

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

In re:	)	
	)	
ANCHOR GLASS CONTAINER CORPORATION,	)	Case No. 8:05-bk-15606
	)	
Debtor.	)	Chapter 11
	)	

**INTERIM ORDER (A) AUTHORIZING DEBTOR TO OBTAIN ADDITIONAL INTERIM POST-PETITION FINANCING AND GRANT PRIMING SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO 11 U.S.C. §§ 105 AND 364; (B) MODIFYING THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362; (C) AUTHORIZING DEBTOR TO ENTER INTO AGREEMENTS WITH WELLS FARGO BANK, NATIONAL ASSOCIATION; AND (D) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001**

Upon the August 8, 2005 oral motion (the "Motion") of Anchor Glass Container Corporation (the "Debtor"), as a debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Case"), pursuant to sections 105, 361, 362, 364(c) and 364(d) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") and Rules 2002, 4001(c), and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), seeking, among other things:

(1) authorization for the Debtor to obtain post-petition advances and other financial accommodations on an interim basis for a period through and including the date of the Final Hearing (as hereinafter defined) from Wells Fargo Bank, National Association in its capacity as agent (in such capacity, "Agent") for certain Noteholders (as hereinafter defined) (each individually, a "Purchaser" and collectively, "Purchasers") party to the Term Sheet (the "Term Sheet"), a copy of which is annexed hereto and incorporated herein as Exhibit "A," in

accordance with all of the terms and conditions set forth therein<sup>1</sup>, and in accordance with this Interim Order, secured by senior priming security interests in and liens upon all of the Noteholders' Collateral (as hereinafter defined) pursuant to section 364(d) of the Bankruptcy Code;

(2) authorization for the Debtor to enter into the Term Sheet;

(3) modification of the automatic stay to the extent hereinafter set forth;

(4) granting to Agent, for the benefit of itself and the Purchasers, a superpriority administrative claim status pursuant to section 364(c)(1) of the Bankruptcy Code in respect of all Obligations of the Debtor under the Term Sheet and other Financing Agreements (the "Obligations"); and

(5) setting a final hearing on the Motion.

Due and appropriate notice of the hearing on the Debtors' first day motions, at which hearing the Motion was made (the "Notice") having been served by the Debtor on (i) counsel for the Purchasers, Akin Gump Strauss Hauer & Feld LLP, Attn: Ira S. Dizengoff, Esq. and David H. Botter, Esq.; (ii) the United States Trustee for the Middle District of Florida (the "U.S. Trustee"); (iii) the holders of the twenty (20) largest unsecured claims against the Debtor's estate (the "20 Largest Unsecured Creditors"); (iv) the Internal Revenue Service; (v) counsel for the Pre-Petition Agent (as hereinafter defined) and Pre-Petition Lenders (as hereinafter defined); (vi) counsel for the Post-Petition Agent (as hereinafter defined) and Post-Petition Lenders (as hereinafter defined); (vii) counsel for Madeline L.L.C., in its capacity as collateral agent and administrative agent (in such capacity, the "Junior Lender Agent") for itself and the other financial institutions from time to time party to the Junior Lender Loan Agreement (as hereinafter defined); (viii) the Bank of New York, as trustee and collateral agent (in such capacity, the "Note Trustee") for the Noteholders; (ix) certain other parties identified in the

---

<sup>1</sup> Capitalized terms not otherwise defined in this Interim Order shall have the respective meanings ascribed thereto in the Term Sheet.

certificate of service filed with the Court, including, without limitation, all creditors who have filed or recorded pre-petition liens or security interests against any of the Debtor's assets (collectively, the "Noticed Parties").

The initial hearing having been held by this Court on August 8, 2005 (the "Interim Hearing").

Upon the record made by the Debtor at the Interim Hearing, and the filings and pleadings in the Case, and good and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

A. Petition. On August 8, 2005 (the "Petition Date"), the Debtor filed a voluntary petition (the "Petition") under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its businesses and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. Jurisdiction and Venue. The Court has jurisdiction of this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The Motion is a "core" proceeding as defined in 28 U.S.C. § 157(b)(2)(A), (D), and (M). Venue of the Case and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. Under the emergency circumstances set forth in the record of the Interim Hearing, the Notice given by the Debtor of the Interim Hearing and the relief granted under this Interim Order constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001(c).

