

MODIFICATION TO LOAN AND SECURITY AGREEMENT

1. **Definitions.** Defined terms used herein, but not defined herein shall have the meanings in the Pre-Petition Loan Agreement and in the Stipulation (as the case may be).

2. **References.** For the purposes of the DIP Credit Facility, (a) all instances of “Lender” in the Pre-Petition Loan Agreement shall be changed to “DIP Lender”, (b) each reference to this “Agreement” shall be a reference to the Pre-Petition Loan Agreement as modified by this Modification to Loan and Security Agreement and (c) each reference to “Loan Documents” shall be a reference to the Post-Petition Documentation.

3. **No Term Loans or Letters of Credit.** All references to term loans, the term loan facility, letters of credit and the letter of credit sub-facility, as well as all related definitions and provisions in the Pre-Petition Loan Agreement, shall be deemed fully funded prior to the date of the Petition and such definitions and related provisions shall no longer be operative.

4. **DIP Budget; Use of Proceeds.** Borrower may utilize Revolving Loans by DIP Lender pursuant to the DIP Credit Facility exclusively to pay for the expenses incurred by Borrower as provided for in the DIP Budget. Disbursements of Revolving Loans after the date of the Petition will be made to Borrower in accordance with Section 1.4 of this Agreement and in the amounts set forth in the DIP Budget which shall include any Approved Disbursement Variances. To the best of Borrower’s knowledge, after consultation with Clear Thinking Group and assuming the accuracy of the sales and expense estimates that have been provided Great American/Tiger in that certain Consulting Agreement dated February __, 2018 (“*Consulting Agreement*”), (a) the expenditures set forth in the DIP Budget constitute all of Borrower’s projected expenses during the period of the DIP Budget, and (b) the sums to be advanced by DIP Lender pursuant to the DIP Credit Facility and the DIP Budget are sufficient to pay all of the expenses set forth in the DIP Budget and incurred through the last date shown in the DIP Budget. Subject to the DIP Lender’s consent and subject to the accuracy of the projections in the Consulting Agreement, Borrower’s sales and cash receipts, shall not be less than as set forth in the DIP Budget and Borrower’s expenses shall not exceed those set forth in the DIP Budget, in all cases subject to the Approved Sales Variance, the Approved Cash Receipts Variance, and the Approved Disbursements Variance (all as defined below, and collectively, the “Approved Variances”). Nothing herein, however, permits the Revolving Loans made under the DIP Credit Facility to exceed the amounts set forth in the DIP Budget plus the Approved Variances. As used herein, the Approved Variances include, and are defined and calculated as follows:

(a) “Approved Sales Variance” means that Borrower’s actual sales compared to Borrower’s projected sales measured commencing as of the end of the first two weeks covered by the DIP Budget and each week thereafter for both (i) the two-week period concluding with the week during which the variance is being calculated, and (ii) cumulatively from the commencement of this Chapter 11 Case concluding with the week during which the variance is being calculated, cannot be less than 90% of the amount set forth on the DIP Budget.

(b) “Approved Cash Receipts Variance” means that, Borrower’s actual cash receipts compared to Borrower’s projected cash receipts measured commencing as of the end of the first two weeks by the DIP Budget and each week thereafter for both (i) the two-week period concluding with the week during which the variance is being calculated, and (ii) cumulatively from the commencement of this Chapter 11 Case concluding with the week during which the variance is being calculated, cannot be less than 90% of the amount set forth on the DIP Budget; and.

(c) “Approved Disbursements Variance” means that Borrower’s actual disbursements compared to Borrower’s projected disbursements measured commencing as of the end of the first two weeks covered by the DIP Budget and each week thereafter for both (i) the two-week period concluding with the week during which the variance is being calculated, and (ii) cumulatively from the commencement of this Chapter 11 Case concluding with the week during which the variance is being calculated, cannot be more than 110% of the amount set forth on the DIP Budget.

5. **Collections; Application of Payments.** In accordance with Section 4.1 of this Agreement, from and after the date of the Petition, Borrower shall at all times, direct its Account Debtors to direct all Account Debtors to send Collections to the Lock Box and all Collections and other proceeds from the going-out-of-business sale received by Borrower shall be deposited in the Blocked Account and such funds shall be transferred to DIP Lender in such manner, and with such frequency, as Lender shall specify, and applied in accordance with Section 23 of this Modification to Loan and Security Agreement.

