IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
APPVION, INC., *et al.*,[1]	:	Case No. 17-12082 (___)
Debtors.	:	(Joint Administration Requested)

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

Appvion, Inc. and its affiliated debtors, (the "Debtors"), by and through their proposed counsel, DLA Piper LLP (US), hereby submit this motion (the "Motion"), pursuant to sections 105(a), 361, 362, 363, 364, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6003, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1(b) and 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for entry of an interim order, substantially in the form attached hereto as Exhibit A (the "Interim Order") and a final order: (a) authorizing Debtor Appvion, Inc. ("Appvion"), as borrower (the "Borrower"), to obtain, and for certain other Debtors to guarantee (in such capacities, the "Guarantors", and together with the Borrower, the "Loan Parties"), secured postpetition financing (the "DIP Financing" or "DIP Facility") pursuant to the Superpriority

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Appvion, Inc. (6469), Paperweight Development Corp. (4992), PDC Capital Corporation (1197), Appvion Receivables Funding I LLC (9218), APVN Holdings LLC (8543) and Appvion Global Netherlands Cooperatief UA (8258). The corporate headquarters and the mailing address for the Debtors listed above is 825 East Wisconsin Avenue, P.O. Box 359, Appleton, Wisconsin 54912.

Senior Debtor-in-Possession Credit Agreement, with the lenders signatory thereto (the "DIP Lenders"), PJT Partners LP, as sole lead arranger, and Wilmington Trust, National Association, as administrative agent and collateral agent (collectively, in such capacities, the "DIP Agent", and together with the DIP Lenders, the "DIP Secured Parties"), substantially in the form attached hereto as Exhibit B (as amended, supplemented or otherwise modified from time to time, the "DIP Facility Agreement," and collectively with the schedules and exhibits attached thereto, all agreements, documents, certificates, instruments and/or amendments executed by and/or delivered by or to any Loan Party in connection therewith and the DIP Orders, the "DIP Facility Documents"); (b) authorizing use of cash collateral; (c) granting adequate protection to prepetition secured parties; (d) scheduling a final hearing for an order approving the Motion on a final basis (a "Final Order", and together with the Interim Order, the "DIP Orders"); and (e) granting related relief. In support of the Motion, the Debtors rely upon and incorporate by reference the *Declaration of Alan D. Holtz in Support of First Day Pleadings* (the "First Day Declaration")[2] filed with the Court concurrently with this Motion. In further support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction over these cases, the Debtors, property of the Debtors' estates and this Motion 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 is a core proceeding under 28 U.S.C. § 157(b).

2. Venue in this Court is proper in this district under 28 U.S.C. §§ 1408 and 1409.

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

3. Pursuant to Rule 9013(f) of the Local Rules, the Debtors consent to the entry of a final order with respect to this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. The statutory and legal bases for relief requested in this Motion are sections 105(a), 361, 362, 363, 364, and 507 of the Bankruptcy Code; Rules 2002, 4001, 6003, and 9014 of the Bankruptcy Rules; and Rules 2002-1(b) and 4001-2 of the Local Rules.

BACKGROUND

5. Founded over 110 years ago, the Debtors are a leading manufacturer of specialty, high value-added coated paper products. Today, Paperweight Development Corp., Appvion, Inc., and their subsidiaries and affiliates (collectively, the "Company") create product solutions for customers and end users through their development and use of coating formulations and applications as well as security technologies.

6. On November 9, 2001, the Debtors' employees purchased the Company from its parent company, Arjo Wiggins Appleton p.l.c., through an employee stock ownership plan. In late 2001, approximately 90% of the Debtors' employees invested nearly $107 million in an employee stock ownership plan. Thereafter, the Debtors' employees and retirees have owned 100% of the equity in the Company.

7. The Company owns three manufacturing plants: a plant located in Appleton, Wisconsin, that produces thermal, carbonless and specialty papers; a fully-integrated pulp and paper mill with three paper machines located in Roaring Spring, Pennsylvania, which produces carbonless, security and specialty papers; and a plant located in West Carrollton, Ohio that produces thermal paper products. Additionally, the Company leases three properties, warehouses located in Appleton, Wisconsin and Roaring Spring, Pennsylvania and a distribution

center in Appleton, Wisconsin. At these facilities, the Company employs approximately 1350 employees, of which approximately 915 are covered by union contracts with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "USW").

8. The Debtors are party to two principal secured lending facilities, the aggregate weight of which has overleveraged the Company, imperiling its ability to operate into the future. On June 28, 2013, Appvion entered into a $435 million senior secured credit facility (the "Senior Secured Credit Facility") consisting of a $335 million first lien term loan facility (the "Term Loan") and a $100 million revolving credit facility (the "Revolving Credit Facility"). As of the Petition Date, the Debtors owed $240.8 million, including accrued and unpaid interest of $0.6 million, under the Senior Secured Credit Facility. On November 19, 2013, Appvion issued $250 million aggregate principal amount of its 9.000% Second Lien Senior Secured Notes due 2020 (the "Second Lien Notes"). With impending maturities and mounting pressures created by the debt load and headwinds in the market, in June 2017, the Company, in conjunction with its professional advisors, began to explore a refinancing transaction with its lenders. In the end, it became apparent that a refinancing transaction was not possible due to the nature of the Company's debt agreements, liquidity demands and the press of time.

9. Accordingly, beginning in August 2017, the Board of Directors (the "Board") directed the Company's advisors to begin to explore a deleveraging transaction that could either be accomplished through an out-of-court process, or a chapter 11 proceeding. Unfortunately, due to the inability to consummate the refinancing transaction, and with near-term maturity of certain of the credit facilities, on August 16, 2017, the Company issued its Form 10-Q for the quarter ending July 2, 2017, which confirmed that the Company was at risk at being a "going

concern." This led a number of the Company's vendors to begin to request disadvantageous trade terms, further restricting the Company's liquidity. Thus, faced with dwindling liquidity and increased creditor demands, it was determined that it would be necessary for the Company to effectuate the restructuring pursuant to chapter 11.

10. The Debtors, in conjunction with their advisors have been working diligently with their lender constituencies to work toward a comprehensive restructuring. And, while the parties are continuing to work toward a solution that will address the Company's leverage and liquidity, while best positioning the Company for the future, as of the Petition Date, the parties have not been able to finalize their negotiations toward a consensual plan. While those negotiations will continue with the expectation that an agreed plan of reorganization will be achieved shortly, in order to ensure a smooth landing into chapter 11, the Debtors and their creditors have negotiated debtor-in-possession financing.

11. On October 1, 2017 (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for relief under the Bankruptcy Code.

12. The Debtors continue to be in possession of their assets and to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtors' chapter 11 cases. No date has been set for a meeting pursuant to section 341 of the Bankruptcy Code.

13. Additional factual background regarding the Debtors, including their business operations, capital and debt structures, and the events leading to the filing of these chapter 11 cases, is set forth in detail in the First Day Declaration, which is fully incorporated in this Motion by reference.

A. Events Leading to Chapter 11 Cases and Debtor in Possession Financing

14. Beginning in the Spring of 2017, the Company began to explore a refinancing of its senior debt, with a focus on extending the maturity of its existing debt obligations and raising additional liquidity. On April 5, 2017, the Company engaged Guggenheim Partners LLP as investment banker to market and lead a potential refinancing transaction.[3] As part of this process, Guggenheim pursued a multi-track approach focusing on both the Company's existing senior lenders and a number of third-parties that had signed non-disclosure agreements. In the end, the Company determined that a refinancing transaction on appropriate terms was not possible due to the nature of the Company's debt agreements, financial condition and near-term liquidity demands.

