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*Proposed Counsel to the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:)	
)	Chapter 11
)	
CICI'S HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 21-30146 (SGJ)
)	
Debtors.)	(Joint Administration Requested)
)	(Emergency Consideration Requested)
)	

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF
AN ORDER (I) AUTHORIZING THE DEBTORS TO CONTINUE
TO OPERATE THEIR CASH MANAGEMENT SYSTEM AND PERFORM
INTERCOMPANY TRANSACTIONS, AND (II) GRANTING RELATED RELIEF**

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: CiCi's Holdings, Inc. (5177); Awesome Acquisition Company (0481); CiCi Acquisition Company, LLC (N/A); CiCi Enterprises, LP (5070); CiCi GP, LLC (2948); CiCi Services, LLC (3586); JMC GP, LLC (8268); JMC Restaurant Distribution, LP (5075); and Pizza Parent, LLC (9534). The Debtors' principal offices are located at 1080 W. Bethel Road, Coppell, Texas 75019, United States.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)² respectfully state the following in support of this motion (this “Motion”):³

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit C** (the “Order”): (a) authorizing the Debtors to (i) continue to operate their Cash Management System and (ii) continue to perform intercompany transactions consistent with historical practice, as set forth herein; and (b) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court.

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

4. The bases for the relief requested herein are sections 105, 345, 363, and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and Rule 9013-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”).

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion are set forth in the *Declaration of Richard Peabody, Chief Financial Officer of CiCi’s Holdings, Inc. in Support of First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated herein by reference.

³ Capitalized terms used but not yet defined herein have the meanings ascribed to such terms later in this Motion or in the First Day Declaration, as applicable.

Background

5. The Debtors are leading owners, operators, and franchisors of family-oriented unlimited pizza restaurants. With approximately 318 locations across 26 states, including 11 owned restaurants and 307 franchise locations owned and operated by 128 franchisees, the CiCi's brand is known as a "go-to" destination for family and other group outings through its wide variety of pizza, pasta, and salad bar items and cost-effective price point. Much like their competitors and nearly all other customer-facing businesses, the Debtors' recent operations have been impacted by the uncertainty, unexpected challenges, and ever-changing landscape resulting from the COVID-19 pandemic. A more detailed history of the Debtors' businesses, as well as their pre-petition efforts to address issues related to safe and efficient operations, franchisee relations, and liquidity issues, are discussed in more detail in the First Day Declaration.

6. On January 25, 2021 (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

The Cash Management System

I. Overview.

7. In the ordinary course of business, the Debtors maintain an integrated, centralized cash management system (the "Cash Management System") comparable to the cash management systems used by similarly situated companies to manage the cash of operating units in a cost-effective, efficient manner.

8. The Debtors use the Cash Management System in the ordinary course of business to collect, transfer, and distribute funds generated from their operations and to facilitate cash monitoring, forecasting, and reporting. The Cash Management System allows the Debtors to control funds, ensure cash availability for each operating entity, and reduce administrative costs by facilitating the movement of funds among multiple entities. The Debtors' treasury department maintains daily oversight over the Cash Management System and implements cash management controls for entering, processing, and releasing funds, including in connection with Intercompany Transactions. The Debtors' accounting department regularly reconciles the Debtors' books and records to ensure that all transfers are accounted for properly.

9. The Cash Management System includes a total of 14 bank accounts. As illustrated in the Cash Management System schematic attached hereto as **Exhibit A**, the Cash Management System is arranged to organize and monitor cash flows across the CiCi's enterprise and to centralize procurement for general administrative and operating expenses. The Debtors estimate that their cash receipt collections averaged approximately \$6.07 million per month in the twelve months prior to the Petition Date. This amount, however, varies month-to-month.

10. Given the economic and operational scale of the Debtors' businesses, any disruption to the Cash Management System would have an immediate adverse effect on the Debtors' businesses and operations to the detriment of their estates and numerous stakeholders. Accordingly, to minimize the disruption caused by these chapter 11 cases and to maximize the value of the Debtors' estates, the Debtors request authority, but not direction, to continue to utilize their existing Cash Management System during the pendency of these chapter 11 cases, subject to the terms described herein.

II. The Cash Management System.

11. The Cash Management System includes a total of 14 bank accounts (each a “Bank Account” and collectively, the “Bank Accounts”), each of which is identified on **Exhibit B** attached hereto. Eight of the Bank Accounts are held at PlainsCapital Bank, three of the Bank Accounts are held at Bank of America, two of the Bank Accounts are held at Frost Bank, and the remaining Bank Account is held at Wells Fargo Bank (collectively, the “Cash Management Banks”). As of the Petition Date, the Debtors have approximately \$6,069,140.88 in cash in the Bank Accounts.