6. **Maximum Revolving Loans.** Section 1.1(a) of the Pre-Petition Loan Agreement is hereby amended and restated to read as follows:

“(a) **Revolving Loans and Letters of Credit.** Subject to the terms and conditions contained in this Agreement, including Sections 1.3 and 1.6, DIP Lender shall, from time to time prior to the Maturity Date, at Borrowing Agent’s request, (i) make revolving loans to Borrower (“**Revolving Loans**”), and (ii) make, or cause or permit a Participant (as defined in Section 10.10) to make, letters of credit (“**Letters of Credit**”) available to Borrower; **provided**, that after giving effect to each such Revolving Loan and each such Letter of Credit, (A) the outstanding balance of all Revolving Loans and the Letter of Credit Balance will not exceed the lesser of (x) the Maximum Revolving Facility Amount and (y) the Borrowing Base **plus** an Overadvance not to exceed 10% of (1) the amount set forth in the DIP Budget for such period and/or (2) cumulatively from the commencement of this Chapter 11 Case concluding with the week during which the Overadvance is being calculated, and (B) none of the other Loan Limits for Revolving Loans will be exceeded. All Revolving Loans shall be made in and repayable in Dollars. After the date of the Petition, any principal amounts repaid in respect of the Revolving Loans may not be reborrowed.”

7. **Covenants Regarding Security Interest of DIP Lender.** A new Sections 3.5, 3.6 and 3.7 are added to the Pre-Petition Loan Agreement at the end of Section 3.4, to read as follows:

“3.5 **Priority of All Loans.** All advances and loans made hereunder by DIP Lender to Borrower (including, without limitation, all Loans, fees (contingent or otherwise), interest and expenses, and any other portion of the Obligations, whether or not such Obligations are within or in excess of the Maximum Revolving Facility Amount) shall constitute and be deemed a cost and expense of administration in this Chapter 11 Case and shall be entitled to priority under Section 364(c)(1), Section 364(c)(2), Section 364(c)(3), and Section 364(d) of the Bankruptcy Code ahead of all other costs and expenses of administration of the kind specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) or 726 of the Bankruptcy Code, except as may be otherwise provided in the DIP Orders and the Stipulation.

3.6 **Priority of Liens; Further Assistance.**

(a) The Liens granted pursuant to the terms of the Post-Petition Documentation and the Liens conferred upon DIP Lender pursuant to the DIP Orders, shall constitute (i) pursuant to Section 364(c)(1) of the Bankruptcy Code, a “super-priority” administrative expense claim, subject and subordinate only to the Carve-Out (ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, a first priority Lien, subject and subordinate only to the Carve-Out, upon or security interest in all of the Collateral that is not otherwise encumbered by a validly perfected security interest or Lien in existence on the date of the Petition that has not been primed; (iii) pursuant to Section 364(d)(1) of the Bankruptcy Code, a first priority, subject and subordinate only to the Carve-Out, priming Lien upon or security interest in all of the Collateral in existence on the date of the Petition and the proceeds thereof; and (iv) pursuant to Section 364(c)(3) of the Bankruptcy Code, a second priority Lien, subject and subordinate only to the Carve-Out, upon or security interest in all of the Collateral that was in existence on the date of the Petition and subject to a validly perfected and unavoidable security interest or Lien that has not been primed and which has not been subordinated to the Liens in favor of DIP Lender in its capacity as a pre-petition lender.

(b) Except as expressly provided in the DIP Orders, no expenses, costs or charges in connection with this Chapter 11 Case shall be charged against the Collateral or DIP Lender under Section 506(c) of the Bankruptcy Code and Borrower hereby waives any rights it has to seek such charges under Section 506(c) of the Bankruptcy Code.

3.7 **Liens Under DIP Orders.** The Liens and security interests granted to DIP Lender pursuant to the Post-Petition Documentation shall be in addition to all Liens conferred upon DIP Lender by the Bankruptcy Court pursuant to the terms of the DIP Orders and the Stipulation. Notwithstanding anything to the contrary contained herein, except as specifically permitted herein, Borrower has no authority, express or implied, to dispose of any item or portion of the Collateral.”

8. **Modification to Provision Relating to Inventory.** Section 4.6(a) of the Pre-Petition Loan Agreement is hereby amended and restated as follows:

“(a) **Returns.** No Loan Party Obligor will accept returns of any Inventory from any Account Debtor except in the ordinary course of its business. In the event the value of returned Inventory in any one calendar month exceeds \$1,000 (collectively for all Loan Party Obligors), Borrower will immediately notify Lender (which notice shall specify the value of all such returned Inventory, the reasons for such returns, and the locations and the condition of such returned Inventory).”

9. **Deletion of Solvency Representation.** The solvency representation set forth in Section 5.9(b) of the Pre-Petition Loan Agreement will not be operative.