15. Accordingly, beginning in August 2017, the Board of Directors (the "Board") directed the Company's advisors to begin to explore a deleveraging transaction that could be accomplished through either an out-of-court process, or a chapter 11 proceeding. In order to further these discussions, both the participants to the Senior Secured Credit Facility (the "First Lien Lenders") and holders of the Second Lien Secured Notes (the "Second Lien Noteholders" and collectively with the First Lien Lenders, the "Prepetition Secured Parties") and holders of the Second Lien Secured Notes retained legal and financial advisors and agreed not to buy or sell the Company's securities, thereby allowing open and arms-length negotiations toward a solution to both the Company's short-term liquidity needs and long-term leverage issues. During this same period, the Board retained AlixPartners LLP as an advisor to evaluate near term liquidity and cash flow and to support the efforts of the Company's other advisors.

[3] During this same period, the Company explored a potential sale of the Company, however it became clear that the Company's existing debt load made a sale impractical at such time.

16. Due to the inability to consummate a refinancing transaction, and with near-term maturity of certain of the credit facilities, on August 16, 2017, the Company issued its Form 10-Q for the quarter ending July 2, 2017, which stated that the Company was evaluating whether "there is substantial doubt about its ability to continue as a going concern." Shortly thereafter, Standard & Poor's issued a credit rating downgrade on the Company. The combination of these two announcements led a number of the Company's vendors to begin to demand disadvantageous trade terms, further restricting the Company's liquidity. Further, the Company's Accounts Receivable Securitization Facility was scheduled to expire on September 29, 2017, which would result in a reduced ability to finance receivables and would allow the agent under such facility to assert control over the bank account in which all receivables proceeds are deposited. The agent's exercise of such rights would eliminate the Company's access to receivables proceeds and would have a negative impact on liquidity. Faced with dwindling liquidity and increased creditor demands, it was determined that it would be necessary for the Company to effectuate the restructuring through chapter 11.

17. On or about August 16, 2017, the Debtors, in conjunction with their advisors, began working diligently with their lender constituencies to work toward a comprehensive restructuring. In connection with the Debtors' overall restructuring efforts, the Debtors engaged in extensive arms-length negotiations with the Prepetition Secured Parties. These negotiations resulted in two separate proposals for postpetition financing: one from the First Lien Lenders and one from the Second Lien Noteholders. Ultimately, the Debtors, in consultation with their advisors, determined that the terms and conditions set forth under the DIP Facility Agreement is the best available under the circumstances and adequately addresses the Debtors' reasonably foreseeable working capital needs. The DIP Lenders agreed to provide financing to the Debtors

on the terms and conditions described below, as more fully set forth in the DIP Facility Documents.

18. Immediate access to postpetition financing is necessary to prevent irreparable harm to the Company and to enhance the Debtors' liquidity, provide working capital during the pendency of these chapter 11 cases, and provide customers, employees, vendors, suppliers and other key constituencies with confidence that the Debtors have sufficient resources available to maintain their operations in the ordinary course while working towards a comprehensive restructuring. If the Debtors are unable to access this postpetition financing, the Debtors' business operations, ability to satisfy obligations to customers and ability to effectively develop a plan of reorganization will be irreparably harmed. For the foregoing reasons, the postpetition financing facility is in the best interests of the Debtors' estates, creditors and other parties in interest.

RELIEF REQUESTED

19. By this Motion, the Debtors seek entry of the DIP Orders granting, among other things, the following relief:

a) authorizing the Debtors to borrow funds under the DIP Facility in an aggregate principal amount of up to $325.2 million (the "DIP Loans"), pursuant to the terms and conditions of the DIP Facility Documents, with up to $65 million available on an interim basis;

b) authorizing the use of Cash Collateral (as defined below) and all other Prepetition Term Facility Collateral (as defined below) and any proceeds thereof as described more fully and to the extent provided in the DIP Facility Documents;

c) granting to the DIP Agent (for the benefit of the DIP Secured Parties) the DIP Liens and the DIP Superpriority Claims (each as defined below);

d) granting adequate protection to the Prepetition Secured Parties;

e) modifying the automatic stay to implement the terms of the DIP Financing; and

f) scheduling a final hearing on this Motion (the "Final Hearing").

SUMMARY OF PRINCIPAL TERMS OF DIP FACILITY

20. Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, the following is a concise summary of the proposed material terms of the DIP Facility Documents.[4]

Borrower	Appvion, Inc.
Guarantors	Paperweight Development Corp. APVN Holdings LLC Appvion Receivables Funding I LLC Appvion Canada, Ltd.
DIP Agent	Wilmington Trust, National Association
DIP Lenders *Bankruptcy Rule 4001(c)(1)(B)*	Certain of the Prepetition First Lien Lenders.
DIP Facility/Borrowing Limits *Bankruptcy Rule 4001(c)(1)(B)*	The DIP Facility comprises a term loan in an aggregate principal amount of up to $325.2 million consisting of: (i) new money commitments in the aggregate principal amount of $85 million (the "New Money Commitments"; the loans made thereunder, the "New Money Loans")and (ii) a roll-up of existing loans under the Prepetition First Lien Facility in the aggregate principal amount of $240.2 million (the "Roll-Up Loans"). The New Money Loans may be drawn in multiple installments, with up to $65 million of the New Money Loans available upon entry of the Interim Order, subject to a budget agreed upon by the Loan Parties and the Required Lenders and minimum funding requirements consistent with the Prepetition First Lien Facility. Amounts repaid or prepaid in respect of DIP Loans may not be re-borrowed. On the Closing Date, each NM Lender having a NM Commitment as of such date and each Related Lender thereof will be deemed to have made Roll-Up Loans and the proceeds of such Roll-Up Loans will be used to pay the obligations owing under such NM Lenders' and Related Parties' Prepetition First Lien Loans; provided that the aggregate amount of Roll-Up Loans made on the Closing Date will not exceed the aggregate amount of Prepetition First Lien Loans multiplied by the Interim Availability Percentage. On the date of the entry of the Final Financing Order, the balance of the Prepetition First Lien

[4] Capitalized terms used in this summary but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Documents. This statement is qualified in its entirety by reference to the applicable provisions of the DIP Documents. To the extent there is any inconsistency between this concise statement and the provisions of the DIP Documents, the provisions of the DIP Documents shall control.