12. The Bank Accounts are described in more detail below:⁴

Debtor: Awesome Acquisition Company	
<u>Bank Account</u>	<u>Bank Account Description</u>
AAC Operating Account Bank Account - 0736	The AAC Operating Account receives funds from loan draws and transfers from the CiCi’s Operating Account and the JMC Operating Account. Funds from this account are used for debt payments, taxes, and professional fees. As needed, funds from this account are also transferred to the CiCi’s Operating Account and JMC Operating Account to fund general operations.
AAC FBO Account Bank Account - 8535	The AAC FBO Account is a reserve account used as backup in the event of potential ACH draft issues with the AAC Operating Account.
Savings Account Bank Account - 0201	The Savings Account is used for excess funds that are not needed for the Debtors’ operations. This account also holds the proceeds from the federal tax refund received by the Debtors on or about January 11, 2021.
Debtor: CiCi Enterprises, LP	
<u>Bank Account</u>	<u>Bank Account Description</u>
CiCi’s Operating Account Bank Account - 0744	The CiCi’s Operating Account is the main operating account for the CiCi’s restaurant business. It is used to pay corporate restaurant and franchisor costs, including expenses for food and supplies, rents, utilities, travel expenses, operating expenses, and bank transfers. This account is funded from franchisee royalties and transfers from the Store Deposit Account, the Merchant Account, the Secondary Store Deposit Account, and, less regularly, from the Marketing Account and the AAC Operating Account.
CiCi’s Payroll Account Bank Account - 0769	The CiCi’s Payroll Account is used to process and pay employee payroll for CiCi Enterprises, LP’s employees. This account is funded from CiCi’s Operating Account.

⁴ These descriptions of Bank Account types are for illustrative purposes only. A single Bank Account may fall into more than one of the categories described herein.

Marketing Account Bank Account - 0751	The Marketing Account is funded from franchisee ad fund contributions and pays miscellaneous brand marketing costs. As necessary, the Marketing Account may receive funds from or pay excess funds to the CiCi's Operating Account.
Store Deposit Account Bank Account - 8548	The Store Deposit Account is funded by cash payments at corporate-run restaurants. Funds from this account are used to pay bank fees and are transferred to CiCi's Operating Account.
Merchant Account Bank Account - 3960	The Merchant Account is funded by credit card payments at corporate-run restaurants. Funds from this account are used to pay bank fees and are transferred to CiCi's Operating Account.
Secondary Store Deposit Account Bank Account - 0022	The Secondary Store Deposit Account is funded by cash payments at corporate-run restaurants. Funds from this account are used to pay bank fees and are transferred to CiCi's Operating Account.
Gift Check Account Bank Account - 6608	The Gift Check Account is a prior gift card operating account. It is not currently receiving any transfers from any accounts and is only paying bank fees.
<u>Debtor: JMC Restaurant Distribution, LP</u>	
<u>Bank Account</u>	<u>Bank Account Description</u>
JMC Operating Account Bank Account - 0819	The JMC Operating Account pays expenses related to the distribution side of the business, including for inventory, transportation, insurance, utilities, rents, general operating expenses. This account is funded by wholesale sales of food and supplies and, less frequently, from transfers from the AAC Operating Account.
JMC Payroll Account Bank Account - 0801	The JMC Payroll Account receives transfers from the JMC Operating Account to pay employee payroll for JMC Restaurant Distribution, LP's employees.
<u>Debtor: CiCi Services, Inc.</u>	
<u>Bank Account</u>	<u>Bank Account Description</u>
Gift Card Account Bank Account - 9305	The Gift Card Account funds gift card redemptions and is funded through sales of gift cards.
Secondary Gift Card Account Bank Account - 2743	The Secondary Gift Card Account is currently not being funded and only pays bank fees.

13. The Debtors pay fees incurred in connection with the Bank Accounts (the "Bank Fees") to the Cash Management Banks on a monthly basis. The Bank Fees total approximately \$6,000 per month. The Debtors do not believe that they owe any Bank Fees as of the Petition Date, but in the event such Bank Fees are owing, the Debtors seek authority, but not direction, to pay the prepetition Bank Fees and continue paying the Bank Fees in the ordinary course on a postpetition basis, consistent with historic practice.

III. Compliance with Section 345 of the Bankruptcy Code and the U.S. Trustee Guidelines.

14. Section 345(a) of the Bankruptcy Code governs a debtor's cash deposits during a chapter 11 case and authorizes deposits of money as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of the Bankruptcy Code requires debtors to obtain, from the entity with which the money is deposited, a bond in favor of the United States and secured by the undertaking of an adequate corporate surety, or "the deposit of securities of the kind specified in section 9303 of title 31," unless the court "for cause" orders otherwise. 11 U.S.C § 345(a)–(b).

