge that as of the Petition Date, the Prepetition Liens granted to the Prepetition Secured Creditors (a) constitute legal, valid, binding, enforceable (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), non-avoidable, and properly perfected security interests in and liens on the Prepetition Collateral, and were granted to, or for the benefit of, the applicable Prepetition Secured Creditors for fair consideration and reasonably equivalent value, (b) are not subject to defense, counterclaim, recharacterization, subordination, avoidance, or recovery pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity, and (c) are senior in priority over any and all other security interests in and liens on the Prepetition Collateral; *provided* that (i) subject to paragraph (F)(iii) herein, the Prepetition ABL Liens are junior in priority to the Prepetition Term Loan Liens on the Term Priority Collateral and to certain liens senior by operation of law (solely to the extent such liens were valid, non-avoidable, and senior in priority to the Prepetition ABL Liens as of the Petition Date and properly perfected prior to the Petition Date or perfected subsequent to the Petition Date as permitted by section 546(b) of

the Bankruptcy Code) or otherwise permitted by the Prepetition ABL Documents (the “*ABL Prepetition Permitted Liens*”), and (ii) the Prepetition Term Loan Liens are junior in priority to the Prepetition ABL Liens on the ABL Priority Collateral and to certain liens senior in priority by operation of law (solely to the extent such liens were valid, non-avoidable, and senior in priority to the Prepetition Term Loan Liens as of the Petition Date and properly perfected prior to the Petition Date or perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) or otherwise permitted by the Prepetition Term Loan Documents (the “*Term Loan Prepetition Permitted Liens*,” and together with the ABL Prepetition Permitted Liens, the “*Prepetition Permitted Liens*”).⁴

(vi) *No Challenges / Claims*. No offsets, causes of action, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Secured Obligations exist, and no portion of the Prepetition Liens or Prepetition Secured Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtors and their estates have no valid Claims (as such term is defined in section 101(5) of the Bankruptcy Code), objections, challenges, causes of action, and/or choses in action against any of the Prepetition Secured Creditors or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees with respect to the Prepetition Credit Documents, the Prepetition Secured Obligations, the Prepetition Liens, or otherwise, whether arising at law or at equity, including, without limitation, any challenge, recharacterization, subordination,

⁴ As used in this Interim Order, no reference to the ABL Prepetition Permitted Liens, the Term Loan Prepetition Permitted Liens, or the Prepetition Permitted Liens shall refer to or include the Prepetition ABL Liens or the Prepetition Term Loan Liens.

avoidance, recovery, disallowance, disgorgement, reduction, or other claims arising under or pursuant to sections 105, 502, 510, 541, 542 through 553, inclusive, or 558 of the Bankruptcy Code or applicable state law equivalents. The Prepetition Secured Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code, and the aggregate value of the ABL Priority Collateral exceeds the amount of the “Obligations” arising under and as defined in the ABL Credit Agreement. The Debtors have waived, discharged, and released any right to challenge any of the Prepetition Secured Obligations, the priority of the Debtors’ obligations thereunder, and the validity, extent, and priority of the Prepetition Liens.

(vii) Cash Collateral. All of the Debtors’ cash, including, without limitation, the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral within the meaning of section 363(a) of the Bankruptcy Code and is Prepetition Collateral of the Prepetition Secured Creditors, subject in all respects to the Intercreditor Agreement.

(viii) No Control. None of the Prepetition ABL Lenders or the Prepetition ABL Agent controls the Debtors or their operations, has authority to determine the manner in which any of the Debtors’ operations are conducted or is a control person or “insider” (as defined in section 101(31) of the Bankruptcy Code) of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from this Interim Order, the Prepetition Secured Obligations, and/or the Prepetition Credit Documents.

(ix) Release. Subject to entry of the Final Order, each of the Debtors, on their own behalf and on behalf of each of their past, present, and future predecessors, successors, heirs, subsidiaries, and assigns, hereby forever, unconditionally, permanently, and irrevocably releases, discharges, and acquits each of the Prepetition Agents, the other Prepetition Secured Creditors,

solely in their capacities as such, and each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, advisors, sub-fund advisors, and collateral managers, and each of their respective heirs, predecessors, successors, and assigns (collectively, the “**Released Parties**”) of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, attorneys’ fees), actions, suits, controversies, proceedings, losses, damages, injuries, debts, liens, actions, judgments, and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether known or unknown, matured or contingent, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, pending, or threatened, arising under, in connection with, or relating to the Prepetition Secured Obligations or the Prepetition Credit Documents, including, without limitation: (a) any so-called “lender liability” or equitable subordination claims or defenses; (b) Claims and causes of action arising under the Bankruptcy Code; and (c) any and all offsets, defenses, claims, counterclaims, set off rights, objections, challenges, causes of action, and/or choses in action of any kind or nature whatsoever, whether arising at law or in equity, including any recharacterization, recoupment, subordination, avoidance, or other claim or cause of action arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law, including, without limitation, any right to assert any disgorgement or recovery, in each case, with respect to the extent, amount, validity, enforceability, priority, security, and perfection of any of the Prepetition Secured Obligations, the Prepetition Credit Documents, or the Prepetition Liens, and further waive and release any defense, right of counterclaim, right of setoff, or deduction to the payment of the Prepetition Secured Obligations

that the Debtors now have or may claim to have against the Released Parties, arising under, in connection with, based upon, or released to any and all acts, omissions, conduct undertaken, or events occurring prior to entry of this Interim Order; provided, that nothing in this Interim Order shall release any Released Party from any claim arising from such Released Party's gross negligence, fraud, or willful misconduct.

G. Consulting Agreement. Pursuant to that certain *Store Closing Consulting Agreement*, by and between Gordon Brothers Retail Partners, LLC and New rue21, LLC (as amended, restated or otherwise modified from time to time with the consent of the Prepetition ABL Agent, the "***Consulting Agreement***"), the Debtors retained the Consultant (as defined in the Consulting Agreement) to conduct "Going out of Business" sales of the Debtors' assets. The assumption of, and the continued existence and validity of, the Consulting Agreement and the uninterrupted continuation of the sales contemplated thereby is a condition to the consent of the Prepetition Agents to this Interim Order and the Debtors' use of Cash Collateral hereunder.

H. Findings Regarding the Use of Cash Collateral.

(i) Request for Use of Cash Collateral. The Debtors seek authority on an interim basis to use Cash Collateral on the terms described herein to administer the Chapter 11 Cases and fund operations. At the Final Hearing, the Debtors will seek final approval of the use of Cash Collateral arrangements pursuant to a proposed Final Order, which shall be substantially in the form of this Interim Order and otherwise acceptable to the Prepetition Agents and the Debtors (in each case, such acceptance not to be unreasonably withheld and be in accordance with the Intercreditor Agreement).

(ii) Priming of Certain Prepetition Liens; Consent to Use of Cash Collateral.

The Prepetition ABL Lenders have either consented, or are deemed to consent, to the Debtors' use

of the Cash Collateral, and to the subordination of the Prepetition ABL Liens to the Carve Out on the terms and conditions set forth in this Interim Order. The Prepetition Term Loan Lenders have either consented to, or are deemed to consent to, the use of the Cash Collateral and to the subordination of the Prepetition Term Loan Liens to the Carve Out on the terms and conditions set forth in this Interim Order.

(iii) Immediate Need for Use of Cash Collateral. The Debtors' immediate need to use Cash Collateral as provided for herein is necessary and critical in order to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, to protect the value of their assets, and to otherwise finance their operations requires the use of Cash Collateral, the absence of which would immediately and irreparably harm the Debtors, their estates and parties in interest. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without the use of Cash Collateral.

(iv) Adequacy of the Approved Budget. The Debtors have prepared and delivered to the Prepetition Agents, a budget, a summary copy of which is attached as **Exhibit 4** hereto (as the same may be modified from time to time consistent with the terms of this Interim Order, and once approved by the Prepetition ABL Agent, the "***Approved Budget***") (it being understood that the budget summarized on **Exhibit 4** hereto has already been so approved)). The Approved Budget has been reviewed by the Debtors, their management, and their advisors. The Debtors, their management, and their advisors believe the Approved Budget and the estimate of administrative expenses due or accruing during the period covered by the Approved Budget were

developed using reasonable assumptions. As a condition to the authorization to use Cash Collateral, the Prepetition ABL Agent requires, and the Debtors have agreed, that proceeds of Cash Collateral (including from Prepetition Collateral and Postpetition Collateral) shall be used in a manner consistent with the terms and conditions of this Interim Order and in accordance with the Approved Budget (subject to Permitted Variances (as defined herein)).