D. Debtor's Acknowledgments and Agreements. The Debtor admits, stipulates, acknowledges and agrees that:<sup>2</sup>

---

<sup>2</sup> The admissions, stipulations, acknowledgements and agreements of Debtor under Paragraph D of this Order are expressly subject to the rights of the Official Committee of Unsecured Creditors, or if none appointed, all other creditors of the Debtor's estate, as set forth in paragraph 4.1 of this Order.

(i) *Pre-Petition Financing Agreements.* Prior to the commencement of the Case, Wachovia Capital Finance Corporation (Central) (“Wachovia”), formerly known as Congress Financial Corporation (Central), in its capacity as agent (the “Pre-Petition Agent”) for certain financial institutions as lenders (each a “Pre-Petition Lender” and collectively, “Pre-Petition Lenders”), made loans, advances and provided other credit accommodations (the “Pre-Petition Loans”) to the Debtor pursuant to: (1) the Loan and Security Agreement, dated August 30, 2002, by and among Debtor, Pre-Petition Lenders, Pre-Petition Agent, Bank of America, N.A., as documentation agent, and General Electric Capital Corporation, as lead bookrunner and syndication agent, together with Amendment No. 1 to Loan and Security Agreement, dated December 31, 2002, Amendment No. 2 to Loan and Security Agreement, dated February 7, 2003, Amendment No. 3 to Loan and Security Agreement, dated July 25, 2003, Amendment No. 4 to Loan and Security Agreement, dated November 4, 2004, and Amendment No. 5 to Loan and Security Agreement, dated February 14, 2005 (as the same has heretofore been amended, supplemented, modified, extended, renewed, restated and/or replaced at any time prior to the Petition Date, the “Existing Loan Agreement”) and (2) all other agreements, documents and instruments executed and/or delivered with, to, or in favor of Pre-Petition Agent and Pre-Petition Lenders, including, without limitation, the security agreements, notes, guarantees, mortgages, Uniform Commercial Code (“UCC”) financing statements and all other related agreements, documents and instruments executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Existing Loan Agreement, as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated and/or replaced at any time prior to the Petition Date, collectively, the “Pre-Petition Financing Agreements”).

(ii) *Junior Lender Debt.* Prior to the Petition Date, Debtor obtained loans, advances and other financial accommodations from Junior Lender Agent and Junior Lenders (as hereinafter defined) pursuant to the Loan and Security Agreement, dated February 14, 2005, by and among Debtor, the financial institutions from time to time party thereto as lenders (collectively, the “Junior Lenders”) and Junior Lender Agent (the “Junior Lender Loan

Agreement” and together with all other all other agreements, documents and instruments executed and/or delivered in connection therewith or related thereto, as all of foregoing now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the “Junior Lender Documents”). Pursuant to the Junior Lender Documents, the obligations owed by Debtor to Junior Lender Agent and Junior Lenders are secured by certain of the Debtor’s assets and other property interests identified in the Junior Lender Documents.

(iii) *11% Senior Secured Notes due 2013.* Prior to the Petition Date, Debtor issued (a) the 11% Senior Secured Notes due 2013 in the original aggregate principal amount of \$300,000,000 (collectively, the “Initial Senior Secured Notes”) and (b) the 11% Senior Secured Notes due 2013 in the original principal aggregate amount of \$50,000,000 (collectively, the “Additional Senior Secured Notes” and together with the Initial Senior Secured Notes, the “Senior Secured Notes”), pursuant to the Indenture, dated February 7, 2003, by and between Note Trustee, as collateral agent and trustee for the holders of the Senior Secured Notes (the “Noteholders”), and Debtor, as issuer, as supplemented and modified by the First Supplement to Indenture, dated on or about August 4, 2003 (collectively, the “Note Indenture”, and together with all other agreements, documents and instruments executed and/or delivered in connection therewith or related thereto, as all of the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the “Noteholder Agreements”). Pursuant to the Noteholder Agreements, the Senior Secured Notes are secured by certain of Debtor’s real property, equipment, fixed assets and other property interests identified in the Noteholder Agreements (the “Noteholders’ Collateral”).