15. Similarly, the U.S. Trustee's *Guidelines for Chapter 11 Cases* (the "U.S. Trustee Guidelines") generally require chapter 11 debtors to, among other things, deposit all estate funds into an account with an authorized depository that agrees to comply with certain requirements of the Office of the United States Trustee for the Northern District of Texas (the "U.S. Trustee").

16. All of the Cash Management Banks are designated depositories in the Northern District of Texas. The Debtors have no reason to believe at this time that their Cash Management System, as described above, does not comply with section 345 of the Bankruptcy Code. Nevertheless, to the extent that it may not comply with section 345 or any other requirements of the U.S. Trustee, the Debtors request that this Court waive any such noncompliance because modifying the Debtors' Cash Management System would impose considerable costs to the Debtors' estates.

IV. Intercompany Transactions.

17. In the ordinary course of business, the Debtors maintain business relationships with each other (the “Intercompany Transactions”) that have historically resulted in intercompany receivables and payables (collectively, the “Intercompany Claims”).⁵ The Debtors settle Intercompany Transactions as journal-entry receivables and payables, from time to time, to reimburse certain Debtors for various expenditures associated with their businesses and/or fund the Bank Accounts in anticipation of such expenditures, as needed. The Intercompany Claims are set off to the extent applicable and any Intercompany Claims that are not set off have historically remained outstanding and have not been repaid.

18. Intercompany Transactions are made through account transfers to (a) reimburse certain Debtors for various expenditures associated with their business, (b) fund certain Debtors’ accounts in anticipation of such expenditures, as needed, or (c) transfer funds up to an operating account when such excess revenue is available. For instance, in the ordinary course, Awesome Acquisition Company (“AAC”) transfers funds from loans from its secured lenders to JMC Restaurant Distribution, LP and CiCi Enterprises, LP to fund their respective operations. Also, revenues from cash and credit card sales at corporate-run restaurants are deposited into the Store Deposit Account, Merchant Account, or Secondary Store Deposit Account, and then transferred to the CiCi’s Operating Account. Once the funds are in the CiCi’s Operating Account and JMC Operating Account, such funds are disbursed to pay payroll and other operating obligations, and the Debtors make appropriate credits and debits within their accounting system to reflect these Intercompany Transactions.

⁵ For the avoidance of doubt, the Intercompany Transactions are solely between the Debtors; the Debtors do not seek to pay any affiliated or unaffiliated third parties pursuant to the Intercompany Transactions.

19. The Intercompany Transactions are an essential component of the Debtors' operations and centralized Cash Management System. Any interruption of the Intercompany Transactions would severely disrupt the Debtors' operations and result in great harm to the Debtors' estates and their stakeholders. Accordingly, the Debtors seek authority to continue the Intercompany Transactions in the ordinary course of business on a postpetition basis, in a manner substantially consistent with the Debtors' past practice.⁶

Basis for Relief

I. Maintaining the Existing Cash Management System Is Essential to the Debtors' Ongoing Operations and Restructuring Efforts.

20. The U.S. Trustee Guidelines require debtors in possession to, among other things, close all existing bank accounts and open new debtor in possession accounts. These requirements are intended to provide a clear line of demarcation between prepetition and postpetition transactions and operations and to prevent inadvertent payment of prepetition claims. Considering, however, that the Debtors' businesses and financial affairs are complex and require the collection, disbursement, and movement of funds through the Debtors' multiple Bank Accounts, enforcement of these provisions of the U.S. Trustee Guidelines during these chapter 11 cases would severely disrupt the Debtors' operations. Accordingly, the Debtors respectfully request that the Court allow them to operate each of the Bank Accounts listed on **Exhibit B** attached hereto, as they were maintained in the ordinary course of business before the Petition Date.

21. Continuation of the Cash Management System is permitted pursuant to section 363(c)(1) of the Bankruptcy Code, which authorizes a debtor in possession to "use property

⁶ This motion provides an overview of the Debtors' typical Intercompany Transactions. The relief requested herein is applicable with respect to all Intercompany Transactions and is not limited to those Intercompany Transactions described in this motion. To the extent that there are any outstanding prepetition obligations related to Intercompany Transactions not described herein, the Debtors, out of an abundance of caution, seek authority to honor such obligations.

of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1); *see Amdura Nat’l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996) (included within the purview of section 363(c) is a debtor’s ability to continue the “routine transactions” necessitated by a debtor’s cash management system). Bankruptcy courts routinely treat requests for authority to continue utilizing existing cash management systems as relatively “simple matter[s].” *See, e.g., In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In addition, in granting such relief, courts recognize that an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in relevant part*, 997 F.2d 1039, 1061 (3d Cir. 1993). The requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also Southmark Corp. v. Grosz (In re Southmark Corp.)*, 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor “to administer more efficiently and effectively its financial operations and assets”).