	Obligations will be rolled up with the proceeds of Roll-Up Loans. On the Closing Date, the Debtors shall use the proceeds of the New Money Loans to pay in full the obligations owing under the Receivables Facility, cash collateralize outstanding letters of credit, pay certain fees, costs and expenses incurred in connection with the DIP Facility and other administration costs incurred with the cases, pay certain prepetition obligations authorized by the Bankruptcy Court, provide working capital to the Debtors and for general corporate purposes of the Loan Parties consistent with the Approved Budget.
Interest Rate *Bankruptcy Rule 4001(c)(1)(B)*	With respect to the Roll-Up Loans, the Loans will bear interest at the same rate as under the Prepetition First Lien Credit Agreement. With respect to the New Money Loans, the Loans will bear interest at: (a) the Applicable Rate (as defined below) plus the Base Rate, payable monthly in arrears; or (b) the Applicable Rate plus the Eurodollar Rate as quoted by the Administrative Agent, adjusted for reserve requirements, if any, and subject to customary change of circumstance provisions, for interest periods of one, three or six months (the "Adjusted Eurodollar Rate"), payable at the end of the relevant interest period, but in any event at least quarterly; *provided that* in no event shall the Adjusted Eurodollar Rate be less than 1.00% per annum. The "Applicable Rate" means (i) 8.25% per annum in the case of Base Rate Loans and (ii) 9.25% per annum in the case of Eurodollar Rate Loans. The "Base Rate" means for any day, the prime rate published in *The Wall Street Journal* for such day; provided that the Base Rate shall be no less than 2.00% per annum. During the continuance of an event of default, as defined in the DIP Facility Documents, Loans will bear interest at an additional 2.0% per annum.
Fees *Bankruptcy Rule 4001(c)(1)(B)*	The Borrower agrees to pay to the Administrative Agent the following fees: (a) "Unused Commitment Fee": From and after the Closing Date, a non-refundable unused commitment fee at the rate of 0.5% per annum will accrue as a percentage of the daily average unused portion of the New Money Commitments (whether or not then available), payable monthly in arrears and on the Termination Date; (b) "Upfront Fee": For the account of each Lender in respect of the DIP Facility, an upfront fee equal to 2.0% of such Lender's New Money Commitment under the DIP Facility as set forth in the DIP Facility Documents on the Closing Date, such fee earned and due and payable on the Closing Date; (c) "Backstop Fee": For the account of the Majority Lender, a non-refundable backstop fee in the amount of 2.675% of the Applicable Percentages (as determined under the Prepetition First Lien Credit Agreement) of all Prepetition Lenders other than the Majority Lender of the New Money Commitments under the DIP Facility as set forth in the DIP Facility Documents

	on the Closing Date, such fee earned and due and payable on the Closing Date; (d) "Arranger Fee": For the account of Arranger, a non-refundable arranger fee in the amount of 0.4875% of the New Money Commitments under the DIP Facility as set forth in the DIP Facility Documents on the Closing Date, such fee earned and due and payable on the Closing Date; (e) "Exit Fee": For the account of each Lender in respect of the DIP Facility, an exit fee equal to 1.5% of such Lender's New Money Commitment under the DIP Facility as set forth in the DIP Facility Documents on the Closing Date, such fee earned and due and payable on the earlier of the Termination Date or repayment in full of the DIP Facility; and (f) "Administrative Agent Fee": For the account of the Administrative Agent, customary fees and expenses in amounts to be agreed.
Budget *Bankruptcy Rule 4001(c)(1)(B)*	"Approved Budget" means the budget covering the period ending December 31, 2018 prepared by the Borrower and furnished to the Administrative Agent and the Lenders on or prior to the Closing Date and which, in the case of the initial Approved Budget, was approved by the Administrative Agent and all of the Lenders and their financial advisors, as the same may be updated, modified or supplemented from time to time with the approval of the Administrative Agent and the Required Lenders. "Consolidated Forecast" means the cash flow forecast for the 13-week period beginning on the previous Monday, with supporting detail and documentation, in form and detail reasonably satisfactory to the Required Lenders that shall be delivered to the Administrative Agent and PJT Partners LP on or before 5pm on Friday of each week.
Closing Date *Bankruptcy Rule 4001(c)(1)(B)*	The first date upon which the Interim Order shall have been entered and all other conditions precedent to funding shall have been satisfied or waived.
Maturity *Bankruptcy Rule 4001(c)(1)(B)*	"Scheduled Termination Date" means 9 months following the Closing Date. "Termination Date" means the earliest of (a) the Scheduled Termination Date, (b) forty-five (45) days after the entry of the Interim Order, if the Final Order has not been entered prior to the expiration of such period, (c) the substantial consummation (which shall be no later than the "effective date" thereof) of a plan of reorganization that is confirmed pursuant to an order entered by the Bankruptcy Court, (d) the consummation of a sale of substantially all assets of the Loan Parties, and (e) the acceleration of the Loans and the termination of all New Money Commitments in accordance with the DIP Facility Documents.
Collateral *Bankruptcy Rule 4001(c)(1)(B)*	Pursuant to the DIP Facility Documents, as security for the full and timely payment and performance of all of the Obligations, each of the Loan Parties assigns, pledges and grants to the Administrative Agent, for the benefit of the DIP Secured Parties, a valid, perfected, continuing, enforceable, non-avoidable first priority security interest in, and lien on, all of the property of the Loan Parties, now owned or hereafter acquired.

	Upon the entry of the Final Order, Collateral shall include claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code ("Avoidance Actions").
DIP Liens/Super Priority Administrative Claim Status *Bankruptcy Rule 4001(c)(1)(B)*	Pursuant to Section 364(c)(1) of the Bankruptcy Code, all of the Obligations shall, subject to the Carve-Out, at all times constitute allowed superpriority administrative expense claims against the Debtors with priority over any and all claims against the Debtors of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under Sections 105, 326, 328, 330, 331, 364, 365, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 or 1114 of the Bankruptcy Code (including any adequate protection obligations), and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors and all proceeds thereof (including, effective upon entry of the Final Financing Order, Avoidance Proceeds), subject only to the valid, perfected and unavoidable Liens thereon and the Carve-Out.
Prepayments *Bankruptcy Rule 4001(c)(1)(B)*	**Voluntary**: The Company may not prepay in full or in part any New Money Loans. Subject to minimum prepayment amounts, the Borrower may voluntarily prepay the Roll-Up Loans in full or in part; provided that (a) any repayment or prepayment of all or any portion of the principal amount of the Roll-Up Loans, (i) prior to June 28, 2019 or (ii) upon any refinancing or replacement of the Roll-Up Loans or any optional or mandatory prepayment of Term Loans (in whole or in part), in each case shall be accompanied by a payment premium equal to 1.50% of the aggregate principal amount of such Roll-Up Loans so repaid or prepaid, as the case may be. **Mandatory**: Other than in connection with certain cost-cutting transactions (solely to the extent the proceeds thereof are incorporated into the Approved Budget effective as of the date of the applicable cost-cutting transaction), if any Loan Party or any of its Subsidiaries (x) Disposes of any property in a Disposition constituting an Asset Sale which results in the realization by such Person of Net Cash Proceeds, (y) receives Net Cash Proceeds of casualty insurance or condemnation awards (or from payments in lieu thereof) (excluding for purposes of this clause (y) any Net Cash Proceeds from "Recoveries" (as defined in the AWA Environmental Indemnity Agreement and the PDC Environmental Indemnity Agreement), which must be paid to AWA under the terms of the applicable Fox River Indemnity Arrangements) or (z) incurs or issues any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.02 of the DIP Facility Agreement), the Borrower shall prepay an aggregate principal amount of Term Loans equal to 100% of such Net Cash Proceeds within five (5) Business Days of the receipt thereof by such Person (such prepayments to be applied as set forth in clause (iii) below); provided, however, that, (A) so long as no Event of Default shall have occurred and be continuing, with respect to any prepayment of Term Loans required to be made pursuant to the preceding clause (x) above, subject to the consent of the Required Lenders (in their sole discretion), if such prepayment would result in the prepayment of one or more Eurodollar Rate Loans on a day other than the last day of the then current Interest Period for each such Eurodollar Rate Loan, the Borrower may defer the relevant portion of such required payment until the last day of the relevant then current Interest Period of each such applicable Eurodollar Rate Loan (provided that such deferral period shall in no case exceed sixty (60) days, provided further that, upon the occurrence of an Event of Default or the Termination Date during any