(iv) *Intercreditor Agreements.*

(a) Pre-Petition Agent and Junior Lender Agent entered into an Intercreditor Agreement, dated February 14, 2005 (the “Junior Lender Intercreditor Agreement”), which sets forth, inter alia, the respective rights, obligations, and priorities of the claims and interests of the Pre-Petition Agent and Junior Lender Agent with respect to the Collateral (as defined in the Junior Lender Intercreditor Agreement).

(b) Pre-Petition Agent and Note Trustee entered into a Collateral Access and Intercreditor Agreement, dated February 7, 2003 (the "Noteholder Collateral Access and Intercreditor Agreement" and together with the Junior Lender Intercreditor Agreement, the "Intercreditor Agreements"), which sets forth, inter alia, (i) the respective rights, obligations, and priorities of the claims and interests of the Pre-Petition Agent and Note Trustee with respect to the Collateral and the Revolving Loan Collateral (as each term is defined in the Noteholder Collateral Access and Intercreditor Agreement) and (ii) the right of the Pre-Petition Agent to use the real property and equipment of Debtor in connection with the exercise of Pre-Petition Agent's rights and remedies with respect to the Revolving Loan Collateral.

(v) *Post-Petition Obligations.* As of the Petition Date, the Debtor entered into a post-petition financing arrangement (the "DIP Facility") with Wachovia, in its capacity as agent (the "Post-Petition Agent"), on behalf of certain lenders (each a "Post-Petition Lender" and collectively, the "Post-Petition Lenders"). The proceeds of the DIP Facility were used to refinance the Pre-Petition Loans and to provide the Debtor with working capital within the DIP Facility availability limits..

E. Findings Regarding the Additional Post-Petition Financing.

(i) *Additional Post-Petition Financing.* The Debtor has requested to issue to the Agent and Purchasers, and Agent and Purchasers are willing to purchase, certain Notes as more particularly described and on the terms and conditions set forth in this Interim Order and the Term Sheet.

(ii) *Need for Additional Post-Petition Financing.* The Debtor does not have sufficient available sources of working capital to operate its businesses in the ordinary course of its business without the additional financing requested. The Debtor's ability to maintain business relationships with its vendors, suppliers, and customers, to pay its employees, and to otherwise fund its operations is essential to Debtor's continued viability. The ability of the Debtor to obtain sufficient working capital and liquidity through the proposed issuance of Notes to the Agent and Purchasers as set forth in this Interim Order and the Term Sheet is vital to

the preservation and maintenance of the going concern values of the Debtor. Accordingly, the Debtor has an immediate need to issue the Notes in order to permit, among other things, the orderly continuation of the operation of its businesses, to minimize the disruption of its business operations, and to manage and preserve the assets of its estate in order to maximize the recovery to all estate creditors.

(iii) *No Credit Available on More Favorable Terms.* The Debtor is unable to procure financing in the form of unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code, as an administrative expense under section 364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of an administrative expense priority pursuant to section 364(c)(1) of the Bankruptcy Code without the grant of priming liens on assets. The Debtor has been unable to procure the necessary financing on terms more favorable than the financing offered by Agent and Purchasers pursuant to the Term Sheet; and

(iv) *Budget.* Debtor has prepared and delivered to Agent and Purchasers an initial budget (the "Budget"). Such Budget has been thoroughly reviewed by the Debtor and its management and sets forth, among other things, in each instance commencing with the week beginning July 24, 2005, (A) projected weekly operating cash receipts, (B) projected weekly cash disbursements, (C) projected weekly amount of credit accommodations available to Debtor and (D) projected aggregate amount of outstanding loans, advances and other credit accommodations. The Debtor represents that the Budget is achievable and will allow the Debtor to operate in Chapter 11 without the accrual of unpaid administrative expenses.

(v) *Business Judgment and Good Faith Pursuant to Section 364(e).* The terms set forth in the Term Sheet and this Interim Order are fair, just and reasonable under the circumstances, are ordinary and appropriate for secured financing to debtors-in-possession, reflect the Debtor's exercise of its prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The terms and conditions set forth in the Term Sheet and this Interim Order have been negotiated in good faith and at arms' length by and among the Debtor, Agent and the Purchasers, with all parties

represented by counsel. Any credit extended under the terms of this Interim Order shall be deemed to have been extended in good faith by the Agent and Purchasers as that term is used in section 364(e) of the Bankruptcy Code.