I. *Prepetition ABL Lenders' Adequate Protection*. Until such time as the Prepetition ABL Obligations are Paid in Full,⁵ the Prepetition ABL Lenders are entitled to receive adequate protection pursuant to sections 361, 362 and 363 of the Bankruptcy Code and as set forth in paragraph 4 of this Interim Order resulting from, among other things: (i) the use of the ABL Priority Collateral; (ii) the use, sale, lease, or depreciation or other Diminution in Value of the ABL Priority Collateral; and/or (iii) the imposition of the automatic stay under the Bankruptcy Code. The terms of the adequate protection being provided reflect the Debtors' prudent exercise of business judgment and constitute a reasonable compromise for the use of the ABL Priority Collateral. As adequate protection, the Prepetition ABL Lenders shall receive, among other things, the Adequate Protection Liens (as defined herein) to secure the applicable Prepetition ABL Obligations, the Adequate Protection Superpriority Claims with respect to the applicable

⁵ "***Paid in Full***" means the indefeasible repayment in full in cash of all obligations (including principal, interest, fees, prepayment premiums, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted) under the applicable credit facility and this Interim Order, the cash collateralization or repayment in full in cash of all treasury and cash management obligations (including Cash Management Obligations, as defined in the ABL Credit Agreement), hedging obligations, and bank product obligations, and the cancelation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the terms of the applicable facility. No facility or its obligations thereunder shall be deemed to have been Paid in Full until such time as, (a) with respect to the applicable facility, the Challenge Deadline (as defined herein) shall have passed without the timely and proper commencement of a Challenge, or, if a Challenge is timely and properly asserted prior to the Challenge Deadline, upon the final, non-appealable disposition of such Challenge, (b) any and all applicable adequate protection payments (including the applicable Adequate Protection Payments (as defined herein)) have been made, and (c) with respect to the Prepetition ABL Obligations, a countersigned payoff letter has been received by the Prepetition ABL Agent in form and substance satisfactory to the applicable Prepetition ABL Agent, in its sole discretion, including a release from any further obligations or subordination with respect to the Carve Out.

Prepetition ABL Obligations, and the Adequate Protection Payments (as defined herein), as applicable.

J. Prepetition Term Loan Lenders' Adequate Protection. The Prepetition Term Loan Lenders are entitled to receive adequate protection pursuant to sections 361, 362 and 363 of the Bankruptcy Code and as set forth in paragraph 4 of this Interim Order resulting from, among other things: the (i) use of the Cash Collateral; (ii) use, sale, lease, or depreciation or other Diminution in Value of the Term Priority Collateral; and/or (iii) the imposition of the automatic stay under the Bankruptcy Code. The terms of the adequate protection being provided reflect the Debtors' prudent exercise of business judgment and constitute a reasonable compromise for the use of the Term Priority Collateral. As adequate protection, the Prepetition Term Loan Lenders shall receive the Adequate Protection Liens to secure the applicable Prepetition Term Loan Obligations and the Adequate Protection Superpriority Claims with respect to the applicable Prepetition Term Loan Obligations, as applicable.

K. Sections 506(c) and 552(b). Upon entry of the Final Order with respect to the ABL Priority Collateral, and subject to paragraph 23 with respect to the Term Priority Collateral, the Debtors have agreed as a condition to the use of Cash Collateral that as a material inducement to the Prepetition ABL Agent consent to the use of Cash Collateral, and in exchange for the consensual use of Cash Collateral consistent with the Approved Budget (subject to Permitted Variances) and the terms of this Interim Order, subject to and upon entry of the Final Order, the Prepetition ABL Lenders and Prepetition ABL Agent are entitled to receive (i) a waiver of any equities of the case exceptions or claims under section 552(b) of the Bankruptcy Code; (ii) a waiver of unjust enrichment and similar equitable relief as set forth below; and (iii) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

L. Good Faith. The terms and conditions of this Interim Order: (a) are fair, reasonable, and the best available to the Debtors under the circumstances; (b) reflect the Debtors' exercise of prudent and sound business judgment consistent with their fiduciary duties; and (c) are supported by reasonably equivalent value and consideration. The use of Cash Collateral was negotiated in good faith and at arm's length among the Debtors and the Prepetition Secured Creditors.

M. Prepetition Permitted Liens. Nothing herein shall constitute a finding or ruling by this Court that any alleged Prepetition Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtors, the Prepetition Secured Creditors, or any Committee, to challenge the validity, priority, enforceability, seniority, perfection, or extent of any alleged Prepetition Permitted Lien and/or security interests. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Prepetition Permitted Lien and is expressly subject to the Prepetition Liens.

N. Intercreditor Agreement. Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Credit Documents, (a) shall remain in full force and effect, (b) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Creditors, (c) shall govern the relative priorities, rights, and remedies of the Prepetition Secured Creditors, and (d) shall not be deemed to be amended, altered, or modified by the terms of this Interim Order unless expressly set forth herein.

O. Good Cause. Good cause has been shown for the entry of this Interim Order. The relief requested in the Motion is necessary, essential, and appropriate and is in the best interest of and will benefit the Debtors, their creditors, and their estates, as its implementation will, among

other things, provide the Debtors with the necessary liquidity to: (a) minimize disruption to the Debtors' businesses and on-going operations; (b) preserve and maximize the value of the Debtors' estates for the benefit of all the Debtors' creditors; and (c) avoid immediate and irreparable harm to the Debtors, their creditors, their businesses, their employees, and their assets.

P. Immediate Entry. Good and sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

Based upon the foregoing findings and conclusions, the Motion and the record before this Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Motion Granted; Cash Collateral Use Approved. The Motion is granted on an interim basis, and the use of Cash Collateral on an interim basis is authorized, subject to the terms and conditions set forth in this Interim Order.

2. Objections Overruled. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits.

Authorization to Use Cash Collateral

3. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order, and in compliance with the Approved Budget (subject to Permitted Variances), the Debtors are authorized to use Cash Collateral (including Prepetition Collateral and Postpetition Collateral⁶) in accordance with the Approved Budget (subject to Permitted Variances) until such

⁶ *“Postpetition Collateral”* means all Prepetition Collateral and all personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors, including, without limitation: (i) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including, without limitation, all of the issued and outstanding capital stock or equivalents of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks,

time that the Prepetition Secured Creditors terminate the Debtors' use of Cash Collateral as provided herein; *provided* that the Prepetition Secured Creditors are granted the Adequate Protection Superpriority Claims, Adequate Protection Liens, Adequate Protection Payments, as applicable, and other forms of adequate protection set forth herein; *provided further* that nothing herein shall impede the Debtors' ability and entitlement to fund the Carve Out as provided in paragraph 18 hereof; *provided, further*, that during the Remedies Notice Period (as defined herein), the Debtors may only use Cash Collateral to meet payroll obligations (other than severance under applicable law that is not considered a wage), sales taxes and other expenses that are critical to keeping the Debtors' business operating and administering the Debtors' estates subject to the Approved Budget or otherwise with the express written consent of the Prepetition ABL Agent. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business (which shall be subject to further orders of this Court), or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except

servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), 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, cause of action, and all substitutions, indemnification rights, all present and future intercompany debt, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (ii) all proceeds of leased real property; (iii) the proceeds of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of Postpetition Collateral; (iv) subject to entry of a Final Order (other than with respect to proceeds of actions brought under section 549 of the Bankruptcy Code which shall become Postpetition Collateral upon entry of the Interim Order) the proceeds of actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents (subparagraphs (iii) and (iv), the "**Avoidance Actions**"); (v) subject to entry of a Final Order with respect to the Prepetition ABL Lenders, and paragraph 23 of this Interim Order with respect to the Prepetition Term Loan Lenders, proceeds of the Debtors' rights under sections 506(c) (solely to the extent such rights result from the use of the Postpetition Collateral and are, therefore, enforceable against parties other than the Prepetition Secured Creditors) and 550 of the Bankruptcy Code; and (f) all Postpetition Collateral that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date. Notwithstanding the foregoing, Postpetition Collateral shall not include the Debtors' real property leases (but shall include all proceeds of such leases). Postpetition Collateral (other than Term Priority Collateral), proceeds of Avoidance Actions, proceeds of the Debtors' real property leases, collateral constituting ABL Priority Collateral, and the proceeds and products thereof whether in existence on the Petition Date or thereafter arising shall constitute "**Postpetition ABL Priority Collateral**"; *provided* that the proceeds of any Avoidance Actions shall not become Postpetition Collateral until entry of the Final Order (other than with respect to proceeds of actions brought under section 549 of the Bankruptcy Code which shall become Postpetition Collateral upon entry of the Interim Order).

as expressly permitted in this Interim Order, the Consulting Agreement and in accordance with the Approved Budget (subject to Permitted Variances).