	such deferral period, the Borrower shall immediately prepay Term Loans in the amount of all Net Cash Proceeds received by the Borrower and other amounts, as applicable, that are required to be applied to prepay Loans under Section 2.05(b)(ii) of the DIP Facility Agreement (without giving effect to this clause (A)) but which have not previously been so applied) and (B) with respect to any Net Cash Proceeds of (1) any property constituting an Asset Sale otherwise required to be applied under preceding clause (x) above, or (2) casualty insurance or condemnation awards (or from payment in lieu thereof) otherwise required to be applied under preceding clause (y) above, then in each case, subject to the prior written consent of the Required Lenders (in their sole discretion), such Loan Party or such Subsidiary may reinvest all or any portion of such Net Cash Proceeds in operating assets on terms and conditions reasonably agreed to by the Required Lenders; and provided further, however, that any Net Cash Proceeds of, as applicable, Asset Sales or casualty insurance or condemnation awards (or from payment in lieu thereof) not so reinvested shall be promptly applied if an Event of Default has occurred and is continuing to the prepayment of the Term Loans as set forth in Section 2.05(b)(ii) of the DIP Facility Agreement. Subject to Section 2.05(c) of the DIP Facility Agreement, if applicable, each prepayment of Term Loans pursuant to the provisions of Section 2.05(b) of the DIP Facility Agreement shall be applied first, to the outstanding New Money Loans; and second, to the outstanding Roll-Up Loans.
DIP Milestones *Bankruptcy Rule 4001(c)(1)(B)*	Milestones culminating in the confirmation of a plan of reorganization, including, without limitation: (i) Not later than 120 days following the Petition Date, the Debtors shall file with the Bankruptcy Court an Acceptable Plan of Reorganization and a disclosure statement reasonably satisfactory to the Required Lenders with respect thereto; (ii) Not later than the date that is 180 days following the Petition Date, the Bankruptcy Court shall enter an order approving a disclosure statement reasonably satisfactory to the Required Lenders with respect to an Acceptable Plan of Reorganization; (iii) Not later than the date that is 240 days following the Petition Date, the Bankruptcy Court shall enter an order confirming an Acceptable Plan of Reorganization (the date such order is entered, the "Plan Confirmation Date"), which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders; and (iv) Not later than the date that is 270 days following the Petition Date, such Acceptable Plan of Reorganization shall become effective.
Events of Default *Bankruptcy Rule 4001(c)(1)(B)*	The DIP Facility Documents contain ordinary events of default at Section 8.01 of the DIP Facility Agreement.
Parties with an Interest in Cash Collateral *Bankruptcy Rule 4001(b)(1)(B)(i)*	All of the Debtors' cash, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral and is Prepetition Collateral of the Prepetition Secured Parties (excluding certain sums on deposit in certain

	depository accounts).
Purposes for Use of Cash Collateral *Bankruptcy Rule 4001(b)(1)(B)(ii)*	The Loan Parties shall be permitted to continue to use cash collateral in the ordinary course of business, including, without limitation, for the purchase and sale of raw materials and work-in-process and finished goods inventory from affiliates, subject to the Approved Budget and the terms of the Interim Order and Final Order, as applicable.
Adequate Protection *Bankruptcy Rules 4001(b)(1)(B)(iv);4001(c)(1)(B)(ii)*	The Prepetition First Lien Agent and Prepetition First Lien Parties shall receive adequate protection in the form of (i) solely to the extent any portion of the Prepetition First Lien Obligations remain outstanding, ongoing payment of interest and other amounts due under the Prepetition First Lien Documents; (ii) current cash reimbursement of actual and documented fees and expenses and other disbursements of the majority lender under the Prepetition First Lien Credit Agreement (the "Majority Lender"), including, without limitation, the reasonable documented fees and expenses of PJT Partners LP, O'Melveny & Myers LLP, and Richards Layton & Finger, P.A., whether incurred before or after the Petition Date; and (iii) subject to the priorities set forth in the DIP Facility Documents, the senior adequate protection liens and superpriority claims. The Prepetition Second Lien Parties are entitled to and shall receive adequate protection in the form of (i) current cash payment of actual and documented fees and expenses of the Prepetition Second Lien Trustee, including actual and documented fees and expenses of the Prepetition Second Lien Trustee's professional advisors, Houlihan Lokey, Stroock & Stroock & Lavan LLP, and Delaware local counsel to be named, not to exceed, in the aggregate, the amounts set forth with respect to such fees and expenses in the Approved Budget] and (ii) subject to the priorities set forth in the DIP Facility Documents, the Junior Adequate Protection Lien and the Junior Adequate Protection Superpriority Claim (each as defined in the Interim Order). Adequate protection is to be provided to the Prepetition Secured Parties for any post-petition diminution in value of the Prepetition Liens on the Prepetition Collateral due to, *inter alia*, the Debtors' sale, use or lease of the Prepetition Collateral, including the Cash Collateral, the imposition of the automatic stay, and the priming of the Prepetition Liens by the DIP Liens, is authorized by sections 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code.
Carve Out *Bankruptcy Rule 4001(c)(1)(B)* *Local Rule 4001-2(a)(ii)*	"Carve-Out" means an amount equal to the sum of (i) all fees required to be paid to the clerk of the Bankruptcy Court or any claims agent retained to perform such services and to the Office of the United States 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) fees and expenses of 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); and (iii) allowed and unpaid claims for unpaid fees, costs, and expenses (the "Professional Fees") incurred by persons or firms retained by the Debtors or the official committee of unsecured creditors in the chapter 11 cases (the "Creditors' Committee"), if any, whose retention is approved by the Bankruptcy Court pursuant to Sections 327 and 1103 of the Bankruptcy Code, but excluding professionals engaged in the ordinary course of business of the Debtors (collectively, the "Professional Persons"), subject to the terms of the DIP Orders and any other interim or other compensation order entered by the Bankruptcy Court that are incurred (A) at

	any time before delivery by the Administrative Agent of a Carve-Out Trigger Notice, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice (the "Pre-Trigger Date Fees"), subject to any limits imposed by the Approved Budget, the DIP Orders, or otherwise on Professional Fees permitted to be incurred in connection with any permitted investigations of claims and defenses against any prepetition secured parties; and (B) after the occurrence (the "Trigger Date") and during the continuance of an Event of Default and delivery of written notice (the "Carve-Out Trigger Notice") thereof (which may be by email) to the Loan Parties, the Loan Parties' counsel, the United States Trustee, and lead counsel for the Creditors' Committee, if any, in an aggregate amount not to exceed $250,000 (the amount set forth in this clause (iii)(B) being the "Post-EoD Carve-Out Amount"); provided, that nothing shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in clauses (i), (ii), (iii)(A) or (iii)(B) above, on any grounds. Notwithstanding the foregoing, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (a) the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the Lenders, the Administrative Agent, the Arranger, or the holders of the indebtedness under the Prepetition First Lien Credit Agreement (whether in such capacity or otherwise), or (ii) 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 DIP Facility Documents or the indebtedness under the Prepetition First Lien Credit Agreement (whether in such capacity or otherwise), including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (b) attempts to modify any of the rights granted to the Lenders or the Administrative Agent; (c) attempts to prevent, hinder or otherwise delay any of the Lenders' or the Administrative Agent's assertion, enforcement or realization upon any Collateral in accordance with the DIP Facility Documents and the Final Order; (d) paying any amount on account of any claims arising before the commencement of the chapter 11 cases, unless such payments are approved by an order of the Bankruptcy Court; or (e) after delivery of a Carve-Out Trigger Notice, any success, completion, back-end or similar fees; provided that no more than an aggregate of $50,000 of the proceeds of the New Money Loans, the Collateral, the collateral securing the obligations under the Prepetition First Lien Credit Agreement, proceeds of the foregoing and the Carve-Out may be used by the official committee of unsecured creditors in respect of the investigation of the claims and liens of the secured parties under the Prepetition First Lien Credit Agreement, solely to the extent set forth in the DIP Orders (but not to litigate, object to or challenge any of the foregoing) and potential claims, counterclaims, causes of action or defenses against the secured parties under the Prepetition First Lien Credit Agreement, solely to the extent set forth in the DIP Orders (but not to litigate any of the foregoing). For the avoidance of doubt and notwithstanding anything to the contrary in the DIP Facility Documents, the Carve-Out shall be senior to all liens and claims securing the DIP Facility Documents, any adequate protection liens, if any, and the superpriority claims, and any and all other liens or claims securing the DIP