(vi) *Good Cause.* The relief requested is necessary, essential, and appropriate and is in the best interest of and will benefit the Debtor, its creditors, and its estate as its implementation will, among other things, provide the Debtor with the necessary liquidity (i) to minimize disruption to the Debtor's businesses and on-going operations, (ii) preserve and maximize the value of the Debtor's estate for the benefit of all the Debtor's creditors, and (iii) avoid immediate and irreparable harm to the Debtor, its creditors, its business, its employees, and its assets.

(vii) *Immediate Entry.* Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(c)(2). No party appearing in the Case has filed or made an objection to the relief sought or the entry of this Interim Order, or any objections that were made (to the extent such objections have not been withdrawn) are hereby overruled.

Based upon the foregoing, and after due consideration and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

Section 1. Authorization and Conditions to Financing.

1.1 Relief Granted. The relief requested is granted in accordance with Bankruptcy Rule 4001(c)(2) to the extent provided in this Interim Order.

1.2 Authorization to Borrow and Use Note Proceeds. Debtor is hereby authorized and empowered to immediately issue Notes and to incur indebtedness and obligations owing to Agent and Purchasers pursuant to the terms and conditions of this Interim Order and the Term Sheet (as the same have heretofore been or may hereafter be amended, modified, supplemented, restated, extended or replaced); during the period commencing on the date of this Interim Order through and including the date of the Final Hearing as set forth in section 6 of this



Interim Order (the "Interim Financing Period"), and in accordance with the Budget and this Interim Order. Subject to the terms and conditions contained in this Interim Order, and in accordance with the Budget, Debtor shall use the proceeds of the Notes and any other credit accommodations provided to Debtor or pursuant to this Interim Order and the Term Sheet only for the payment of the expense items specified in the Budget, including, without limitation, the fees of the U.S. Trustee, the Clerk of this Court and, subject to section 2.6 of this Interim Order, Allowed Professional Fees (as hereinafter defined); provided, however, that the Debtor shall not use such proceeds for the repurchase or refinancing, in any manner, of the Pre-Petition Loans or the DIP Facility.

1.3 Financing Agreements.

1.3.1 Authorization. The Debtor is hereby authorized and directed to enter into, execute, deliver, perform, and comply with all of the terms, conditions and covenants of the Term Sheet and all other agreements, documents and instruments executed and/or delivered in connection with or related to the Term Sheet (collectively, the "Financing Agreements").

1.3.2 Approval. The Financing Agreements and each term set forth therein are approved to the extent necessary to implement the terms and provisions of this Interim Order. All of such terms, conditions, and covenants shall be sufficient and conclusive evidence of the borrowing arrangements by and among the Debtor, Agent, and Purchasers, and of the Debtor's assumption and adoption of all of the terms, conditions, and covenants of the Term Sheet and the other Financing Agreements for all purposes, including, without limitation, to the extent applicable, the payment of all Obligations arising thereunder, including, without limitation, all principal, interest, and expenses, including, without limitation, all of Agent's and Purchasers' professional fees (including, but not limited to reasonable attorneys' fees and legal expenses), as more fully set forth in the Financing Agreements.

1.3.3 Amendment. Subject to the terms and conditions of the Term Sheet and the other Financing Agreements, Agent, Purchasers and Debtor may amend, modify,

supplement, or waive any provision of the Financing Agreements (an "Amendment") without further approval or order of the Court so long as (i) such Amendment is not material (for purposes hereof, a "material" Amendment shall mean, any Amendment that operates to increase the rate of interest other than as currently provided in the Financing Agreements, add specific new events of default or enlarge the nature and extent of default remedies available to the Agent and Purchasers following an event of default, or otherwise modify any terms and conditions in any Financing Agreement in a manner materially less favorable to the Debtor) and is undertaken in good faith by the Agent, Purchasers, and Debtor; (ii) the Debtor provides prior written notice of the Amendment (the "Amendment Notice") to (v) counsel to any official committee appointed in the Case under section 1102 of the Bankruptcy Code (collectively, the "Committee(s)") or in the event no such Committee is appointed at the time of such Amendment, the 20 Largest Unsecured Creditors; (w) the U.S. Trustee; (x) counsel to the Post-Petition Agent and Post-Petition Lenders; (y) counsel to the Junior Lender Agent and (z) counsel to the Note Trustee, and files the Amendment Notice with the Court; and (iii) no objection to the Amendment is filed with the Court within five (5) business days from the later of the date the Amendment Notice is served or the date the Amendment Notice is filed with the Court in accordance with this section. Any material Amendment to the Financing Agreements must be approved by the Court to be effective.