Adequate Protection Provisions

4. As adequate protection for the interest of the Prepetition Secured Creditors in the Prepetition Collateral (including Cash Collateral) on account of, among other things, the granting of the subordination, as applicable, of the Prepetition Liens to the Carve Out, the Debtors' use of Cash Collateral, and any other diminution in value arising out of the imposition of the automatic stay or the Debtors' use, sale, lease, depreciation, or disposition of the Prepetition Collateral and Cash Collateral during the pendency of the Chapter 11 Cases, (collectively, "*Diminution in Value*"), the Prepetition Secured Creditors shall receive adequate protection as follows:

(a) *Adequate Protection Liens*. To the extent of any Diminution in Value, each of the Prepetition ABL Agent (for the benefit of itself and the other Prepetition ABL Lenders) and the Prepetition Term Loan Agent (for the benefit of itself and the other Prepetition Term Loan Lenders) are hereby granted, pursuant to sections 361 and 363(e) of the Bankruptcy Code, valid, binding, enforceable, non-avoidable and perfected replacement and additional postpetition security interests in, and liens on the Prepetition Collateral and the Postpetition Collateral (the "*Adequate Protection Liens*"), which shall be subject to the Carve Out and the relative priorities set forth on **Exhibit 1** hereto. The Adequate Protection Liens granted to the Prepetition Term Loan Agent (on behalf of the Prepetition Term Loan Lenders) shall secure the Prepetition Term Loan Obligations and the Adequate Protection Liens granted to the Prepetition ABL Agent (on behalf of the Prepetition ABL Lenders) shall secure the Prepetition ABL Obligations.

(i) The Adequate Protection Liens shall be: (A) deemed to be valid, binding, non-avoidable, enforceable, and fully perfected as of the Petition Date; and (B) in all instances, subject to the Carve Out and the relative priorities set forth on **Exhibit 1** hereto. Other

than as set forth herein, until the indefeasible payment in full in cash of the Prepetition Secured Obligations, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases. The Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code (or in any other Successor Cases), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. Subject to paragraph 23 of this Interim Order, the Adequate Protection Liens shall not be subject to Bankruptcy Code sections 506(c) (solely with regard to the ABL Priority Collateral subject to entry of the Final Order), 510, 549, or 550. No lien or interest avoided and preserved for the benefit of any Debtor's estate pursuant to section 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the Adequate Protection Liens.

(ii) *Priority of Adequate Protection Liens.* The Adequate Protection Liens shall be payable from and have recourse to all Prepetition Collateral and Postpetition Collateral, subject to the Carve Out and the relative priorities set forth on **Exhibit 1** hereto.

(b) *Adequate Protection Payments.* All claims (including interest and letter of credit fees) arising or related to the Prepetition ABL Obligations shall continue to accrue and be paid in cash at the applicable default contract rate of interest through the Chapter 11 Cases in accordance with the Prepetition ABL Documents until such time as the Prepetition ABL Obligations are Paid in Full. The Prepetition ABL Agent shall be entitled to the payment of all reasonable and documented fees, out-of-pocket costs and expenses and charges of the advisors to the Prepetition ABL Agent (including, without limitation, Morgan, Lewis & Bockius LLP and Reed Smith LLP (collectively, the "***ABL Agent Advisors***")), in each case in accordance with the

procedures set forth in paragraph 15 hereof (collectively, the “*Adequate Protection Payments*”); *provided, however*, that notwithstanding the foregoing, the Debtors are authorized and directed to indefeasibly pay upon the entry of this Interim Order the fees and expenses of the ABL Agent Advisors that accrued prior to and were unpaid as of the date of entry of the Interim Order without the need for such ABL Agent Advisors to deliver an invoice as set forth herein.

(c) *Adequate Protection Superpriority Claims.*

(i) *Superpriority Claims of the Prepetition Secured Creditors.* To the extent of any diminution in value, as further adequate protection of the interests of the Prepetition Agents and the other Prepetition Secured Creditors with respect to the Prepetition Secured Obligations, each of the Prepetition ABL Agent (for the benefit of itself and the other Prepetition ABL Lenders) and the Prepetition Term Loan Agent (for the benefit of itself and the other Prepetition Term Loan Lenders) is hereby granted an allowed administrative claim against the Debtors’ estates under section 503 of the Bankruptcy Code, with priority over all administrative expense claims and unsecured claims against the Debtors and their estates of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (solely with regard to ABL Priority Collateral, subject to entry of the Final Order), 507(a), 507(b), 546(c), 726, 1113, and 1114 of the Bankruptcy Code, as provided for by section 507(b) of the Bankruptcy Code (the “*Adequate Protection Superpriority Claims*”), to the extent that the Adequate Protection Liens do not adequately protect against any Diminution in Value of the Prepetition Agents’ interests in the Prepetition Collateral.

(ii) *Priority of Adequate Protection Superpriority Claims.* The Adequate Protection Superpriority Claims shall be payable from and have recourse to all

Prepetition Collateral and Postpetition Collateral, subject to the Carve Out and the relative priorities set forth on **Exhibit 1** hereto.

(d) *Reservations of Rights.* Subject only to the Carve Out and the relative priorities set forth on **Exhibit 1** hereto, nothing contained herein shall impair or modify the Prepetition Secured Creditors' rights under section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Creditors in this Interim Order is insufficient to compensate for the Diminution in Value of the interest of the Prepetition Secured Creditors in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. Nothing contained in this Interim Order shall be construed as an admission as to the extent of any Diminution in Value, if any, in the interest of any Prepetition Secured Creditors in the Prepetition Collateral and nothing shall impair or modify the rights of any party to contest any assertion of Diminution in Value or contest any request for additional adequate protection.

Provisions Common to Use of Cash Collateral Authorizations

5. **Approved Budget, Testing, and Permitted Variances.**

(a) *Approved Budget.* The Approved Budget and any modification to, or amendment or update of, the Approved Budget shall be in form and substance acceptable to the Prepetition ABL Agent and the Debtors; *provided*, that following the occurrence of the Prepetition ABL Obligations (including any applicable Adequate Protection Payments) being Paid in Full, any updated, modified or supplemented budget shall be in form and substance acceptable to the Prepetition Term Loan Agent. The Approved Budget shall be updated, modified or supplemented by the Debtors not less than every four (4) weeks unless otherwise agreed to by the Debtors and the Prepetition ABL Agent. Each such updated, modified or supplemented budget shall be in form and substance acceptable to the Prepetition ABL Agent, and no such updated, modified or supplemented budget shall be effective until so approved and once approved shall be deemed the

Approved Budget; *provided, however*, that, in the event that the Prepetition ABL Agent and the Debtors cannot agree as to a new Approved Budget, the prior Approved Budget shall remain in full force and effect unless and until a new Approved Budget has been approved by the Prepetition ABL Agent. The Approved Budget shall depict, on a weekly basis and line item basis (1) projected cash receipts, (2) projected cash disbursements (including ordinary course operating expenses, capital expenditures, bankruptcy-related expenses and certain other fees and expenses, and including expenses relating to this Interim Order), (3) net cash flow, (4) projected Borrowing Base and Excess Availability (each as defined in the ABL Credit Agreement), (5) total available liquidity, and (6) professional fees and disbursements with respect to the Debtors' professionals and other estate professionals, for the first four (4) week period from the Petition Date.

(b) *Borrowing Base*. Until the Prepetition ABL Obligations have been Paid in Full, the Borrowing Base Certificate (as defined in the ABL Credit Agreement) shall be updated and delivered weekly to the Prepetition ABL Agent.

(c) *Permitted Variances*. The Debtors shall not, without the consent of the Prepetition ABL Agent, permit (i) the actual total cash receipts for any one week period to be less than 90% of the total cash receipts set forth in the Approved Budget for such period, (ii) the actual non-operating disbursements for any one week period to exceed 105% of the aggregate non-operating disbursements set forth in the Approved Budget for such period, and (iii) the actual operating disbursements for any one week period to exceed 105% of the aggregate operating disbursements set forth in the Approved Budget for such period (collectively, the "***Permitted Variances***").