10. **Modification to Tax Payments Provision.** The following language is hereby added to the end of Section of 5.10 of the Pre-Petition Loan Agreement:

“Notwithstanding the foregoing, after the date of the Petition, Borrower will timely file (or make provisions to timely file for an extension) all tax returns and reports required by applicable law, and Borrower will timely pay all foreign, federal, state and local taxes, assessments, deposits and contributions now or in the future owed by Borrower, in accordance with the DIP Budget.”

11. **Additional Reporting and Monitoring.** Section 5.15 of the Pre-Petition Loan Agreement is hereby amended by adding the following covenants to the end thereof:

- “(j) **Monitoring.** Without limiting the rights of the DIP Lender, DIP Lender shall have the right to monitor and review, on a weekly basis, borrowing base certificates, cash disbursements and rolling cash flow forecasts of Borrower.
- “(k) **Weekly Budget Report.** On or before noon on Tuesday of each week, Borrower shall provide DIP Lender with a weekly updated cash budget report, which will include but not be limited to the reporting of actual sales and cash disbursements for the period ending Friday of the prior week and showing a comparison on a weekly basis to the DIP Budget.
- “(l) **Weekly Conference Call.** On Wednesday of each week (or less frequently as determined by DIP Lender), Borrower’s Chief Executive Officer, representatives of Clear Thinking Group, and Borrower’s other advisors shall participate in a conference call with the DIP Lender to discuss (i) the Weekly Budget Report, (ii) the status of discussions and negotiations for any sale or other disposition of the business or assets, as applicable, (iii) the operations, financial performance, expense reduction program and cash flow reports, as applicable, of the Borrower and (iv) any other issues that DIP Lender wishes to discuss.
- “(m) **Bankruptcy Related Documents.** Borrower shall promptly provide DIP Lender with copies of all financial reports, schedules and other materials and information related to the Collateral at any time furnished by Borrower, or on its behalf, to the Bankruptcy Court, or the U.S. Trustee or to any creditors’ committee or Borrower’s shareholders, concurrently with the delivery thereof to the Bankruptcy Court, U.S. Trustee, creditors’ committee or shareholders, as the case may be.”
- “(n) **Perpetual Inventory Report.** Within 7 days after the date of the Petition and the Tuesday of the each week thereafter, for the prior week most recently ended on Sunday, Borrower shall, or shall cause the Liquidation Agent, to provide a perpetual inventory report of Borrower’s Inventory valued on a first-in, first-out basis at the lower of cost or market (in accordance with GAAP), which report shall be in a form satisfactory to DIP Lender.
- “(o) **Consultation and Approval Rights on Going-Out-Of-Business Sale.** Borrower agrees to consult with DIP Lender with respect to the terms and

manner in which the Borrower's going-out-of-business sale, including without limitation any bulk sale of inventory or merchandise ("**Sale**") is conducted, including without limitation any bulk sale of Collateral, and Borrower acknowledges and agrees that DIP Lender shall have the right to approve the terms and manner of the Sale or to withhold any approval, in its reasonable discretion.

12. **Modification to Negative Covenants**. Section 5.25 of the Pre-Petition Loan Agreement is hereby amended as follows:

(a) Section 5.25(d) of the Pre-Petition Loan Agreement is hereby amended and restated to read as follows:

"(d) sell, transfer, return, or dispose of any Collateral or other assets, except that each Loan Party may sell finished goods Inventory in the ordinary course of its business, in accordance with the DIP Budget, or with the consent of DIP Lender;"

(b) Section 5.25(i) of the Pre-Petition Loan Agreement is hereby amended and restated to read as follows:

"(i) pay or declare any dividends or other distributions on any Loan Party's Equity Interests (except for dividends payable solely in capital stock or other equity interests of such Loan Party and dividends and distributions to Borrower);"

(c) Sections 5.25(t) and (u) of the Pre-Petition Loan Agreement are hereby amended and restated to read as follows:

"(t) agree, consent, permit or otherwise undertake to amend or otherwise modify any of the terms or provisions of the Emerald Note, or make any payment on the Emerald Note (including without limitation any payment of principal or interest);
or

(u) agree, consent, permit or otherwise undertake to amend or otherwise modify any of the terms or provisions of the IDB Note, permit the IDB Note to be secured by any Collateral, or make any payment on the IDB Note (including without limitation any payment of principal or interest);

(d) Section 5.25 of the Pre-Petition Loan Agreement are hereby amended by adding new clauses (v) and (w) to the end thereof to read as follows:

"(v) make or commit to make any capital expenditure that is not included in the DIP Budget or approved by DIP Lender in writing; and

(w) use the proceeds of the Loans or the Collateral to commence or prosecute any investigation, action or objection with respect to the super-priority claims or Liens granted to DIP Lender pursuant to the Post-Petition Documentation and the DIP Orders or any other claims of any kind against DIP Lender."