	Facility.
Modification of Automatic Stay *Bankruptcy Rule 4001(c)(1)(B)(iv)*	The automatic stay shall be modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to (a) permit the Debtors to grant the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens and the Adequate Protection Superpriority Claims, and (b) authorize the Debtors to pay, and the DIP Secured Parties and the Prepetition First Lien Parties and to retain and apply, payments made in accordance with the DIP Facility Documents.
Section 506(c) Waiver *Local Rule 4001-2(a)(i)(C)*	Subject to the entry of the Final Order, in light of the Approved Budget covering all administrative costs projected by the Debtors, the DIP Secured Parties and the Prepetition Secured Parties are entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code. The entry of a final, non-appealable order in the chapter 11 cases charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Lenders shall be an event of default.
Indemnification *Bankruptcy Rule 4001(c)(1)(B)(ix)*	The Debtors will indemnify and hold harmless the DIP Secured Parties, including the Majority Lender, the Arranger and their respective affiliates and officers, directors, employees, agents and advisors from and against all losses, liabilities, claims, damages or other expenses arising out of or relating to the DIP Facility Agreement and Debtors' use of the financing provided thereunder. The indemnification survives and continues for the benefit of all such persons or entities.
Lien on Avoidance Actions *Bankruptcy Rule 4001(c)(1)(B)(xi)*	Subject to the entry of a Final Order, the DIP Liens shall attach to any proceeds or property recovered in respect of any avoidance actions (the "Avoidance Proceeds").
Waiver of Marshaling Doctrine and Equities of Case Exception *Bankruptcy Rule 4001(c)(1)(B)(viii)*	Upon entry of the Final Order, neither the DIP Secured Parties nor the Prepetition Secured Parties shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral.

Highlighted Provisions Under Local Rule 4001-2(a)(1)

21. The Interim Order includes certain terms that constitute material provisions requiring explicit disclosure under the Local Rules.[5] The provisions described in Local Rule 4001-2(a)(i), to the extent applicable, are set forth at the following sections of the Interim Order:

a. **Local Rule 4001-2(a)(i)(A) – Cross Collateralization.** The Interim Order does not provide for cross collateralization, however, the proceeds of the Roll-Up Loans will be used to pay off the Prepetition First Lien Loans and the proceeds of the New Money Loans will be used to pay off the Receivables Facility. *See* Interim Order ¶¶ 5, 9.

b. **Local Rule 4001-2(a)(i)(B) – Validity, Perfection, and Amount of Prepetition Liens**. Liens and security interests of the Prepetition Secured Parties are stipulated to be valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination immediately upon entry of the Interim Order, but subject to Challenge. *See* Interim Order ¶ 22(b).

c. **Local Rule 4001-2(a)(i)(C) – Section 506(c) Waiver.** With respect to expenses incurred in the Interim Period, the Interim Order contains a waiver of any right to asset claims to surcharge against the DIP Collateral. *See* Interim Order ¶ 10.

d. **Local Rule 4001-2(a)(i)(D) – Liens on Avoidance Actions.** Subject to the entry of a Final Order, the DIP Liens shall attach to any proceeds or property recovery in respect of any avoidance actions. *See* Interim Order ¶ 11(g).

e. **Local Rule 4001-2(a)(i)(E) – Provisions Deeming Prepetition Debt to be Postpetition Debt.** The Prepetition First Lien Loans will be exchanged for Roll-Up Loans. *See* Interim Order ¶ 5(a). The Receivables Facility obligations will be paid off by the New Money Loans. *See* Interim Order ¶ 9.

f. **Local Rule 4001-2(a)(i)(F) – Disparate Treatment of Professionals Retained by the Committee.** The Interim Order contains no provisions that provide for disparate treatment for professionals retained by a creditors' committee, if any, with respect to the Carve Out.

[5] While the Debtors have attempted to highlight the provisions required by the Bankruptcy Rules and Local Rules, as well as certain other material provisions, the Debtors reserve the right to supplement this list at the hearing to consider this Motion on an interim basis.

g. **Local Rule 4001-2(a)(i)(G) – Non-Consensual Priming.** The Interim Order does not provide for non-consensual priming of any existing lien.

h. **Local Rule 4001-2(a)(i)(H) – Provisions Affecting the Court's Power to Consider Equities of the Case.** Upon entry of the Final Order, neither the DIP Secured Parties nor the Prepetition Secured Parties shall be subject to the equities of the case under section 552(b) or the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral. *See* Interim Order ¶¶ 38 and 39, respectively.

Basis for Relief

I. The DIP Facility Should be Approved.

A. The Debtors Are Authorized to Incur the DIP Obligations Under 364(c) and 364(d)(1) of the Bankruptcy Code.

22. The Debtors propose to obtain financing under the proposed DIP Facility by providing security interests and liens as set forth above pursuant to sections 364(c) and 364(d)(1) of the Bankruptcy Code. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under Section 503(b)(1) of the [the Bankruptcy Code]." 11 U.S.C. § 364(c); *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense); *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (debtor must show that it made reasonable efforts to seek other sources of financing under §§ 364(a) and (b)); *In re Garland Corp.*, 6 B.R. 456, 461 (1st Cir. BAP 1980) (secured credit under § 364(c)(2) authorized, after notice and a hearing, upon showing that unsecured credit unobtainable); *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (debtor seeking credit under § 364(c) of the Bankruptcy Code must prove that it cannot obtain unsecured credit pursuant to § 364(b)).

23. The Debtors, together with their advisors, sought out and evaluated alternative sources of unsecured postpetition financing to determine whether the Debtors could obtain debtor-in-possession financing as an administrative expense. The Debtors' advisors reached out to seven (7) potential third-party DIP Lenders (not including the Prepetition Secured Parties), four (4) of whom had previously been involved in connection with refinancing efforts, and executed nondisclosure agreements with each of the third-party potential lenders. In addition to establishing a virtual data room and providing access to those who executed nondisclosure agreements, the Debtors' advisors held multiple diligence calls with prospective lenders.

24. The Debtors received a total of four (4) proposals. Two of the proposals, received from the third-party potential lenders, regarding postpetition financing were not viable. Two proposals involved participation from the Prepetition Secured Parties. No parties were willing to provide postpetition financing on an unsecured, administrative priority basis. Furthermore, and as further described in the First Day Declaration, the Debtors do not believe they can adequately protect, preserve and maximize the value of their estates without access to postpetition financing, indeed, the Debtors believe that their estates will be irreparably harmed if they are permitted to obtain postpetition financing.