22. Here, requiring the Debtors to adopt a new, segmented cash management system during these chapter 11 cases would be expensive, burdensome, and unnecessarily disruptive to the Debtors’ operations. Importantly, the Cash Management System provides the Debtors with the ability to quickly track and report the location and amount of funds, which, in turn, allows management to track and control such funds, ensure cash availability, and reduce administrative costs through a centralized method of coordinating the collection and movement of funds. Any disruption of the Cash Management System could have a negative effect on the Debtors’ restructuring efforts. Indeed, absent the relief requested herein, requiring the Debtors to adopt a

new, segmented cash management system would cause the Debtors' operations to grind to a halt, jeopardizing the Debtors' business enterprise. By contrast, maintaining the current Cash Management System will facilitate the Debtors' transition into chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies. Finally, maintaining the current Cash Management System will allow the Debtors' treasury and accounting employees to focus on their daily responsibilities.

23. The Debtors respectfully submit that parties in interest will not be harmed by the Debtors' continued use of the present Cash Management System, including maintenance of the Bank Accounts and the Intercompany Transactions, because the Debtors have implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of prepetition obligations. Specifically, with the assistance of their advisors, the Debtors have implemented internal control procedures that prohibit payments on account of prepetition debts without the prior approval of each of the Debtors' respective treasury departments. The Debtors will continue to work closely with the Cash Management Banks to ensure that appropriate procedures are in place to prevent checks issued prepetition from being honored without the Court's approval. In light of such protective measures, the Debtors submit that maintaining the Cash Management System is in the best interest of the Debtors' estates and creditors.

II. Authorizing the Banks to Continue to Maintain, Service, and Administer the Bank Accounts in the Ordinary Course of Business Is Warranted.

24. Moreover, the Debtors respectfully request that the Court authorize the Cash Management Banks to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course of business. The Debtors further respectfully request that the Court authorize and direct the Cash Management Banks to receive, process, honor, and pay any and all checks, wire transfers, credit

cards, ACH payments and other instructions, and drafts payable through, or drawn or directed on, such Bank Accounts after the Petition Date by holders, makers, or other parties entitled to issue instructions with respect thereto, irrespective of whether such checks, drafts, wires, credit card, or ACH payments are dated prior to or subsequent to the Petition Date. Notwithstanding the foregoing, any check, draft, or other notification that the Debtors advise the Cash Management Banks to have been drawn, issued, or otherwise presented before the Petition Date may be honored by the Cash Management Banks only to the extent authorized by order of the Court. If the Debtors' ability to conduct transactions by these methods is impaired, the Debtors may be unable to perform under certain contracts and payments to vendors could be delayed, resulting in unnecessary disruption to their business operations and the incurrence of additional costs.

25. The Debtors also respectfully request that, to the extent a Cash Management Bank honors a prepetition check or other item drawn on any account that is the subject of this Motion, either at the direction of the Debtors or in a good faith belief that the Court has authorized such prepetition check or item to be honored, such Cash Management Bank will not be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item honored postpetition. Such relief is reasonable and appropriate because the Cash Management Banks are not in a position to independently verify or audit whether the Debtors may pay a particular item in accordance with a Court order or otherwise.

26. Courts in this District routinely grant similar relief, including authorizing a debtor's continued use of its existing cash management procedures and policies. *See, e.g., Studio Movie Grill Holdings, LLC*, No. 20-32622 (Bankr. N.D. Tex. Oct. 29, 2020) [Docket No. 96]; *In re TriVascular Sales LLC*, No. 20-31840 (Bankr. N.D. Tex. Sept. 16, 2020) [Docket No. 204]; *In re Tuesday Morning Corp.*, No. 20-31476 (Bankr. N.D. Tex. May 28, 2020) [Docket No. 68]; *In re*

The LaSalle Grp., Inc., No. 19-31484 (Bankr. N.D. Tex. July 17, 2019) [Docket No. 215]; *In re PHI, Inc.*, No. 19-30923 (Bankr. N.D. Tex. April 17, 2019) [Docket No. 271]; *In re Energy & Exploration Partners, Inc.*, Case No. 15-44931 (Bankr. N.D. Tex. Dec. 10, 2015) [Docket No. 427]; *In re ALCO Stores, Inc.*, Case No. 14-34941 (Bankr. N.D. Tex. Oct. 16, 2014) [Docket No. 70]; *In re Reddy Ice Holdings, Inc.*, Case No. 12-32349 (Bankr. N.D. Tex. Apr. 19, 2012) [Docket No. 110]; *In re IDEARC Inc.*, Case No. 09-31828 (Bankr. N.D. Tex. Apr. 19, 2009) [Docket No. 156]; *In re Pilgrim Corp.*, Case No. 08-45664 (Bankr. N.D. Tex. Dec. 1, 2008) [Docket No. 69].⁷

III. The Court Should Authorize the Debtors to Pay Prepetition Amounts Owed on Account of the Cash Management System, Including Intercompany Claims.