13. **Deletion of Financial Covenants**. The financial covenants set forth in Section 5.26 of the Pre-Petition Loan Agreement and Schedule E to the Pre-Petition Loan Agreement will not be operative.

14. **Additional Affirmative Covenants.** A new Section 5.30 is added to the Pre-Petition Loan Agreement at the end of Section 5.29, to read as follows:

“5.30 **Compliance with the DIP Orders.** Borrower shall, at all times, comply with all terms, conditions and provisions of the DIP Orders.”

15. **Modification to Events of Default.** Section 7.1 of the Pre-Petition Loan Agreement is hereby amended as follows:

(a) The following events will not constitute “Events of Default” under the Pre-Petition Loan Agreement:

- (i) the filing of the Chapter 11 Case (notwithstanding Section 7.1(g) and (h) of the Pre-Petition Loan Agreement);
- (ii) the events specified in Section 7.1(f) of the Pre-Petition Loan Agreement (relating to insolvency or business failure of the Borrower), Section 7.1(e) of the Pre-Petition Loan Agreement (relating to Indebtedness under the previous Chapter 11 Plan, the Emerald Note and the IDB Note, to the extent such default consists of the same type of defaults as are set forth in this clause (a)), and Section 7.1(j) of the Pre-Petition Loan Agreement (relating to defaults in other agreements, to the extent the same are caused by the filing of the Chapter 11 Case);
- (iii) acts occurring or conditions existing prior to the filing of the Chapter 11 Case;
- (iv) Borrower’s failure to cure continuing events of default arising from acts occurring or conditions existing prior to the filing of the Chapter 11 Case, including, but not limited to those relating to the insolvency or financial condition of Borrower at any time before the closing of the Chapter 11 Case; or
- (v) The filing of a motion to appoint a trustee or to convert the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code.

(b) Section 7.1(q) is hereby amended and restated to read as follows:

“if (A) the outstanding balance of all Revolving Loans and the Letter of Credit Balance exceeds, at any time, the lesser of (x) the Maximum Revolving Facility Amount and (y) the Borrowing Base, plus an Overadvance not to exceed 10% of (1) the amount set forth in the DIP Budget for such period and/or (2) cumulatively from the commencement of this Chapter 11 Case concluding with the week during which the Overadvance is being calculated, or (B) any of the Loan Limits for Revolving Loans are, at any time, exceeded; or

(c) Without limiting any other provisions of the Post-Petition Documentation, the occurrence of any of the following events shall constitute an Event of Default under the Post-Petition Documentation and the Pre-Petition Documentation:

- (i) Clear Thinking Group ceases to be engaged by Borrower (due to Borrower termination, Clear Thinking Group termination, expiration or otherwise) in connection with the restructuring of Borrower's business;
- (ii) Borrower shall fail to perform any non-monetary Obligation set forth herein within two Business Days after the date due;
- (iii) the appointment of an interim trustee, trustee or examiner for the Borrower, or a change in the current management of the Borrower, without DIP Lender's consent;
- (iv) a change in the venue of this Chapter 11 Case;
- (v) Borrower's payment of expenses not set forth in the DIP Budget;
- (vi) Borrower's failure to stay within all of the Approved Variances at all times;
- (vii) the lack of entry of a Final Order in a form acceptable to DIP Lender in its sole discretion approving the DIP Credit Facility within thirty (30) days after entry of the Interim Order approving the DIP Credit Facility;
- (viii) entry of an order of the Bankruptcy Court amending, supplementing, staying, vacating or otherwise modifying the Interim Order or Final Order approving the DIP Credit Facility without DIP Lender's prior written consent;
- (ix) the filing of a plan of reorganization in this Chapter 11 Case which adversely alters DIP Lender's rights under the DIP Credit Facility or any other Post-Petition Documentation, except to the extent agreed to in writing by DIP Lender in its sole discretion;
- (x) the entry of an order by the Bankruptcy Court in this Chapter 11 Case in favor of a third-party authorizing post-petition financing or factoring by such third-party;
- (xi) three Business Days after written notice to Borrower of the failure by Borrower to deliver to DIP Lender any of the documents or other information required to be delivered pursuant to the DIP Orders when due; or
- (xii) except as set forth herein, three Business Days after the failure by Borrower to observe or perform any of the material terms or provisions contained in the DIP Orders; or