(d) *Variance Testing*. The Debtors shall, commencing with the first week after the Petition Date, deliver to the Prepetition ABL Agent, by not later than Wednesday of each week,

a certificate (in form and substance acceptable to the Prepetition ABL Agent) showing a reconciliation for the prior week period, and certifying that (i) the Debtors are in compliance with the covenants and requirements contained in this Paragraph 5 and (ii) to the knowledge of the Debtors, no Cash Collateral Termination Event has occurred, or, if such a Cash Collateral Termination Event has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto.

6. Modification of Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to permit the Debtors to grant the Adequate Protection Liens and the Adequate Protection Superpriority Claims.

7. Perfection of Adequate Protection Liens.

(a) This Interim Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of the Adequate Protection Liens and the other security interests granted herein, effective as of the Petition Date, without any further act and without regard to any other federal, state, or local requirements or law requiring notice, execution, filing, registration, recording, or possession of the Postpetition Collateral, or other act to validate or perfect such security interest or lien, including, without limitation, entering into any control agreements with any financial institution(s) party to a control agreement or other depository account consisting of Postpetition Collateral or requirement to register liens on any certificates of title (a “**Perfection Act**”). Notwithstanding the foregoing, if any Prepetition Agent, as applicable, shall, in its sole discretion, elect for any reason to file, record, or otherwise effectuate any Perfection Act, then such Prepetition Agent, as applicable, is authorized to perform such act, and the Debtors are authorized and directed to perform such act to the extent necessary, which act or acts shall be deemed to have

been accomplished as of the date and time of entry of this Interim Order notwithstanding the date and time actually accomplished, and, in such event, the subject filing or recording office is authorized to accept, file, or record any document in regard to such act in accordance with applicable law. The Prepetition Agent, as applicable, may choose to file, record, or present a certified copy of this Interim Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file, or record such certified copy of this Interim Order in accordance with applicable law. Should any Prepetition Agent, as applicable, so choose and attempt to file, record, or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive, or alter the validity, enforceability, attachment, priority, or perfection of the postpetition liens and security interests granted herein by virtue of the entry of this Interim Order.

(b) To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of any liens and security interests granted and created by this Interim Order (including the Adequate Protection Liens) or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby pre-empted to the maximum extent permitted by the Bankruptcy Code, applicable federal or foreign law, and the judicial power and authority of this Court; *provided, however*, that nothing herein shall excuse the Debtors from payment of any local fees, if any, required in connection with such liens. By virtue of the terms of this Interim Order, to the extent that any Prepetition Agent, as applicable, has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the names of any of the Debtors, such filings shall be deemed to properly perfect its liens and security interests

granted and confirmed by this Interim Order without further action by the applicable Prepetition Agent.

8. Application of Proceeds of Postpetition Collateral. The Debtors shall apply the proceeds of Postpetition Collateral in accordance with the terms of the Approved Budget and this Interim Order. For the avoidance of doubt, and notwithstanding anything to the contrary herein, but subject to paragraph 30 of this Interim Order, the Carve Out and the Prepetition Permitted Liens, (a) all proceeds of Postpetition ABL Priority Collateral shall be applied to the Prepetition ABL Obligations (until such obligations are Paid in Full), and (b) all proceeds of Term Priority Collateral shall be applied to the Prepetition Term Loan Obligations (until such obligations are Paid in Full). The Debtors shall not, directly or indirectly, voluntarily purchase, redeem, defease, or prepay any principal of, premium, if any, interest or other amount payable in respect of any indebtedness prior to its scheduled maturity, other than the Prepetition ABL Obligations, the Adequate Protection Payments required under this Interim Order, and obligations authorized by an order of this Court (which may include, without limitation, obligations secured by Prepetition Permitted Liens).

9. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in the Chapter 11 Cases or any Successor Cases shall obtain credit or incur debt pursuant to sections 364(b), 364(c), or 364(d) of the Bankruptcy Code at any time prior to the Prepetition Secured Obligations having been Paid in Full, including subsequent to the confirmation of any plan of reorganization or liquidation with respect to any or all of the Debtors and the Debtors' estates, then the cash proceeds derived from such credit or debt shall immediately be turned over to the Prepetition ABL Agent to be applied as set forth in paragraph 8 herein.

10. Maintenance of Postpetition Collateral and Prepetition Collateral. Until the infeasible payment in full in cash of all Prepetition Secured Obligations (including until such time as the Prepetition ABL Obligations have been Paid in Full), the Debtors shall: (a) insure the Prepetition Collateral and the Postpetition Collateral as required under the Prepetition Credit Documents; and (b) maintain the cash management system in effect as of the Petition Date or as otherwise agreed to by the Prepetition ABL Agent (subject to any orders of this Court in respect of the cash management system).

11. Events of Default. The failure of the Debtors to comply with the “Milestones” on **Exhibit 3** hereto, or the occurrence of any of the events of default listed on **Exhibit 2** hereto, shall each constitute an “Event of Default” and a “Cash Collateral Termination Event” under this Interim Order.

12. Rights and Remedies Upon Event of Default.

(a) Immediately upon the occurrence and during the continuation of an Event of Default or a Cash Collateral Termination Event, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from this Court, but subject to the terms of this Interim Order, including, without limitation, the funding of the Carve Out and the Remedies Notice Period (as defined herein), the Prepetition ABL Agent may declare (the “**Termination Declaration**,” and the date of such Termination Declaration, the “**Termination Declaration Date**”), (A) all Prepetition ABL Obligations (and applicable Adequate Protection Payments and applicable Adequate Protection Superpriority Claims) to be immediately due and payable, (B) that the application of the Carve Out has occurred through delivery of the Carve Out Trigger Notice (as defined below), and (C) a termination, reduction, or restriction on the ability of the Debtors to use Postpetition Collateral, including, without limitation,

the ABL Priority Collateral (except as otherwise provided in this Interim Order or the Prepetition Credit Documents). Any Termination Declaration shall not be effective until notice has been provided by electronic mail (or other electronic means) to counsel to the Debtors, counsel to any Committee and the U.S. Trustee. The automatic stay in the Chapter 11 Cases otherwise applicable to the Prepetition Secured Creditors is hereby modified so that five (5) Business Days after a Termination Declaration Date (as such period may be extended pursuant to the terms hereof, the “*Remedies Notice Period*”) and subject to the Intercreditor Agreement, the funding of the Carve Out, and the relative priorities set forth on Exhibit 1 hereto, the applicable Prepetition Secured Creditors shall be entitled to exercise their respective rights and remedies to the extent available in accordance with the applicable Prepetition Credit Documents and this Interim Order; *provided* that, no rights and remedies may be exercised pursuant to the foregoing clause if the Debtors have sought and received a Remedies Determination within the Remedies Notice Period and this Court has not yet issued a ruling in respect thereof.

(b) During the Remedies Notice Period, the Debtors shall be entitled to seek an emergency hearing within the Remedies Notice Period with this Court (a “*Remedies Determination*”); *provided* that if a hearing is requested to be heard before the end of the Remedies Notice Period but is scheduled for a later date by this Court (without any request by the Debtors to this Court with respect to such later scheduling), the Remedies Notice Period shall be automatically extended to the date of such hearing. This Court may fashion an appropriate remedy at a hearing on a Remedies Determination; *provided, that* the rights of the Debtors and the Prepetition Secured Creditors to contest such relief are expressly preserved. Except as set forth in this paragraph 12 or otherwise ordered by this Court prior to the expiration of the Remedies Notice Period, after the Remedies Notice Period, the Debtors shall waive their right to and shall not be

entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the Prepetition Secured Creditors under this Interim Order. Unless this Court orders otherwise prior to the expiration of the Remedies Notice Period, the automatic stay, as to the Prepetition Secured Creditors shall automatically be terminated at the end of the Remedies Notice Period (as it may be extended in accordance with this paragraph) without further notice or order. Upon expiration of the Remedies Notice Period (as it may be extended in accordance with this paragraph), subject to the Intercreditor Agreement, the Carve Out, and the relative priorities set forth on **Exhibit 1** hereto, the Prepetition Secured Creditors shall be permitted to exercise all remedies set forth herein, and as otherwise available at law without further order of or application or motion to this Court consistent with this Interim Order and the applicable loan documents. Without limiting the foregoing, the Prepetition Secured Creditors may, subject to the Remedies Notice Period, the Prepetition Credit Documents, and the funding of the Carve Out and the relative priorities set forth on **Exhibit 1** hereto, enter onto the premises of any Debtor in connection with an orderly liquidation of the Postpetition Collateral and the Prepetition Collateral, as applicable, in accordance with paragraph 13 herein.