27. The Debtors' funds move through the Cash Management System as described above and, at any given time, there may be prepetition amounts outstanding on account of the Cash Management System, including Intercompany Claims. Any non-payment of prepetition amounts owed could cause serious disruptions to the Debtors' estates. As such, the Debtors respectfully request that the Court authorize the Debtors to pay any prepetition amounts owed in connection with the Cash Management System.

28. Courts in the Fifth Circuit and elsewhere have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 369–70 (Bankr. S.D. Tex. 2000); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World*

⁷ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.), 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

29. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). To do so, “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). In addition, under section 1107(a) of the Bankruptcy Code, a debtor in possession has, among other things, the “implied duty . . . to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *CoServ*, 273 B.R. at 497).

30. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. *See Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See, e.g., Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Railway Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment

of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *CoServ*, 273 B.R. at 497.

31. In addition to seeking authority to continue to pay Intercompany Claims, the Debtors also request that the Court authorize the Debtors to continue to pay the Bank Fees, including any prepetition Bank Fee, and further authorize the Cash Management Banks to chargeback returned items to the Bank Accounts, whether such items are dated prior to, on, or subsequent to the Petition Date, in the ordinary course of business. The Debtors further request that the Court order that liens on any of the Bank Accounts granted to creditors will not have priority over the Bank Fees of the respective Cash Management Bank at which the Bank Account is located.

32. The Debtors’ continued use of the Cash Management System, including payment of Intercompany Claims and payment of Bank Fees, will facilitate their transition into chapter 11 by, among other things, avoiding administrative inefficiencies and expenses and minimizing delays in the payment of postpetition amounts due. As described above, the Debtors pay Bank Fees to the Banks to facilitate the use of their Bank Accounts. Non-payment of these fees could cause disruption to their Cash Management System. Similarly, as described above, the Debtors in

the ordinary course of business engage in Intercompany Transaction with other Debtors, which are an essential component of the Debtors' operations and Cash Management System. Any interruption of the Intercompany Transactions, or non-payment of prepetition amounts due in connection with the Cash Management System, would severely disrupt the Debtors' operations to the detriment of Debtors and their estates.

33. Accordingly, the Debtors respectfully submit that a sound business purpose exists to authorize payment of prepetition amounts due in connection with the Cash Management System, including Intercompany Claims and Bank Fees.

IV. The Court Should Authorize the Debtors to Continue Intercompany Transactions in the Ordinary Course and Grant Administrative Priority Status to Postpetition Intercompany Claims.

34. The Debtors' funds move through the Cash Management System as described above. At any given time, there may be Intercompany Claims owed by one Debtor or to another Debtor, or a Debtor to a non-debtor affiliate or related party (or vice versa). Intercompany Transactions are made between and among Debtors in the ordinary course as part of the Cash Management System.⁸ The Debtors track all fund transfers in their accounting system and can ascertain, trace, and account for all Intercompany Transactions previously described. The Debtors, moreover, will continue to maintain records of such Intercompany Transactions. If the Intercompany Transactions were to be discontinued, the Cash Management System and related administrative controls would be disrupted to the Debtors' and each of their estates' detriment.

⁸ Because the Debtors engage in Intercompany Transactions on a regular basis and such transactions are common among large enterprises similar to the Debtors, the Debtors submit the Intercompany Transactions are ordinary course transactions within the meaning of 363(c)(1) of the Bankruptcy Code and, thus, do not require this Court's approval. Nonetheless, out of an abundance of caution, the Debtors are seeking express authority to engage in such transactions on a postpetition basis. Moreover, the continued performance of the ordinary course Intercompany Transactions is integral to ensure the Debtors' ability to operate their businesses as debtors in possession.

Accordingly, the Debtors respectfully submit that the continued performance of the Intercompany Transactions is in the best interest of the Debtors' estates and their creditors and, therefore, the Debtors should be permitted to continue such performance.

35. The Debtors further request that pursuant to section 503(b)(1) of the Bankruptcy Code, any Intercompany Claims against the Debtors on account of the Intercompany Transactions be accorded administrative expense status. If all Intercompany Claims against the Debtors are accorded administrative expense status, each entity will continue to bear ultimate payment responsibility for such ordinary course transactions, thereby reducing the risk that these transactions will jeopardize the recoveries available to each Debtor's respective creditors. For the avoidance of doubt, the relief requested herein with respect to the postpetition Intercompany Transactions and Intercompany Claims resulting therefrom shall not constitute an admission of the Debtors or any other party as to the validity, priority, or status of any Intercompany Claims or the Intercompany Transaction(s) from which such Intercompany Claims may have arisen.