- (xiii) the bringing of a motion by Borrower in this Chapter 11 Case to obtain additional financing from a party other than DIP Lender under Section 364 of the Bankruptcy Code unless the proceeds from such financing are used to immediately repay in cash all Obligations under this Agreement and the Pre-Petition Obligations or to use “cash collateral” of DIP Lender under Section 363(c) of the Bankruptcy Code in a manner and to the extent not otherwise consented to by DIP Lender, in its sole discretion; or
- (xiv) Borrower seek to have its costs and expenses categorized as costs and expenses of administration of this Chapter 11 Case under Section 506(c) of the Bankruptcy Code; or
- (xv) Borrower makes any payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Pre-Petition indebtedness, trade payables or other Pre-Petition claims against Borrower, unless expressly provided by an order of the Bankruptcy Court or consented to by DIP Lender, in its sole discretion; or
- (xvi) Borrower filing a pleading, or in any way support another party’s pleading, seeking to modify or otherwise alter any of the terms and conditions set forth in the DIP Orders without the prior written consent of DIP Lender, in its sole discretion;
- (xvii) the entry of an order of the Bankruptcy Court amending, supplementing or otherwise altering any of the terms and conditions set forth in the DIP Orders without the prior written consent of DIP Lender, in its sole discretion;
- (xviii) for a period in excess of three (3) calendar days, reversal, vacatur or stay of the effectiveness of any DIP Order, without the express prior written consent of DIP Lender, in its sole discretion; or
- (xix) Borrower (or any party with the support of any of Borrower) shall challenge the validity or enforceability of any of the Post-Petition Documentation or the Pre-Petition Documentation; or
- (xx) the entry by the Bankruptcy Court of an order granting relief from the automatic stay imposed by Section 362 of the Bankruptcy Code sought by any party that materially adversely affects Borrower’s property in excess of \$10,000, without the written consent of DIP Lender, in its sole discretion; or
- (xxi) Borrower uses the Loans for any item other than those set forth in the DIP Budget or the Interim Order, except as agreed in writing in advance by DIP Lender, in its sole discretion;

- (xxii) subject to Section 365 of the Bankruptcy Code, Borrower shall fail to obtain, maintain or comply in all material respects with any order, consent, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, any governmental authority and such failure could reasonably be expected to have a Material Adverse Change; or
- (xxiii) Borrower, without the prior consent of DIP Lender, shall (1) determine, whether by vote of its board of directors or otherwise, to suspend the operation of its business in the ordinary course or liquidate all or substantially all of its assets, or (2) file a motion or other application in this Chapter 11 Case seeking authority to do any of the foregoing; or
- (xxiv) the entry of an order of the Bankruptcy Court granting any Lien on or security interest in any of the Collateral that is *pari passu* with or senior to the Liens held by DIP Lender on, or as security interests in, the Collateral, any adequate protection Liens granted to DIP Lender, any superpriority claims granted to DIP Lender on account of the Pre-Petition Debt or the Pre-Petition Senior Lien, except for the Carve-Out, or Borrower shall seek or request the entry of any such order; or
- (xxv) Borrower creating or permitting to exist any other superpriority claim which is *pari passu* with or senior to the claims of DIP Lender hereunder, any adequate protection Liens granted to DIP Lender, any superpriority claims granted to DIP Lender on account of the Pre-Petition Debt or the Pre-Petition Senior Lien, except for the Carve-Out;
- (xxvi) Borrower seeks to sell any of their assets outside the ordinary course of business, unless (1) the proceeds of such sale are used to indefeasibly pay the Obligations in full in cash (subject to any unfunded Carve-Out amounts due under the DIP Budget), and (2) such sale is pursuant to bidding procedures and a sale motion approved by DIP Lender; or
- (xxvii) without the written consent of DIP Lender, (1) dismissal of any of this Chapter 11 Case or conversion of this Chapter 11 Case to chapter 7 case under the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner or other responsible officer with enlarged powers relating to the operation of the business of Borrower in this Chapter 11 Case, which dismissal, conversion or appointment shall not have been reversed, stayed or vacated within three (3) calendar days, or (2) Borrower shall seek or request the entry of any order to effect any of the events described in subclause (1) of this clause.
- (xxviii) the Bankruptcy Court fails to enter the Interim Order, in form and substance satisfactory to DIP Lender in its sole discretion, within three Business Day after the date of the Petition;

- (xxix) the Bankruptcy Court fails to enter the Final Order, in form acceptable to DIP Lender in its sole discretion, within 20 days after the Bankruptcy Court's entry of the Interim Order;
- (xxx) an initial hearing with the Bankruptcy Court on the Interim Order shall fail to have occurred within 10 days after the filing of the Petition;
- (xxxii) any time the outstanding balance of the Term Loan and the Revolving Loans under this Agreement exceeds the sum of (1) the amount for "Total Loan Balances" set forth in the DIP Budget, *plus* (2) 10% of such amount, for (x) such period and/or (y) cumulatively from the commencement of this Chapter 11 Case concluding with the week during which the outstanding balances are being calculated.