25. Where, as here, a debtor is unable to obtain unsecured credit, section 364(c)(1) of the Bankruptcy Code provides that the debtor may obtain credit secured by an administrative expense claim having priority "over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]." 11 U.S.C. § 364(c)(1). As described above, the Debtors are unable to obtain unsecured credit. Therefore, approval of the DIP Superpriority Claims in favor of the proposed DIP Lenders is reasonable and appropriate.

26. Similarly, the Debtors were unable to obtain postpetition financing on a junior or par priority basis under section 364(c)(2) or (3).

27. In addition, section 364(d)(1) of the Bankruptcy Code, which governs the incurrence of postpetition debt by senior or "priming liens," provides that the court may, after notice and a hearing,

> authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if –
>
> (A) the trustee is unable to obtain credit otherwise; and
>
> (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. 364(d)(1).

28. A debtor need only demonstrate by a good faith effort that credit was not available without the protections afforded to potential lenders by sections 364(c) or 364(d) of the Bankruptcy Code. *In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986). Thus, "[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Id.*; *Ames*, 115 B.R. at 40 (holding that debtor made reasonable effort to secure financing when it selected the least onerous financing option from the remaining two lenders). Moreover, where few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom., Anchor Savings Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989).

29. As mentioned above, the Debtors selected the DIP Financing provided by the DIP Lenders only after carefully examining all available options. In the end, it was not feasible for the Debtors to obtain from any other party a loan on equal or better terms that afforded the

Debtors sufficient liquidity to operate their businesses and would assist the Debtors in their restructuring efforts through these chapter 11 cases. In consultation with their professionals, the Debtors determined, in the exercise of their business judgment, that the DIP Lenders provided the best source of funding under all the circumstances, especially because it (a) would minimize the costs and expenses associated with a contested priming fight; and (b) would enable the Debtors to pursue a comprehensive restructuring on a consensual basis with its lender constituents. Accordingly, the Debtors commenced vigorous, arms'-length and good faith negotiations with the DIP Lenders for the DIP Financing.

30. The proposed DIP Liens sought to be granted are senior with respect to the first-priority liens held by the Prepetition Secured Parties, subject to the Carve-Out and the adequate protections described above, and are in accordance with the terms of the Intercreditor Agreement dated as of November 19, 2013, by and among Appvion, Inc., Paperweight Development Corp, each other grantor from time to time party thereto, Jefferies Finance LLC and U.S. Bank National Association (the "Intercreditor Agreement").

31. The Debtors believe the Prepetition Secured Parties have valid, enforceable, and perfected liens on substantially all of the Collateral. The Debtors and counsel have reviewed the security documents, the financing statements and the Intercreditor Agreement and such review demonstrates that the Prepetition Secured Parties have properly filed UCC-1 financing statements against the Debtors in each of the applicable jurisdictions. The First Lien Lenders hold a first-priority perfected security interest in the Collateral and the Second Lien Noteholders hold a second-priority perfected security interest in the Collateral (as defined in the Intercreditor Agreement). A review of the Debtors' books and records reflects as of the Petition Date, $253 million remains outstanding under the Senior Secured Credit Facility and $250 million under the

Second Lien Notes. The DIP Facility is sufficient to repay the Senior Secured Credit Facility and the Receivables Facility in full and provide sufficient new money liquidity for the Debtors' chapter 11 cases.

32. As noted above, the Debtors suffer from severely constrained liquidity. The Debtors selected the DIP Facility because the terms were comparable to the terms offered by the Second Lien Noteholders, but the DIP Facility's structure and costs are more favorable to the Debtors. An immediate infusion of liquidity is required in order to permit the Debtors to stabilize their operations and cash flow, provide confidence to the market and employees, all of which will maximize the potential value of their assets to their estates and creditors. Absent such an infusion, the Debtors will suffer immediate and irreparable harm. Therefore, the Debtors are seeking interim approval to borrow up to $65 million (plus the amount of Roll-Up Loans authorized on an interim basis) of the DIP Facility under the Interim Order so that they may meet their working capital needs, including making payments to their employees.

33. By this Motion, the Debtors seek authority to use certain proceeds to repay obligations outstanding under the Receivables Facility (the "AR Repayment"). After careful consideration of the terms of the DIP Facility, the Debtors determined that the AR Repayment provisions are appropriate and necessary under the circumstances. This feature was a critical component of the willingness of the DIP Lenders to commit to provide funding under the DIP Facility and consent to the use of Cash Collateral, as the AR Repayment will facilitate the release of accounts receivable from Appvion Receivables Funding I LLC, one of the Debtors established as a special purpose vehicle to hold the receivables financed under the Receivables Facility. Indeed, the DIP Lenders would not have agreed to provide the DIP Facility without the AR Repayment.

34. By this Motion, the Debtors seek authorize to use certain proceeds to repay obligations outstanding under the Senior Secured Credit Facility (the "Roll-Up"). After careful consideration of the terms of the DIP Facility, the Debtors determined that the Roll-Up provisions are appropriate and necessary under the circumstances and are not prejudicial to their estates or creditors of their estates as the Prepetition First Lien Facility and the Receivables Facility are both over-secured. This feature was a critical component of the willingness of the DIP Lenders to commit to provide funding under the DIP Facility and consent to the use of Cash Collateral. Indeed, the DIP Lenders would not have agreed to provide the DIP Facility and pay off of the Receivables Facility without the Roll-Up. Roll-ups are a common feature of debtor-in-possession financings and have been approved in a variety of cases. *See In re Laboratory Partners, Inc.*, No. 13-12769 (Bankr. D. Del. Nov. 26, 2013) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Southern Air Holdings, Inc.*, No. 12-12690 (Bankr. D. Del. Oct. 1, 2012) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Appleseed's Intermediate Holdings LLC, et al*., No. 11-10160 (Bankr. D. Del. Jan. 20, 2011) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Hayes Lemmerz Int'l, Inc.*, No. 09-11655 (Bankr. D. Del. May 14, 2009) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Source Interlink Cos. Inc.*, No. 09-11424 (Bankr. D. Del. Apr. 29, 2009) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Dayton Superior Corp.*, No. 09-10785 (Bankr. D. Del. Mar. 10, 2009) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Aleris Int'l, Inc.*, No. 09-10478 (Bankr. D. Del. Feb. 13, 2009) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Pacific Energy Res., Ltd.*, No. 09-10785 (Bankr.

D. Del. Mar. 10, 2009) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Foamex Int'l Inc.*, No. 09-10560 (Bankr. D. Del. Feb. 20, 2009) (authorizing debtor-in-possession financing that included full roll-up under the interim order); *In re Hilex Poly Co. LLC*, No. 08-10890 (Bankr. D. Del. May 7, 2008) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Holley Performance Prods. Inc.*, No. 08-10256 (Bankr. D. Del. Feb. 12, 2008) (authorizing debtor-in-possession financing that included roll-up under the interim order).

35. Likewise, the DIP Milestones are a crucial element of the terms of the DIP Financing, and their inclusion in the Interim Order is important to ensure that these chapter 11 cases proceed in a strategic, value-maximizing fashion. In similar contexts, other courts in this district have entered interim financing orders that included express milestones for the progress of a debtor's case. *See, e.g. In re Horsehead Holding,* Case No. 16-10287 (CSS) (Bankr D. Del. Feb. 2, 2016) (approving case milestones in interim DIP financing order); *In re Verso Corporation,* Case No. 16-10163 (KG) (Bankr. D. Del Jan. 27, 2016); *In re Cal Dive International,* Case No. 15-10458 (CSS) (Bankr. D. Del March 9, 2015) (interim order approving DIP financing with case milestones); *In re ADI Liquidation, Inc. (f/k/a AWI Delware, Inc.),* Case No. 14-12092 (KJC) (Bankr. D. Del. Sept. 9, 2014) (interim DIP financing order with case milestones); *In re Handy Hardware Wholesale, Inc.*, Case No. 13-10060 (MFW) (Bankr. D. Del Jan. 14, 2013) (approving case milestones in interim DIP financing order). Thus, for these reasons and the reasons set forth above, the DIP Facility should be approved.