36. Administrative expense treatment for Intercompany Claims, as requested herein, has been granted in chapter 11 cases comparable to these chapter 11 cases. *See, e.g., Studio Movie Grill Holdings, LLC*, No. 20-32622 (SGJ) (Bankr. N.D. Tex. Oct. 29, 2020) (granting administrative expense status to intercompany claims on a final basis); *In re TriVascular Sales LLC*, No. 20-31840 (SGJ) (Bankr. N.D. Tex. Sept. 16, 2020) (same); *In re Tuesday Morning Corp.*, No. 20-31476 (HDH) (Bankr. N.D. Tex. May 28, 2020) (same); *In re The LaSalle Grp., Inc.*, No. 19-31484 (SGJ) (Bankr. N.D. Tex. July 17, 2019) (same); *In re PHI, Inc.*, No. 19-30923 (HDH) (Bankr. N.D. Tex. April 17, 2019) (same).

V. Cause Exists to Waive Section 345 of the Bankruptcy Code to the Extent It Is Applicable to the Cash Management System.

37. To the extent the Cash Management System does not strictly comply with section 345 of the Bankruptcy Code, the Debtors further seek a waiver of the deposit and investment requirements set forth therein. Section 345(a) of the Bankruptcy Code governs a debtor's cash deposits during a chapter 11 case and authorizes deposits of money as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). Section 345(b) of the Bankruptcy Code requires that a debtor's bank post a bond unless a debtor's funds are "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States." 11 U.S.C. § 345(b).

38. As discussed above, each of the Bank Accounts are maintained at banks that are insured by the FDIC and therefore are in compliance with section 345(b) of the Bankruptcy Code. Out of an abundance of caution, to the extent that any of the Debtors' Bank Accounts do not comply strictly with section 345 of the Bankruptcy Code, the Debtors submit that cause exists to waive any such noncompliance because all funds are deposited safely and prudently at financially stable banking institutions in a manner specifically designed to preserve capital, provide liquidity, and generate return.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

39. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Reservation of Rights

40. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the requested relief, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

41. The Debtors will provide notice of this motion to the following parties or their counsel: (a) the Office of the U.S. Trustee for the Northern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the

lenders under the Debtors' prepetition credit facility; (d) the United States Attorney's Office for the Northern District of Texas; (e) the Internal Revenue Service; (f) the state attorneys general for states in which the Debtors conduct business; (g) the Cash Management Banks; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice is needed.

No Prior Request

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

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit C**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Respectfully submitted this 25th day of January, 2021.

GRAY REED & MCGRAW LLP

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*Proposed Counsel to the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on January 25, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Jason S. Brookner