16. **Additional Remedies with Respect to Collateral.** Section 7.3(j) of the Pre-Petition Loan Agreement, is hereby amended and restated, to read as follows

“(j) Waiver of Rights by Loan Party Obligors.

(1) Except as otherwise expressly provided for in this Agreement or by non-waivable applicable law, each Loan Party waives: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Lender on which any Loan Party Obligor may in any way be liable, and hereby ratifies and confirms whatever Lender may do in this regard, and (b) the benefit of all valuation, appraisal, marshalling and exemption laws.

(2) If, following the entry of the DIP Order, an Event of Default has occurred and is continuing, Borrower hereby irrevocably waives any right it may have to use cash collateral under Section 363 of the Bankruptcy Code without DIP Lender's written consent.

(3) Each and every right, power and remedy hereby specifically given to DIP Lender shall be in addition to every other right power and remedy specifically given under this Agreement, the other Loan Documents, the DIP Orders or now or hereafter existing at law or in equity, or by statute and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by DIP Lender. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of exercise of one shall not be deemed a waiver of the right to exercise of any other or others. No delay or omission of DIP Lender in the exercise of any such right, power or remedy and no renewal or extension of any of the Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any Default or Event of Default or an acquiescence therein. In the event that DIP Lender shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then, in such suit, DIP Lender may recover reasonable expenses,

including attorney fees, and the amounts thereof shall be included in such judgment.

17. **Maximum Revolving Facility Amount.** Section 1(a) of Schedule A to the Pre-Petition Loan Agreement which currently reads as follows:

<i>(a) Maximum Revolving Facility Amount:</i>	\$7,000,000.00
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is hereby amended and restated to read as follows:

<i>(a) Maximum Revolving Facility Amount:</i>	The maximum combined amount of the Pre-Petition Debt and the Post-Petition Debt, as shown in the DIP Budget, subject to any Approved Variances (if any); <u>provided</u> that in no event shall the aggregate amount of Pre-Petition Debt and the Post-Petition Debt (inclusive of any Approved Variances), exceed \$7,000,000.
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18. **Interest Rate on Revolving Loans.** Section 3(a) of Schedule A to the Pre-Petition Loan Agreement which currently reads as follows:

<i>(a) Revolving Loans and Letters of Credit:</i>	3.00% per annum in excess of the Base Rate.
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is hereby amended and restated to read as follows:

<i>(a) Revolving Loans:</i>	6.00% per annum in excess of the Base Rate; <u>provided</u> that the interest rate in effect on any day shall not be less than 10.50% per annum.
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19. **Maturity Date.** Section 6 of Schedule A to the petition Loan Agreement] which currently reads as follows:

<i>6. Scheduled Maturity Date:</i>	<i>October 30, 2020</i>
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is hereby amended and restated to read as follows:

<i>6. Scheduled Maturity Date:</i>	the earliest to occur of: (a) June 30, 2018, or (b) the earlier of (i) the date upon which the
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	Interim Order expires or (ii) 45 days after the entry of the Interim Order, in either case, if the Final Order has not been entered prior to the expiration of such period; (c) Borrower filing a plan of reorganization that is not acceptable to DIP Lender, in its sole discretion (d) the date of indefeasible prepayment in full by Borrower of all Obligations under this Agreement in accordance with the terms hereof; or (e) upon acceleration of the Obligations upon the occurrence of an Event of Default.
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20. **Additional Definitions.** The following definitions are hereby added to Schedule B of the Pre-Petition Loan Agreement, or the extent such definitions already exist, are hereby amended and restated, in alphabetical order, to read as follows:

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the Central District of California.

“Chapter 11 Case” shall mean the Chapter 11 case of Borrower, referred to as *In Re B&B Liquidating, LLC*, Case No. 2:18-bk-11744-WB, which is being administered under the Bankruptcy Code, and is pending in the Bankruptcy Court.

“Collateral” shall mean, collectively, the Pre-Petition Collateral and the Post-Petition Collateral.

“DIP Credit Facility” shall mean the credit facility extended by DIP lender to Borrower pursuant to the terms of the Pre-Petition Loan Agreement as modified by this Modification to Loan and Security Agreement, attached as Exhibit A to the Stipulation.

“DIP Orders” shall mean the Interim Order and the Final Order entered by the Bankruptcy Court.