B. The Use of Cash Collateral is Warranted and Should be Approved.

36. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2) provides that:

> The trustee may not use, sell or lease cash collateral . . . unless –
>
> (A) each entity that has an interest in such collateral consents; or
>
> (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2). Section 363(e) provides for adequate protection of interests in property when a debtor uses cash collateral.

37. Substantially all of the Debtors' cash, including, without limitation, all cash and other amounts on deposit or maintained by the Debtors in any bank accounts, as well as any cash proceeds derived from the disposition of any Collateral, constitute proceeds of the Collateral and, therefore are cash collateral of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the "Cash Collateral").

38. The Debtors rely on cash on hand and cash generated from their operations to fund working capital, capital expenditures, research and development efforts, and for other general corporate purposes. During these chapter 11 cases, the Debtors will need this operating revenue to satisfy payroll, pay suppliers, vendors, and utility providers, honor obligations to their customers, and make any other payments that are essential for the continued management, operation and preservation of the Debtors' businesses. The ability to satisfy these expenses when due is essential to the Debtors' smooth transition into the chapter 11 cases and continued operation of their businesses during the pendency of these chapter 11 cases.

39. An inability to use funds during these chapter 11 cases could cripple the Debtors' business operations. Indeed, without access to Cash Collateral, the Debtors and their estates will suffer immediate and irreparable harm.

40. The Prepetition Secured Parties have consented to the Debtors' use of Cash Collateral, subject to the adequate protections described herein, and pursuant to the terms of the DIP Orders. Accordingly, the Debtors' respectfully submit that the use of Cash Collateral is in the best interests of the Debtors' estates and should be approved.

C. The Prepetition Secured Parties Are Adequately Protected Under Sections 364(d) and 361 of the Bankruptcy Code.

41. In connection with the DIP Financing, the Debtors propose providing the Prepetition Secured Parties with adequate protection in accordance with sections 364(d) and 361 of the Bankruptcy Code.[6] To that end, the Debtors and the Prepetition Secured Parties have negotiated, and the Debtors request that the Court approve, as of the Petition Date, certain protections of the Prepetition Secured Parties' interests in the Prepetition Collateral from any diminution in value of each of their respective interests in the Prepetition Collateral resulting from the Debtors' use, sale or lease of such collateral, and the imposition of the automatic stay.

42. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor in possession may not use cash collateral without the consent of the secured party or court approval. Section 363(e) provides that, upon request of an entity that has an interest in property to be used by a debtor, the court shall prohibit or condition such use as necessary to provide adequate protection of such interest. Under section 364(d), a debtor may obtain credit secured by a senior or equal lien if an existing secured creditor's interest in the collateral security is adequately protected.

[6] Bankruptcy Code section 364(d) requires that adequate protection be provided where the liens of secured creditors are being primed to secure the obligations under a debtor-in-possession financing facility. *See* 11 U.S.C. § 364(d).

43. What constitutes adequate protection is decided on a case-by-case basis. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("[t]he determination of adequate protection is a fact-specific inquiry"); *In re Realty Southwest 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); *see also In re O'Connor*, 808 F.2d 1393, 1396-97 (10th Cir. 1987); *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985). By adequate protection, the Bankruptcy Code seeks to shield a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re 495 Central Park Avenue Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. at 736; *In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996). When priming of liens is sought pursuant to section 364(d) of the Bankruptcy Code, courts also examine whether the prepetition secured creditors are provided adequate protection for the value of their liens. *Beker*, 58 B.R. at 737. Because all of these tests are satisfied here and the Debtors have met all of their obligations under section 364 of the Bankruptcy Code, among other bases as demonstrated by the consensual nature of the relief requested by this Motion, the Motion should be granted and the DIP Facility Documents and the adequate protection set forth in the DIP Orders should be approved.

44. Section 361(2)-(3) of the Bankruptcy Code expressly describes replacement liens and administrative claim status as appropriate forms of adequate protection. Thus, the provision of these forms of adequate protection is appropriate. Further, payment of reasonable and documented out-of-pocket fees, costs and expenses, subject to review by parties in interest, often serves as a form of adequate protection for secured creditors. Agreeing to pay the reasonable and documented out-of-pocket fees, costs and expenses offers meaningful additional protection to any diminution in the value of the Collateral. Accordingly, the Debtors believe that the

adequate protection provided is fair, reasonable and sufficient to protect any diminution in the value of the Prepetition Secured Parties' interests in the Collateral during the period their collateral is used by the Debtors.

D. The DIP Financing is Necessary to Preserve the Value of the Debtors' Estates.

45. The Debtors must immediately instill confidence in their employees, vendors, service providers and customers, reassuring them that these chapter 11 cases will not erode their relationships with the Debtors. The Debtors believe they must provide to their constituents assurances as to their ability to seamlessly transition into chapter 11, operate in a "business as usual" fashion, but with increased liquidity, and ultimately sell their businesses in a successful and expedited manner. The DIP Financing will provide the working capital necessary to allow the Debtors to, among other things, continue operating their businesses in the ordinary course, which in turn will help maintain value for the benefit of all creditors and parties in interest.

46. The initial success of the chapter 11 cases at the outset depends on the comfort level of the Debtors' constituents, which in turn depends upon the Debtors' ability to minimize the disruption of the bankruptcy filings. Approval and implementation of the DIP Financing ensures continued functioning of the Debtors, and together with approval of the Debtors' maintenance of their cash management system, will preserve the going concern value of their estates.

E. The Terms of the DIP Financing Are Fair, Reasonable and Appropriate.

47. After appropriate investigation and analysis, the Debtors, in consultation with their advisors, have concluded that the DIP Financing presents the best route available under the circumstances. Bankruptcy courts routinely defer to a debtor's business judgment on most business decisions, including the decision to borrow money, unless such decision fails the

arbitrary and capricious standard. *See Ames* 115 B.R. at 40 (courts should approve borrowings pursuant to 364(c) and (d) if the debtors was within its business judgment); *In re Mid-State Raceway, Inc.*, 323 B.R. 40, 58-59 (Bankr. N.D.N.Y. 2005) (same); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that approval of interim loan, receivables facility and asset-based facility "reflect[ed] sound and prudent business judgment...[was] reasonable under the circumstances and in the best interest of [the debtor] and its creditors").

48. Indeed, "more exacting scrutiny [of the debtor's business decisions] would slow the administration of the Debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

49. The terms and conditions of the DIP Financing are fair and reasonable and were negotiated by the parties in good faith and at arms' length, as evidenced by the Debtors' ability to elect between the financing terms offered by the First Lien Lenders and the Second Lien Noteholders. In the reasonable exercise of the Debtors' business judgment, the DIP Financing is the best financing option available under the present circumstances. As discussed above, the Debtors, with the assistance of their advisors, assessed their financing needs and the DIP Financing proposal. After fully considering the DIP Financing proposals, and whether other more advantageous financing alternatives were available to the Debtors, and in consideration of the Prepetition Secured Parties' respective rights under the Intercreditor Agreement and the potential of significant disruption to the chapter 11 cases in the event of a non-consensual restructuring, the Debtors decided to accept the DIP Financing with the DIP Lenders. The Prepetition Secured Parties are party to the Intercreditor Agreement, which grants the parties

certain rights that if exercised would have significantly disrupted the Debtors' chapter 11 cases. Accordingly, the Debtors determined to select postpetition financing based not only on an analysis of the competing economic terms but also with an eye toward which proposal would eliminate or minimize such potential disruption.