Jason S. Brookner

Exhibit A

Cash Management System Schematic

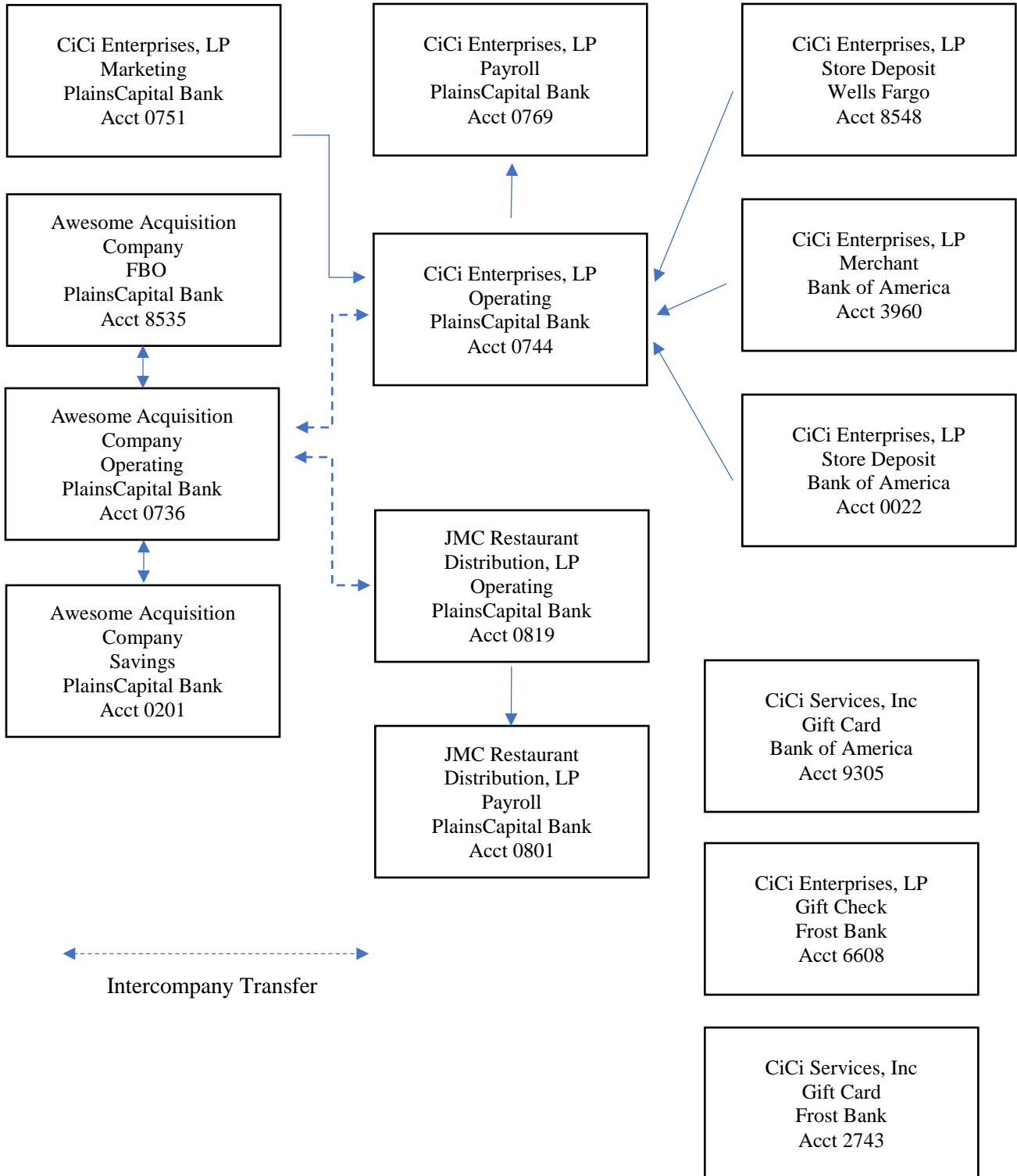


Exhibit B**Bank Accounts**

Entity	Bank	Account Type	Last Four of Account Number
CiCi Enterprises, LP	PlainsCapital Bank	Operating	0744
CiCi Enterprises, LP	PlainsCapital Bank	Payroll	0769
CiCi Enterprises, LP	PlainsCapital Bank	Marketing	0751
CiCi Enterprises, LP	Bank of America	Merchant	3960
CiCi Enterprises, LP	Bank of America	Store Deposit	0022
CiCi Enterprises, LP	Bank of America	Gift Card	9305
CiCi Enterprises, LP	Wells Fargo	Store Deposit	8548
CiCi Enterprises, LP	Frost Bank	Gift Check	6608
CiCi Enterprises, LP	Frost Bank	Gift Card	2743
JMC Restaurant Distribution, LP	PlainsCapital Bank	Operating	0819
JMC Restaurant Distribution, LP	PlainsCapital Bank	Payroll	0801
Awesome Acquisition Company	PlainsCapital Bank	Operating	0736
Awesome Acquisition Company	PlainsCapital Bank	FBO (Savings)	8535
Awesome Acquisition Company	PlainsCapital Bank	Savings	0201

Exhibit C

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:)	
)	Chapter 11
CICI'S HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 21-30146 (SGJ)
)	
Debtors.)	(Joint Administration Requested)
)	
)	Re: Docket No. ___

**ORDER (I) AUTHORIZING THE DEBTORS TO CONTINUE
TO OPERATE THEIR CASH MANAGEMENT SYSTEM AND PERFORM
INTERCOMPANY TRANSACTIONS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"): (a) authorizing the Debtors to continue to operate their Cash Management System and continue to perform the Intercompany

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: CiCi's Holdings, Inc. (5177); Awesome Acquisition Company (0481); CiCi Acquisition Company, LLC (N/A); CiCi Enterprises, LP (5070); CiCi GP, LLC (2948); CiCi Services, LLC (3586); JMC GP, LLC (8268); JMC Restaurant Distribution, LP (5075); and Pizza Parent, LLC (9534). The Debtors' principal offices are located at 1080 W. Bethel Road, Coppell, Texas 75019, United States.

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

Transactions consistent with historical practice; and (b) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein, and shall be granted on a final basis without further order of this Court unless the U.S. Trustee files an objection to the Motion no later than 14 calendar days following the initial debtor interview, which is currently scheduled for _____, __, 2021, at __:__ .m.

2. The Debtors are authorized, but not directed, to: (a) continue operating the Cash Management System as described in the Motion and substantially in the form attached to the Motion as Exhibit A in the ordinary course of business and consistent with the Debtors' historical practice; (b) honor their prepetition obligations related thereto, including the Bank Fees; and (c) continue to perform Intercompany Transactions consistent with historical practice.