“Final Order” shall mean the order entered by the Bankruptcy Court in the Bankruptcy Case after a final hearing under Bankruptcy Rules 2002, 4001(c)(2), and 9014, pursuant to Sections 105(a), 361, 362, 363, 364(c) and (d) of the Bankruptcy Code, as to which no stay pending appeal has been entered, and no motion to reconsider filed, and which has not been vacated, modified or reversed, (i) authorizing the Borrower to incur post-petition secured indebtedness and to grant Liens under the DIP Credit Facility in accordance with this Agreement and the other Loan Documents, (ii) providing for the super-priority of the Obligations, subject to the Carve-Out, including without limitation, a specific grant of a security interest to DIP Lender in all Collateral, as well as the right to the proceeds from all Collateral in accordance with this Agreement and the other Loan Documents, (iii) providing “adequate protection” pursuant to Sections 361, 363, and 364(d) of the Bankruptcy Code to such creditors whose Liens have been primed, and (iv) authorizing the payment by the Borrower of all fees and expenses contemplated by

this Agreement and the other Loan Documents, including, but not limited to, those certain fees set forth in Section 22 of this Modification to Loan and Security Agreement, attached as Exhibit A to the Stipulation, each as set forth in such order, and in all respects to be satisfactory to DIP Lender.

“*Interim Order*” shall mean the “Interim Order Authorizing Continuance of Financing of Debtor in Possession, Granting Security Interests, According Priority Status Pursuant to Bankruptcy Code Section 364(c) and Affording Adequate Protection and Giving Notice of Rule 4001(c)(2) Final Hearing” entered by the Bankruptcy Court in the Chapter 11 Case.

“*Obligations*” after the date of the Petition, means “Obligations” as defined in the Pre-Petition Loan Agreement arising before and after the date of the Petition.

“*Permitted Liens*” means the following:

(a) purchase money security interests in specific items of Equipment securing Permitted Indebtedness outstanding on the date of the Petition;

(b) Liens disclosed in Section 7 of the Disclosure Schedule to the Pre-Petition Loan Agreement; provided, however, that to qualify as a Permitted Lien, any such Lien described in Section 7 of the Disclosure Schedule to the Pre-Petition Loan Agreement shall only secure the Indebtedness that it secures on the Closing Date and any permitted refinancing in respect thereof;

(c) liens for taxes, fees, assessments, or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings (which proceedings have the effect of preventing the enforcement of such lien) for which adequate reserves in accordance with GAAP are being maintained, provided the same have no priority over any of Lender’s security interests;

(d) liens of materialmen, mechanics, carriers, or other similar liens arising in the ordinary course of business and securing obligations which are not delinquent or are being contested in good faith by appropriate proceedings (which proceedings have the effect of preventing the enforcement of such lien) for which adequate reserves in accordance with GAAP are being maintained;

(e) liens which constitute banker’s liens, rights of set-off, or similar rights as to deposit accounts or other funds maintained with a bank or other financial institution (but only to the extent such banker’s liens, rights of set-off or other rights are in respect of customary service charges relative to such deposit accounts and other funds, and not in respect of any loans or other extensions of credit by such bank or other financial institution to any Loan Party);

(f) cash deposits or pledges of an aggregate amount not to exceed \$10,000 to secure the payment of worker’s compensation, unemployment insurance, or other social security benefits or obligations, public or statutory obligations, surety or appeal bonds, bid or performance bonds, or other obligations of a like nature incurred in the ordinary course of business; and

(h) Liens shown of DIP Lender arising under the Pre-Petition Loan Agreement or any other Pre-Petition Loan Documents.

For the avoidance of doubt, the term “Permitted Liens” will not include any Liens or other encumbrances arising after the filing of the Petition, other than those Liens in favor of DIP Lender granted hereunder.

“*Permitted Indebtedness*” means:

- (a) the Obligations;
- (b) the Indebtedness existing on the Petition;
- (c) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

For the avoidance of doubt, “Permitted Indebtedness” does not include any Indebtedness for borrowed money or other financing owing to merchant lenders.

“*Petition*” means the voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court, filed by Borrower on February 16, 2018.

“*Pre-Petition*” means any event, matter or item that arose prior to the date of the Petition.

“*Pre-Petition Loan Agreement*” means that certain Loan and Security Agreement, dated as of October 30, 2017, between Borrower and Siena Lending Group, LLC as in effect prior to the date of the Petition.

“*Pre-Petition Loan Documents*” means all “Loan Documents” as such term is defined in the Pre-Petition Loan Agreement

“*Post-Petition*” means any event, matter or item that arose after to the date of the Petition.

“*Stipulation*” means that certain Stipulation Regarding Continuance Of Financing Of Debtor And Debtor In Possession, Priority Of Advances Made, Modification Of The Automatic Stay And Adequate Protection entered into between Lender and Borrower and any amendments thereto.