13. Leased Premises.

(a) Notwithstanding anything to the contrary in this Interim Order, for purposes of this Interim Order, the Adequate Protection Liens shall not encumber and the Postpetition Collateral shall not include (i) leasehold interests of non-residential real property that prohibit or restrict the granting of such liens in the applicable lease except as permitted pursuant to applicable non-bankruptcy law (but shall include the proceeds of the sale or disposition of such leases) and (ii) any security deposits (in possession of the landlord) or the Debtors' interests, if any, in pre-

paid rent, unless liens on such security deposits or pre-paid rent are expressly permitted pursuant to the underlying lease documents; *provided* that, the Adequate Protection Liens shall extend to any such security deposits or pre-paid rent upon reversion thereof to the Debtors.

(b) The Prepetition Agents' exercise of their remedies pursuant to paragraph 12 shall be subject to the Prepetition Credit Documents and, notwithstanding anything to the contrary herein, the Prepetition Agents may only enter upon a leased premises of the Debtors following an Event of Default or Cash Collateral Termination Event in accordance with: (a) any agreement in writing between the applicable Prepetition Agent and any applicable landlord; (b) pre-existing rights of the Prepetition Agents and any applicable landlord under applicable non-bankruptcy law; (c) consent of the applicable landlord; or (d) further order of this Court following notice and a hearing.

14. Good Faith Under Section 363(m) of the Bankruptcy Code; No Modification or Stay of this Interim Order. The reversal or modification on appeal of an authorization under subsection (b) or (c) of section 363 of the Bankruptcy Code of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

15. Prepetition ABL Agent Expenses. Counsel and/or professionals to the Prepetition ABL Agent seeking payment pursuant to and in accordance with this Interim Order shall each deliver an invoice in summary form (which shall not be required to include time entry detail, but shall include a general description of the nature of the matters for which services were performed, and may be redacted for privileged information; *provided, however*, that the U.S. Trustee and any Committee reserve their rights to request additional detail regarding the services rendered and

expenses incurred by such professionals) to the Debtors, counsel to the Debtors, the U.S. Trustee, and counsel to any Committee. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the date that is ten (10) days after delivery of such invoice to the Debtors, counsel to the Debtors, the U.S. Trustee, and counsel to any Committee (the “*Review Parties*”), the Debtors shall promptly pay such fees and expenses in full (and the Prepetition ABL Agent shall be entitled to reserve sufficient funds pending such review and/or objection). If an objection is timely received from a Review Party, the Debtors shall promptly pay the undisputed amount of the invoice, and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Counsel and/or professionals to the Prepetition ABL Agent shall not be required to file applications or motions with, or obtain approval of, this Court for the payment of any of its fees or out-of-pocket expenses (other than with respect to disputed amounts). Payments of any amounts set forth in this paragraph are not subject to avoidance, subordination, or disgorgement (and payments of any amounts to the ABL Agent Advisors are not subject to, or capped by, the Approved Budget).

16. Indemnification. The Debtors shall indemnify and hold harmless the Prepetition ABL Agent and each of the other Prepetition ABL Lenders, subject to and in accordance with the ABL Credit Agreement. In addition, upon the repayment in cash of all Prepetition ABL Obligations (and the cash collateralization of the letters of credit in accordance with the terms of the ABL Credit Agreement), the Debtors shall pay \$250,000 from proceeds of the Postpetition ABL Priority Collateral into an indemnity account (the “*ABL Indemnity Account*”) subject to the first priority liens of the Prepetition ABL Agent, to be used for any fees and expenses of the Prepetition ABL Agent (including of the ABL Agent Advisors) subject to the procedures in

paragraph 15 herein. The ABL Indemnity Account shall be released to the Debtors subject to and upon the occurrence of the Prepetition ABL Obligations being Paid in Full.

17. Proofs of Claim. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or any Successor Cases, neither the Prepetition Agents or any of the Prepetition Secured Creditors shall be required to file proofs of claim in the Chapter 11 Cases or any Successor Cases in order to assert claims for payment of any of the Prepetition Secured Obligations, including, without limitation, any principal, unpaid interest, fees, expenses and other amounts payable, whether accrued prepetition or postpetition, under the Prepetition Credit Documents or this Interim Order. None of the Prepetition Secured Creditors will be required to file proofs of claim or requests for approval of administrative expenses in any of the Chapter 11 Cases or Successor Cases, and the provisions of this Interim Order relating to the relevant Adequate Protection Superpriority Claims, the Prepetition Secured Obligations and the Debtors' Stipulations shall constitute timely filed proofs of claim and/or administrative expense requests (as applicable) in each of the Chapter 11 Cases.

18. Carve Out.

(a) *Priority of Carve Out.* Each of the Prepetition Liens, the Adequate Protection Liens, and the Adequate Protection 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 all assets of the Debtors, including any Postpetition Collateral, as set forth on **Exhibit 1** to this Interim Order.

(b) *Definition of Carve Out.* As used in this Interim Order, the "***Carve Out***" means the sum of (i) all fees required to be paid to the Clerk of this Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate

(without regard to the notice set forth in (iii) below); (ii) all reasonable Court-allowed fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject in all instances to and capped by the Approved Budget, all unpaid fees and expenses, other than any restructuring, sale, success, or other transaction fee (the “*Allowed Professional Fees*”) incurred by Persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “*Debtor Professionals*”) and any Committee appointed pursuant to section 328 or 1103 of the Bankruptcy Code (the “*Committee Professionals*” and, together with the Debtor Professionals, the “*Professional Persons*”) at any time before or on the first Business Day following delivery by the Prepetition ABL Agent of a Carve Out Trigger Notice, whether allowed by this Court prior to or after delivery of a Carve Out Trigger Notice (the amounts set forth in clauses (i) through (iii), the “*Pre-Carve Out Trigger Notice Cap*”); and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$500,000 incurred after the first Business Day following delivery by the Prepetition ABL Agent of a Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in clauses (iv) being the “*Post-Carve Out Trigger Notice Cap*”). For purposes of the foregoing, “*Carve Out Trigger Notice*” shall mean a written notice delivered by email (or other electronic means) by the Prepetition ABL Agent to the Debtors, their restructuring counsel, the U.S. Trustee, and counsel to any Committee, which notice may be delivered only following the occurrence and during the continuation of an Event of Default or Cash Collateral Termination Event on the Termination Declaration Date.

(c) *Carve Out Reserves.* From and after the Petition Date (i) the Debtors shall utilize Postpetition Collateral to fund, on a weekly basis, the Pre-Carve Out Trigger Notice Reserve (as defined below) in an amount equal to the aggregate amount of Allowed Professional Fees provided for in the Approved Budget at the applicable time, and (ii) the Prepetition ABL Agent shall be entitled to maintain a reserve against the Borrowing Base in the amount of the Carve Out as set forth in paragraph 18(c). On a Termination Declaration Date, the Carve Out Trigger Notice shall be deemed, notwithstanding the occurrence and continuation of an Event of Default, a demand to fund an amount equal to the Pre-Carve Out Trigger Notice Cap from Postpetition Collateral; *provided, however,* that in the event that the Revolver Repayment Date⁷ occurs prior to the Termination Declaration Date, the Prepetition ABL Agent, and each of the Prepetition ABL Lenders holding Prepetition ABL Obligations, shall each no longer have any further liability whatsoever for any fees or amounts constituting the Carve Out, regardless of when arising or incurred. The Debtors shall deposit and hold such amounts in a segregated account designated by the Debtors exclusively for the payment of unpaid Allowed Professional Fees, and not subject to (i) the control of the Prepetition ABL Agent or (ii) any liens in favor of the Prepetition Secured Creditors (the “*Pre-Carve Out Trigger Notice Reserve*”), prior to any and all other claims. On a Termination Declaration Date, the Carve Out Trigger Notice shall also be deemed, notwithstanding the occurrences and continuation of an Event of Default, a demand to fund an