50. Further, the proposed DIP Financing subjects the security interests and administrative expense claims of the DIP Lenders to the Carve-Out, thereby ensuring that in the event of a default under the DIP Facility Agreement, the Debtors' estates or other parties-in-interest are not directly or indirectly deprived of possible rights and powers by restricting the services for which professionals may be paid in these cases. In *Ames Dept. Stores*, the court found such carve-outs for professional fees not only reasonable but necessary to ensure that official committees and debtors' estates can retain assistance from counsel. *See Ames*, 115 B.R. at 38, 40 (observing that courts insist on carve-outs for professionals representing parties-in-interest because "absent such protection, the collective rights and expectation of all parties-in-interest are sorely prejudiced").

F. Modification of the Automatic Stay is Appropriate.

51. Section 362 of the Bankruptcy Code provides for an automatic stay upon the filing of a bankruptcy petition. The DIP Facility Documents require a modification of the automatic stay to implement the terms of the DIP Financing.

52. Stay modification provisions of this kind are ordinary and standard features of post-petition debtor-in-possession financing facilities and, in the Debtors' business judgment, are reasonable under the present circumstances. As noted above, the Debtors are unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code in an amount sufficient and readily available to maintain ongoing operations.

Nor have the Debtors been able to obtain debtor-in-possession financing on terms more favorable than those proposed herein. The terms and conditions of the DIP Financing, including the modification of the automatic stay described above, are fair and reasonable, and were negotiated extensively by well-represented parties in good faith and at arms' length. In these circumstances, and importantly, in light of the material benefits afforded to the Debtors by the DIP Financing, the modification of the automatic stay is more than warranted.

II. Interim Approval of the DIP Financing and Use of Cash Collateral Should Be Granted Immediately.

53. The Debtors bring this Motion to obtain authorization to use Cash Collateral and borrow under the DIP Facility Agreement on an expedited basis, due to the immediate and irreparable harm that would be suffered by the Debtors' estates were the Debtors unable to obtain the financing needed to sustain their businesses. The Debtors have an immediate need to obtain the DIP Financing and use Cash Collateral to permit them, in addition to financing the administration of these chapter 11 cases to (a) operate the businesses, (b) maintain business relationships with vendors, suppliers and customers, including several foreign suppliers that are critical to the Debtors' uninterrupted continued operations, (c) pay employee wages in the ordinary course, (d) make necessary capital expenditures, and (e) satisfy other working capital and operational needs, all of which are necessary to preserve the going-concern value of the Debtors.

54. Without the use of Cash Collateral and access to the additional liquidity under the DIP Facility, the Debtors will not be able to meet their day-to-day operational needs. In such a scenario, the Debtors would have to halt their operations, which would drastically erode the overall value of their businesses. Further, the Debtors must demonstrate to their customers and vendors that they have sufficient capital to ensure ongoing operations in the ordinary course –

thereby assuaging any potential fears among their constituents that these chapter 11 cases will negatively impact them, resulting in material challenges to the Debtors' operations. Therefore, the Debtors request approval of the DIP Financing on an expedited basis due to the immediate and irreparable harm that would be suffered by the Debtors' estates were they unable to obtain the postpetition financing.

55. Rule 4001(c)(2) of the Bankruptcy Rules permits a court to approve a debtor's request for financing during the 14-day period following the filing of a motion requesting authorization to obtain post-petition financing "only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Local Rule 4001-2(b) provides that the Court may grant interim relief pending review by interested parties of proposed debtor-in-possession financing arrangements, including use of cash collateral, provided that such relief is limited to what is necessary to avoid immediate and irreparable harm pending a final hearing.

56. The Debtors request that the Court conduct an expedited preliminary hearing on the Motion and authorize the Debtors from and after the entry of the Interim Order until the Final Hearing to borrow funds in the interim amount of $65 million (plus the amount of Roll-Up Loans authorized on an interim basis), made available under the DIP Facility, which the Debtors shall use to, among other things, provide working capital for the Debtors' ongoing business operations and pay expenses for these chapter 11 cases. This authority will allow the Debtors to maintain a stable business environment and avoid immediate and irreparable harm, pending the Court's final decision at the Final Hearing.

57. Absent this Court's approval of the interim relief sought in this Motion, the Debtors face a substantial risk of severe disruption to their business operations and irreparable damage to their relationships with customers and vendors. The relief sought herein is critical to

ensure the Debtors' businesses retain their highest and best going-concern value through the conclusion of a comprehensive restructuring.

III. A Final Hearing Should Be Set.

58. Pursuant to Rules 4001(b)(2) and 4001(c)(2) of the Bankruptcy Rules, 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.

59. The Debtors request authorization to serve a copy of the signed Interim Order, which fixes the time and date for the filing of objections, if any, by first class mail upon the Notice Parties (defined below). The Debtors request that the Court consider such notice of the Final Hearing to be sufficient notice under Rule 4001 of the Bankruptcy Rules.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

60. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one (21) days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm."

61. For the reasons discussed above, (a) authorizing the Debtors to obtain postpetition secured financing under the DIP Facility, (b) authorizing the Debtors to use Cash Collateral, (c) granting adequate protection to the Prepetition Secured Parties, (d) scheduling a Final Hearing, and (e) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the Interim Order and the DIP Facility, as well as granting the other relief requested herein, is integral to the Debtors' ability to transition their operations into these chapter 11 cases.

62. Failure to receive such authorization and other relief during the first twenty-one (21) days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical

juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their businesses in the ordinary course and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Waiver of Bankruptcy Rule 6004(a)

63. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a).

64. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, "[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." As set forth above, the DIP Financing is essential to prevent potentially irreparable damage to the Debtors' operations, value and ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Rule 6004(h) of the Bankruptcy Rules, to the extent it applies.

Reservation of Rights

65. Nothing contained herein is intended or should be construed as an admission regarding the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or policy under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any claim related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an

admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Notice

46. Notice of this Motion shall be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) the parties included on the Debtors' consolidated list of forty (40) largest creditors; (iv) Debtor's postpetition, debtor-in-possession lenders: (a) O'Melveny & Myers LLP, and (b) Richards, Layton & Finger, P.A.; (v) Counsel to Jefferies Finance LLC, as administrative agent under the certain Credit Agreement dated as of June 28, 2013; (vi) Covington & Burling LLP, counsel to Wilmington Trust, National Association, as administrative agent under that certain Superpriority Senior Debtor-in-Possession Credit Agreement; (vii) U.S. Bank National Association, as agent under that certain Indenture dated as of November 19, 2013; (viii) Fifth Third Bank, as administrative agent under that certain Receivables Purchase Agreement dated as of June 4, 2014; (ix) the Internal Revenue Service; (x) the Securities and Exchange Commission; and (xi) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, notice of this Motion and any order entered in connection with the Motion will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief in it, the Debtors respectfully submit that no further notice of this Motion is required.

[*Remainder of Page Intentionally Left Blank.*]

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

Dated: October 1, 2017
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

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