21. **Fees.** In lieu of the fees set forth in Schedule C of the Pre-Petition Loan Agreement, Borrower shall pay DIP Lender the following fees, which are non-refundable:

(a) **Closing Fee.** A closing fee in an amount of \$50,000, which fee shall be payable on entry of the Interim Order; and

(b) **Collateral Monitoring Fee.** A fee equal to \$15,000 (the “*Collateral Monitoring Fee*”). The full amount of the Collateral Monitoring Fee shall be deemed to be fully earned upon the entry of the Interim Order and shall be payable in installments as follows: (i) equal payments of \$3,000 shall be payable upon the entry of the Interim Order and on the first day of each month thereafter and (ii) the

remaining amount of the Collateral Monitoring Fee shall be paid in full on the Scheduled Maturity Date, or the earlier Termination Date.

(c) **Passport 6.0 Fee.** A fee equal to \$250 per month for access to and use of Passport 6.0, which each such shall be deemed to be fully earned and payable upon the entry of the Interim Order and on the first day of each month thereafter until the earlier of the Scheduled Maturity Date or the Termination Date.

22. **Post-Petition Payments on Account of Pre-Petition Debt.** After the Final Order becomes a final and non-appealable order of the Bankruptcy Court (the “*Effective Date*”), all payments made to DIP Lender (including those funds transferred to the Blocked Account) shall *first* reduce the amount owed to DIP Lender on account of the Pre-Petition Debt until paid in full and *then* to the Post-Petition Debt until paid in full. The DIP Lender shall be entitled to superpriority administrative priority, subject to the Carve-Out for all amounts borrowed by Borrower after the Effective Date hereof of the kind specified in Sections 364(c), 503(b) or 507(b) of the Bankruptcy Code. Borrower acknowledges and agrees that it shall have no right to direct the manner of application of any payments to DIP Lender or any other receipt of proceeds of any of the Collateral.

23. **DIP Orders Control.** This Agreement and the other Loan Documents are each subject to the terms and provisions contained in the DIP Orders to the same extent and effect as if the DIP Orders were fully set forth herein and therein; and in the event that any term or provision of this Agreement or any other Loan Document conflicts or is inconsistent with any term or provision of any DIP Order, the term and provision of the applicable DIP Order shall control and be given effect.

24. **Initial Disbursement of Revolving Loans Under the DIP Credit Facility.** Notwithstanding any other provision of this Agreement or any of the other Loan Documents and without affecting in any manner the rights of DIP Lender under other Sections of this Agreement, it is understood and agreed that the establishment of the DIP Credit Facility and any obligation of DIP Lender to make the initial Revolving Loan after the date of the Petition (“*Initial Disbursement*”) is subject to the satisfaction of the following conditions:

(a) the Interim Order shall have been entered by the Bankruptcy Court, shall be in full force and effect and shall not have been vacated, reversed, modified, appealed, stayed or subject to any motion to reconsider in any respect;

(b) DIP Lender shall have received and approved the DIP Budget; and

(c) the Bankruptcy Court shall have had an initial hearing on the Interim Order within 10 days after the filing of the Petition.

25. **Additional Disbursements of Revolving Loans under the DIP Credit Facility.** Notwithstanding any other provision of this Agreement or any of the other Loan Documents and without affecting in any manner the rights of DIP Lender under other Sections of this Agreement, it is understood and agreed that the establishment of the DIP Credit Facility and any obligation of DIP Lender making any subsequent Loans is subject to the satisfaction of all of conditions set forth in the Initial Disbursement of Loans provision above, and each of the following conditions:

(a) the Final Order, in form and substance satisfactory to DIP Lender, shall have been entered by the Bankruptcy Court, shall be in full force and effect and shall not have been vacated, reversed, modified, appealed stayed or subject to any motion to reconsider in any respect;

(b) there shall be no material adverse change, as determined by DIP Lender in its discretion, in the financial condition or business of Borrower, nor any material decline, as determined by DIP Lender in its discretion, in the market value of any Collateral or a substantial or material portion of the assets of DIP Lender, and no change or event shall have occurred which would impair the ability of the Borrower to perform its obligations hereunder or under any of the other Loan Documents to which it is a party or of DIP Lender to enforce the Obligations or realize upon the Collateral, other than the filing of the Bankruptcy Case and the financial history described in the motion to approve the DIP Orders;

(c) DIP Lender shall have received a borrowing request in the manner set forth in Section 1.4 of the Loan Agreement each advance shall be for the purpose of funding the items set forth on the DIP Budget or the Interim Order, to the extent authorized by the DIP Orders; and

(d) the amount of the Obligations after giving effect to the requested Loan shall not exceed the Maximum Revolving Facility Amount.