⁷ The “*Revolver Repayment Date*” shall mean the date upon which the following have occurred or shall occur: (i) the repayment in full in cash of all Prepetition ABL Obligations (including all principal, interest, fees, prepayment premiums, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted, in connection therewith as provided in this Interim Order), the cash collateralization or repayment in full in cash of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancellation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the terms of the applicable credit facility and this Interim Order, and (ii) the funds in the Carve Out Reserves equal to the amount of the then outstanding Carve Out have been deposited into a segregated account maintained by the Debtors exclusively to pay unpaid Allowed Professional Fees prior to any and all other claims in accordance with the Carve Out and this Interim Order.

amount equal to the Post-Carve Out Trigger Notice Cap, after fully funding the amounts equal to the Pre-Carve Out Trigger Notice Cap (which amounts shall be funded from the Postpetition Collateral). The Debtors shall deposit and hold such amounts in a segregated account designated by the Debtors, exclusively for the payment of unpaid Allowed Professional Fees, and not subject to (i) the control of the Prepetition ABL Agent or (ii) any liens in favor of the Prepetition Secured Creditors, to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the “*Post-Carve Out Trigger Notice Reserve*” and, together with the Pre-Carve Out Trigger Notice Reserve, the “*Carve Out Reserves*”) prior to any and all other claims. On the first Business Day after the delivery of the Carve Out Trigger Notice, all Postpetition Collateral shall be made available to fund the Carve Out Reserves. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the “*Pre-Carve Out Amounts*”) in the manner set forth in this paragraph, but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to the Prepetition ABL Agent, unless the Prepetition ABL Obligations have been Paid in Full, in which case any such excess shall be paid to the Prepetition Secured Creditors in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “*Post-Carve Out Amounts*”) in the manner set forth in this paragraph, and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, first to pay any Pre-Carve Out Amounts until indefeasibly paid in full, and then to the Prepetition ABL Agent, unless the Prepetition ABL Obligations have been Paid in Full, in which case any such excess shall be paid to the Prepetition Secured Creditors in accordance with their

rights and priorities in this Interim Order. Notwithstanding anything to the contrary in this Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts and manner set forth in this paragraph 18, then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount and in the manner set forth in this paragraph 18, prior to making any payments to the Prepetition Secured Creditors, as applicable; *provided* that if, following delivery of a Carve Out Trigger Notice and any reallocation of amounts in the Carve Out Reserves pursuant to the immediately preceding clause, either of the Carve Out Reserves is funded in an amount that does not cover actually incurred Allowed Professional Fees up to the Pre-Carve Out Trigger Notice Cap and the Post-Carve Out Trigger Notice Cap, as applicable, then such Carve Out Reserves will be funded (pursuant to the terms of this paragraph) in an amount that will be equal to the value of actually incurred Allowed Professional Fees up to the Pre-Carve Out Trigger Notice Cap and the Post-Carve Out Trigger Notice Cap, as applicable, as soon as practicable but no later than two (2) Business Days following discovery of such shortfall by the Debtors. Notwithstanding anything to the contrary in this Interim Order, following delivery of a Carve Out Trigger Notice, the Prepetition Agents shall not sweep or foreclose on cash (including, without limitation, cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, and any residual funds in the Carve Out Reserves shall be deemed ABL Priority Collateral and paid to the Prepetition ABL Agent for application in accordance with the terms hereof. Further, notwithstanding anything to the contrary in this Interim Order, the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out.

(d) *No Direct Obligation to Pay Allowed Professional Fees.* None of the Prepetition Secured Creditors shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person or any fees or expenses of the U.S. Trustee or Clerk of this Court incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the Prepetition Secured Creditors, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) *Payment of Carve Out on or After the Termination Declaration Date.* Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Notwithstanding anything to the contrary herein, all rights of the Prepetition Secured Creditors to argue that the Carve Out should be deemed funded out of the ABL Priority Collateral or the Term Priority Collateral, respectively, are expressly preserved.

(f) *Reservation of Rights.* Nothing in this Interim Order shall be construed as a waiver of any right of the Prepetition Secured Creditors with respect to any fee statement, interim application or monthly application issued or filed by the Professional Persons. Notwithstanding anything to the contrary herein, the payment of any Allowed Professional Fees pursuant to the Carve Out shall not (i) reduce any Debtor's obligations owed to the Prepetition Agents and the Prepetition Secured Creditors (whether under this Interim Order or otherwise) or (ii) modify, alter or otherwise affect any of the liens and security interests of such parties (whether granted under this Interim Order or otherwise) in the Prepetition Collateral or the Postpetition Collateral (or their claims against the Debtors).

19. Limitation on Use of Prepetition Collateral and Postpetition Collateral (Including Cash Collateral). For the avoidance of doubt and notwithstanding any other provision of this Interim Order or any other order entered by this Court to the contrary, no portion of the Carve Out, or the Postpetition Collateral (including Cash Collateral) may be used directly or indirectly in connection with: (i) the investigation, initiation, or prosecution of any claims, causes of action, motions, adversary proceedings, or other litigation, (A) against any of the Prepetition Secured Creditors or Prepetition Agents (whether in such capacity or otherwise), or (B) challenging the amount, validity, perfection, priority, or enforceability of or asserting any defense, counterclaim or offset to, the obligations and the liens and security interests granted under the Prepetition Credit Documents or in connection with the Prepetition Loan Facilities, including, in each case without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (ii) attempts to modify any of the rights granted to the Prepetition Agents or the other Prepetition Secured Creditors with respect to the Prepetition Loan Facilities or this Interim Order; or (iii) attempts to prevent, hinder, or otherwise delay any of the Prepetition Secured Creditors' (as applicable) assertion, enforcement, or realization upon any Prepetition Collateral in accordance with the Prepetition Credit Documents, this Interim Order, and the Final Order once a Cash Collateral Termination Event has occurred and any applicable Remedies Notice Period expired; *provided, however*, that the proceeds of the Postpetition Collateral (including Cash Collateral) may be used by any Committee to investigate prior to the Challenge Deadline, but not to prosecute, (A) the claims and liens of the Prepetition Secured Creditors, and (B) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Creditors, up to an aggregate cap of no more than \$50,000;

provided further, however, that it shall not be a violation of this Interim Order for the Debtors to respond to any reasonable discovery or diligence requests from the Committee.

20. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

21. Release. Subject to paragraph 29 hereof, and the challenge rights granted thereunder, effective upon entry of the Final Order, each of the Released Parties is released as provided in paragraph F(ix) hereof.

22. Section 506(c) Claims with Respect to ABL Priority Collateral. Upon entry of the Final Order, and subject to approval by this Court therein, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or Successor Cases at any time shall be charged against the Prepetition ABL Lenders, the Prepetition ABL Agent, and/or the ABL Priority Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise and all rights to surcharge the Prepetition ABL Lenders, the Prepetition ABL Agent, and/or the ABL Priority Collateral under section 105 or 506(c) of the Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally and irrevocably waived, and such waiver shall be binding upon the Debtors and all parties in interest in the Chapter 11 Cases or any Successor Case.

23. Section 506(c) Claims with Respect to Term Priority Collateral. Pursuant to section 506(c) of the Bankruptcy Code, the Debtors are authorized to surcharge any Term Priority Collateral (including any proceeds thereof) in an amount equal to the reasonable, necessary costs and expenses of preserving, or disposing of, the Term Priority Collateral. Notwithstanding anything to the contrary herein, the rights of all parties with respect to whether any net proceeds resulting from Prepetition Collateral should be deemed proceeds resulting from ABL Priority Collateral or Term Priority Collateral are expressly preserved. The Debtors shall segregate all proceeds of Term Priority Collateral.

24. No Marshaling / Applications of Proceeds. Upon entry of the Final Order, and subject to approval by this Court therein, the Prepetition ABL Lenders and the Prepetition ABL Agent shall not be subject to the equitable doctrine of “marshaling” nor any other similar doctrine with respect to any of the ABL Priority Collateral or Postpetition ABL Priority Collateral.

25. Section 552(b). The Prepetition ABL Agent and Prepetition ABL Lenders shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code. Upon entry of the Final Order, and subject to approval by this Court therein, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition ABL Agent and Prepetition ABL Lenders with respect to proceeds, products, offspring, or profits of any of the ABL Priority Collateral or Postpetition ABL Priority Collateral.

26. Limits on Lender Liability. Nothing in this Interim Order, any of the Prepetition Credit Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition Agents, or the Prepetition Secured Creditors of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of the Chapter 11 Cases.