3. The Debtors are authorized, but not directed, to: (a) designate, maintain, close, and continue to use their existing Bank Accounts, including, but not limited to, the Bank Accounts identified on Exhibit B to the Motion, in the names and with the account numbers existing immediately before the Petition Date, *provided, however*, that the Debtors shall not close a Bank Account without the consent of the Lender, which consent shall not be unreasonably withheld; (b) deposit funds in, and withdraw funds from, the Bank Accounts by all usual means, including checks, wire transfers, ACH transfers, and other debits; (c) treat their prepetition Bank Accounts for all purposes as debtor in possession accounts; (d) pay any ordinary course Bank Fees incurred in connection with the Bank Accounts; and (e) with the written consent of the Lender, open new debtor in possession bank accounts at banks that have executed a Uniform Depository Agreement with the U.S. Trustee or banks that are willing to immediately execute one; *provided, however*, that the Debtors shall give notice to the U.S. Trustee and any statutory committees appointed in these chapter 11 cases prior to opening or closing such a bank account.

4. The Cash Management Banks are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course of business, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be.

5. To the extent any of the Debtors' Bank Accounts are not in compliance with 11 U.S.C. § 345(b) or any of the U.S. Trustee's requirements or guidelines, the Debtors shall have a period of 30 days from the date of entry of this Order (or such additional time to which the U.S. Trustee may agree) to either bring such Bank Accounts into compliance with section 345(b) of the

Bankruptcy Code or to make such other arrangements as are agreed to by the U.S. Trustee or approved by the Court; *provided* that nothing in the foregoing shall prevent the Debtors or the U.S. Trustee from seeking further relief from the Court to the extent such an arrangement cannot be reached within that time period (or such other period as agreed to by the Debtors and the U.S. Trustee). The Debtors may obtain a further extension of the 30-day period referenced above by written stipulation with the U.S. Trustee and filing such stipulation on the Court's docket without the need for further Court order.

6. Subject to the terms hereof, the Debtors are authorized to open any new Bank Accounts or close any existing Bank Accounts and enter into any ancillary agreements including new deposit account control agreements, related to the foregoing, as they may deem necessary and appropriate; *provided, however*, that opening such new Bank Accounts are subject to the conditions in paragraph 3 of this Order.

7. The relief granted in this Order is extended to any new bank account opened by the Debtors after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Cash Management Bank.

8. The Debtors are authorized to promptly place stop payments on any unauthorized prepetition checks or ACH payments that should not be honored by a Cash Management Bank. Any Cash Management Banks that are provided with notice of this Order shall not honor or pay any bank payments drawn on any listed Bank Accounts or otherwise issued before the Petition Date for which the Debtors specifically issue stop payment orders in accordance with the documents governing such Bank Accounts.

9. The Debtors' Cash Management Banks are authorized to debit the Debtors' Bank Accounts in the ordinary course of business without the need for further order of this Court for all

checks drawn on the Debtors' account; *provided, however*, that no checks issued against the Debtor prior to the commencement of these chapter 11 cases shall be honored except as otherwise authorized by order of this Court and directed by the Debtors.

10. The Cash Management Banks are authorized, without further order of this Court, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such returned items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

11. Subject to the terms set forth herein, any bank, including the Cash Management Banks, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to any order of this Court, and no bank that honors a prepetition check or other item drawn on any account that is the subject of this Order (a) at the direction of the Debtors, (b) in a good faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of a mistake made despite implementation of reasonable customary handling procedures, shall be deemed to be nor shall be liable to the Debtors, their estates, or any other party on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Order.

12. Any banks, including the Cash Management Banks, are further authorized to honor the Debtors' directions with respect to the opening and closing of any Bank Account and accept and hold the Debtors' funds in accordance with the Debtors' instructions; *provided* that the Cash

Management Banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

13. The Debtors are authorized to continue engaging in Intercompany Transactions in the ordinary course of business. All postpetition payments from a Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code.

14. Nothing contained in the Motion or this Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair the validity, priority, enforceability, or perfection of any security interest or lien, in favor of any person or entity, that existed as of the Petition Date.

15. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with the Approved Budget, the Court's *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief*, and any final order entered by the Court in connection therewith.

16. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion or

a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

17. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

18. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts that are authorized to be paid in connection with the relief granted herein.

19. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

20. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

21. Notwithstanding any Bankruptcy Rule to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

22. The Debtors are authorized to take all reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

23. As soon as practicable after entry of this Order, the Debtors shall serve a copy of this Order on the Cash Management Banks.

24. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

END OF ORDER

Submitted by:

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