The Prepetition Agents, and the Prepetition Secured Creditors shall not, solely by reason of having permitted the use of Cash Collateral, as applicable, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Interim Order or the Prepetition Credit Documents shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition Agents or the Prepetition Secured Creditors of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

27. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors’ estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of this Interim Order.

28. Discharge Waiver. The obligations of the Debtors with respect to adequate protection hereunder, including granting the Adequate Protection Liens and the Adequate Protection Superpriority Claims, shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, 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, or each of the Prepetition Secured Creditors, as applicable, has otherwise agreed in writing. None of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors’ assets, or order confirming such plan or approving such sale, that does not require the payment of the Debtors’ obligations with respect to the adequate protection provided for the Prepetition

Secured Creditors herein, in full in cash within a commercially reasonable period of time without the written consent of the Prepetition Secured Creditors, in accordance with the Prepetition Credit Documents and this Interim Order.

29. Rights Preserved. 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 Prepetition Secured Creditors' right to seek any other or supplemental relief in respect of the Debtors (including, the right to seek additional or different adequate protection); (b) the rights of any of the Prepetition Secured Creditor to seek the payment by the Debtors of postpetition interest or fees pursuant to section 506(b) of the Bankruptcy Code; or (c) any of the rights of the Prepetition Secured Creditors under the Bankruptcy Code or under 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 Cases or Successor Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, (iii) seek an injunction, (iv) oppose any request for use of Cash Collateral, (v) object to any sale of assets, or (vi) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; *provided*, that the rights of the Prepetition Secured Creditors with respect to sections (i)–(iii) of this paragraph 29 shall be subject to the Carve Out and the relative priorities set forth on **Exhibit 1** hereto. Other than as expressly set forth in this Interim Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the Prepetition Secured Creditors are preserved.

30. Binding Effect of Interim Order. Immediately upon entry of this Interim Order, the stipulations (including the Debtors' Stipulations), terms and provisions of this Interim Order

(including, without limitation, the Adequate Protection Liens, Adequate Protection Payments, and the Adequate Protection Superpriority Claims) shall become valid and binding upon and inure to the benefit of the Debtors, the Prepetition Secured Creditors, all other creditors of any of the Debtors, the Committee, if any, and all other parties in interest and their respective successors and assigns, including, without limitation, any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases or any Successor Cases, or upon dismissal of any Chapter 11 Case or Successor Case, unless, and solely to the extent that: (a) a party in interest that has sought and obtained standing and the requisite authority to commence a Challenge⁸ (other than the Debtors, as to which any Challenge is hereby irrevocably waived and relinquished) and has timely commenced a Challenge by the date that is seventy-five (75) days from the date of entry of this Interim Order (the “**Challenge Deadline**”), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition Term Loan Agent (with respect to the Prepetition Term Loan Documents), the Prepetition ABL Agent (with respect to the Prepetition ABL Documents and Prepetition ABL Obligations), and the Debtors, 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; *provided* that if the Chapter 11 Cases are converted to chapter 7 or a chapter 7 or chapter 11 trustee is appointed or elected prior to the expiration of the Challenge Deadline, any such estate representative or trustee shall receive the full benefit of any remaining time before expiration of the Challenge Deadline, which, solely if not yet expired, shall be extended for a

⁸ “**Challenge**” as used herein shall mean an adversary proceeding or contested matter (subject to the limitations contained herein) (a) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Secured Obligations or the Prepetition Liens, or (b) asserting or prosecuting any Avoidance Action or any other claims, counterclaims or causes of action, objections, contests or defenses against any Prepetition Secured Creditors or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof in connection with or related to the Prepetition Credit Documents, the Prepetition Secured Obligations, the Prepetition Liens and the Prepetition Collateral.

period of sixty (60) days; and (b) this Court enters judgment in favor of the plaintiff or movant in any such timely 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 seeking standing to file a Challenge before the Challenge Deadline, which attaches a proposed Challenge (a "Standing Motion"), shall extend the Challenge Deadline (solely with respect to the party that files such timely Standing Motion) until two (2) Business Days after this Court rules on the Standing Motion, or such other time period ordered by this Court in approving the Standing Motion.

31. Cash Collection. From and after the date of the entry of this Interim Order, all collections and proceeds of any Postpetition ABL Priority Collateral and that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall be promptly deposited in the same deposit accounts into which the collections and proceeds of the ABL Priority Collateral were deposited under the Prepetition Documents (or in such other accounts as are designated by the Prepetition ABL Agent from time to time) (collectively, the "**Cash Collection Accounts**"), which accounts shall be subject to the sole dominion and control of the Prepetition ABL Agent (and, for the avoidance of doubt, the Prepetition ABL Agent shall be authorized to issue notices of exclusive control or similar notices under existing control agreements). All proceeds and other amounts in the Cash Collection Accounts of the Debtors shall be remitted to the Prepetition ABL Agent for application in accordance with this Interim Order including, without limitation, to be made available to the Debtors in accordance with this paragraph to be used in accordance with the Approved Budget. In furtherance of the foregoing, upon the Prepetition ABL Agent's receipt of a written cash collateral draw request (each, a "**CC Draw Request**") on Monday of each week, the Prepetition ABL Agent shall disburse funds from the Cash Collection Account to the Debtors' operating account held at

Bank of America, N.A., as appropriate to fund the amounts specified in the CC Draw Request (less any unused amounts in the Debtors' operating account at that time) in accordance with the Approved Budget; *provided* that, subject to the Carve Out, the Prepetition ABL Agent shall not be required to disburse such funds if a Cash Collateral Termination Event has occurred and the Remedies Notice Period has expired, and any excess cash received in the Cash Collection Accounts in excess of the weekly CC Draw Request shall be deemed ABL Priority Collateral and the Prepetition ABL Agent shall be authorized to apply such funds to the outstanding Prepetition ABL Obligations (including any outstanding Adequate Protection Payments, to the extent the applicable review period in paragraph 15 has expired). Unless otherwise agreed to in writing by the Prepetition ABL Agent or otherwise provided for herein, or otherwise ordered by the Court, the Debtors shall maintain no accounts except those identified in any cash management order entered by the Court (a "***Cash Management Order***") and the Pre-Carve Out Trigger Notice Reserve. The Debtors and the applicable financial institutions where the applicable Debtors' Cash Collection Accounts are maintained (including those accounts identified in any Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such Cash Collection Accounts upon receipt of any direction to that effect from the Prepetition ABL Agent.

32. No Modification of Interim Order. Until and unless the Prepetition ABL Obligations have been Paid in Full, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the Prepetition ABL Agent (i) any reversal, modification, stay, vacatur, or amendment to this Interim Order or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in sections 503(b), 507(a), or 507(b) of the

Bankruptcy Code) in any of the Chapter 11 Cases or Successor Cases, equal or superior to the Adequate Protection Superpriority Claims, other than the Carve Out; (b) any order, other than this Interim Order or the Final Order, allowing use of Cash Collateral resulting from Postpetition Collateral; and (c) except as set forth in this Interim Order or the Final Order, any lien on any of the Postpetition Collateral or Prepetition Collateral with priority equal or superior to Prepetition Liens. The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Interim Order without the prior written consent, as provided in the foregoing, of the Prepetition Agents, as applicable, and in accordance with the Prepetition Credit Documents, and no such consent shall be implied by any other action, inaction or acquiescence of the Prepetition Agents, as applicable.

33. Interim Order Controls. In the event of any inconsistency between the terms and conditions of the Prepetition Secured Documents or this Interim Order, the provisions of this Interim Order shall govern and control.

34. 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 plan in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases. The terms and provisions of this Interim Order, including, without limitation, the claims, liens, security interests, and other protections granted to the Prepetition Secured Creditors pursuant to this Interim Order, notwithstanding the entry of any such order, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until all Prepetition

Secured Obligations have been Paid in Full. The terms and provisions in this Interim Order concerning indemnification shall continue in the Chapter 11 Cases and in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases.

35. Final Hearing. The Final Hearing is scheduled for [●], 2024, at [●] [●].m., prevailing Eastern Time before this Court.

36. Notice of Entry of Interim Order. The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been notice of the Interim Hearing and to any party that has filed a request for notices with this Court.

37. Objections. Any party in interest objecting to the relief sought at the Final Hearing shall file and serve a written objection, which objection shall be served upon (i) New rue21 Holdco, Inc., 800 Commonwealth Drive, Warrendale, PA 15086, Attn: Michele Pascoe; (ii) proposed co-counsel to the Debtors, (a) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Rachel C. Strickland, Esq. (rstrickland@willkie.com), Andrew S. Mordkoff, Esq. (amordkoff@willkie.com), and Joseph R. Brandt, Esq. (jbrandt@willkie.com) and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Edmon L. Morton, Esq. (emorton@ycst.com), Matthew B. Lunn, Esq. (mlunn@ycst.com), Shane M. Reil, Esq. (sreil@ycst.com), and Carol E. Cox, Esq. (ccox@ycst.com), (iii) counsel to any official committee appointed in these Chapter 11 Cases; (iv) counsel to the Debtors' Prepetition ABL Agent, (a) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110, Attn: Christopher L. Carter, Esq. (christopher.carter@morganlewis.com), and (b) Reed Smith LLP, 1202 North Market Street, Suite 1500, Wilmington, DE 19801, Attn: Kurt F. Gwynne, Esq. (kgwynne@reedsmith.com); and

(v) the U.S. Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Jane M. Leamy, Esq. (jane.m.leafy@usdoj.gov) and Richard Shepacarter, Esq. (RichardSchepacarter@usdoj.gov), in each case no later than [_____], 2024 at 4:00 p.m. (ET). If no objections to the entry of the Final Order are timely filed, this Court may enter the Final Order without further notice or a hearing.

38. Effectiveness. This Interim Order shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding anything to the contrary proscribed by applicable law, 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.

39. Retention of Jurisdiction. This Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Exhibit 1**Relative Priorities
(in descending order of priority)**

Term Priority Collateral	Postpetition ABL Priority Collateral
Carve Out	Carve Out
Prepetition Permitted Liens	Prepetition Permitted Liens
Adequate Protection Liens (for Prepetition Term Loan Lenders) Adequate Protection Superpriority Claims (for Prepetition Term Loan Lenders)	Adequate Protection Liens (for Prepetition ABL Lenders) Adequate Protection Superpriority Claims (for Prepetition ABL Lenders)
Prepetition Term Loan Liens Prepetition Term Loan Obligations	Prepetition ABL Liens Prepetition ABL Obligations
Adequate Protection Liens (for Prepetition ABL Lenders) Adequate Protection Superpriority Claims (for Prepetition ABL Lenders)	Adequate Protection Liens (for Prepetition Term Loan Lenders) Adequate Protection Superpriority Claims (for Prepetition Term Loan Lenders)
Prepetition ABL Liens Prepetition ABL Obligations	Prepetition Term Loan Liens Prepetition Term Loan Obligations

Exhibit 2

Events of Default

The occurrence of any of the following events, unless consented to or waived (as applicable) by the Prepetition ABL Agent in advance, in writing, in its sole and absolute discretion shall constitute an Event of Default and/or a Cash Collateral Termination Event under the Interim Order:

1. The failure of the Debtors to perform, in any respect, any of the material terms, provisions, conditions, covenants, or obligations under this Interim Order;
2. The failure to achieve any Milestone;
3. The failure to continue sales of the Debtors' assets in accordance with the Consulting Agreement and to assume the Consulting Agreement in accordance with the Milestones;
4. The filing of a motion or any plan of reorganization or disclosure statement attendant thereto by any of the Debtors: (i) to obtain additional financing under section 364(d) of the Bankruptcy Code not otherwise permitted pursuant to this Interim Order or that does not satisfy the claims of the Prepetition ABL Lenders in full at the time of closing of such financing; (ii) to grant any lien other than Permitted Prior Liens upon or affecting any Postpetition Collateral; or (iii) except as provided in this Interim Order, to use Cash Collateral under section 363(c) of the Bankruptcy Code;
5. The entry of an order amending, supplementing, staying, vacating or otherwise modifying the Interim Order or the Cash Management Order, the filing by a Debtor of a motion for reconsideration with respect to the Interim Order or the Cash Management Order, or the Interim Order shall cease to be in full force and effect;
6. The payment of, or application by the Debtors for authority to pay, any prepetition claim unless in accordance with an order of the Court and the Approved Budget;
7. The appointment of an interim or permanent trustee in the Cases or any Successor Cases;
8. The entry of an order approving, relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (i) to allow any creditor (other than the Prepetition ABL Agent) to execute upon or enforce a lien on any Prepetition Collateral or Postpetition Collateral, (ii) approving any settlement or other stipulation with any secured creditor of any Debtor providing for payments as adequate protection or otherwise to such secured creditor, or (iii) with respect to any lien on or the granting of any lien on any Prepetition Collateral or Postpetition Collateral to any federal, state or local environmental or regulatory agency or authority;
9. The entry of any order of the Court authorizing any claims or charges, entitled to superpriority administrative expense claim status in any Case pursuant to section 364 of the Bankruptcy Code *pari passu* with or senior to the claims of the Prepetition Secured Creditors under this Interim Order, or there shall arise or be granted by the Court (i) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of section 503 or clause (b) of section 507 of the Bankruptcy Code or (ii) any lien on the Prepetition Collateral or Postpetition Collateral having a priority senior to or *pari passu* with the liens and security interests granted herein, except,

in each case, as expressly provided in this Interim Order;

10. The Debtors shall file a motion for entry of an order materially adversely impacting the rights and interests of the Prepetition Secured Creditors;
11. Any Debtor shall challenge, support or encourage a challenge of any payments made with respect to the Prepetition ABL Obligations;
12. The entry of any order by the Court granting, or the filing by any Debtor of any motion or other request with the Court seeking authority for, the use of cash proceeds of any Prepetition Collateral or Postpetition Collateral other than as set forth in this Interim Order or to obtain any financing under section 364(d) of the Bankruptcy Code not otherwise permitted under the Interim Order;
13. Any Debtor or any person on behalf of any Debtor shall file any motion seeking authority to consummate a sale of Prepetition or Postpetition ABL Collateral outside the ordinary course of business not otherwise permitted hereunder, pursuant to the Consulting Agreement or without the consent of the Prepetition ABL Agent; and
14. Any Debtor shall make any payment of principal or interest or otherwise provide any credit on account of any prepetition indebtedness or payables other than payments (i) under customary “first day orders” or other order of the Court as approved by the Prepetition ABL Agent in writing, and (ii) payments approved by the Prepetition ABL Agent in writing, in each case in accordance with the Approved Budget.

Exhibit 3

Milestones

The Debtors must achieve each of the following milestones (as the same may be extended from time to time with the consent of the Prepetition ABL Agent):

1. On the Petition Date, the Debtors shall file (a) a motion seeking approval of the use of Cash Collateral, in form and substance acceptable to the Prepetition ABL Agent, and (b) a motion to approve the closing of all of the Debtors' stores pursuant to an agreement with a nationally-recognized liquidator reasonably acceptable to the Prepetition ABL Agent (the "***Store Closing Motion***");
2. On or before three (3) business days after the Petition Date, (a) the Interim Order shall have been entered by the Court, and (b) an interim order, in form and substance acceptable to the Prepetition ABL Agent, approving the Store Closing Motion shall have been entered;
3. On or before twenty-one (21) days after the Petition Date, the Debtors shall have obtained an order of the Court approving bidding procedures relating to the sale of the Debtors' assets (the "***Sale***") in form and substance acceptable to the Prepetition ABL Agent and consistent with the Milestones herein;
4. On or before five (5) business days after conclusion of the auction (or, if no auction is necessary, the announcement of cancellation of the auction) for substantially all of their assets, the Debtors shall have obtained an order from the Court approving a winning bid that is acceptable to the Prepetition ABL Agent (the "**Approved Sale**" and the "**Sale Order**");
5. On or before two (2) business days after entry of the Sale Order, the Debtors shall have consummated the Approved Sale;
6. On or before ten (10) business days after the Petition Date, the Debtors shall have filed a motion requesting, and within fifty (50) days after the Petition Date shall have obtained, an order of the Court extending the lease assumption/rejection period such that the lease assumption/rejection period shall be 210 days after the Petition Date;
7. On or before thirty-five (35) days after the Petition Date, (a) the Final Order shall have been entered by the Court, and (b) a final order, in form and substance acceptable to the Prepetition ABL Agent, approving the Store Closing Motion shall have been entered;
8. On or before June 22, 2024, the Revolver Repayment Date shall have occurred; and
9. On or before seventy five (75) days after the Petition Date, the Prepetition ABL Obligations shall have been Paid in Full.

Exhibit 4

Approved Budget

[To Come]