1.4 Payments and Application of Payments. The Debtor is authorized and directed to make all payments and transfers of estate property to the Agent, for the benefit of itself and the Purchasers, as provided, permitted, and/or required under the Term Sheet and other Financing Agreements, which payments and transfers shall not be avoidable or recoverable from Agent or Purchasers under Sections 547, 548, 550, 553 or any other provision of the Bankruptcy Code or any other claim, charge, assessment, or other liability, whether by application of the Bankruptcy Code, other law, or otherwise. Agent and Purchasers shall apply the proceeds of the Noteholders' Collateral or any other amounts or payments received by Agent and Purchasers in respect of the Obligations in accordance with the Term Sheet and other Financing Agreements

and this Interim Order. Without limiting the generality of the foregoing, the Debtor is authorized and directed, without further order of this Court, except as provided in the Term Sheet, to pay or reimburse the Agent and Purchasers for all present and future costs and expenses, including, without limitation, all reasonable professional fees, consultant fees and legal fees and expenses, paid or incurred by the Agent and/or any Purchasers in connection with the financing transactions as provided in this Interim Order and the Financing Agreements, all of which shall be and are included as part of the principal amount of the Obligations, and shall be secured by the Noteholders' Collateral.

Section 2. Post-Petition Lien; Superpriority Administrative Claim Status.

2.1 Post-Petition Lien.

2.1.1 Post-Petition Lien Granting. To secure the prompt payment and performance of any and all Obligations of Debtor to Agent and Purchasers of whatever kind or nature or description, absolute or contingent, now existing or hereafter arising, Agent, for itself and for the benefit of the other Purchasers, shall have and is hereby granted, effective as of the date hereof, valid and perfected first priority security interests and liens, superior to all other liens, claims and/or security interests that any creditor of the Debtor's estate may have (and certain claims entitled to priority, including the Permitted Liens and Claims (as hereinafter defined), as and to the extent expressly provided in section 2.1.2 below), in and upon all of the Noteholders' Collateral. Notwithstanding the foregoing or anything to the contrary contained in the Term Sheet, Agent's and Purchasers' liens on and security interests in avoidance actions under Chapter 5 of the Bankruptcy Code shall secure all Obligations of the Debtor to Agent and Purchasers upon entry of this Interim Order. In accordance with sections 552(b) and 361 of the Bankruptcy Code, the value, if any, in any of the Noteholders' Collateral, in excess of the amount of all Obligations of the Debtor to Agent and Purchaser secured by such Noteholders' Collateral after satisfaction of the all Obligations of Debtor to Agent and Purchasers, shall constitute additional security for the repayment of the Senior Secured Notes and adequate

protection for the use by Debtor and the diminution in the value of the Noteholders' Collateral existing on the Petition Date.

2.1.2 Lien Priority. The post-petition liens and security interests of Agent and Purchasers granted under the Term Sheet, the other Financing Agreements and this Interim Order in the Noteholders' Collateral shall represent and be priming liens, first and senior in priority to all other interests and liens of every kind, nature and description, whether created consensually, by an order of the Court, or otherwise, including, without limitation, liens or interests granted in favor of third parties in the Noteholders' Collateral in conjunction with sections 363, 364, and/or any other sections of the Bankruptcy Code or other applicable law; provided, however, that Agent's and Purchasers' liens and security interests in the Noteholders' Collateral shall be subject only to (i) the Permitted Liens (as defined in the Note Indenture) and (ii) the Carve Out Expenses (as hereinafter defined) solely to the extent provided for in sections 2.3, 2.4 and 2.5 of this Interim Order (the foregoing clauses (i) and (ii) are collectively referred to herein as the "Permitted Liens and Claims").

2.1.3 Post-Petition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of the post-petition liens and security interests granted herein, effective as of the date hereof, without any further act and without regard to any other federal, state, or local requirements or law requiring notice, filing, registration, recording, or possession of the Noteholders' Collateral or other act to validate or perfect such security interest or lien (a "Perfection Act"). Notwithstanding the foregoing, if the Agent and/or any Purchaser shall, in its sole discretion, elect for any reason to file, record, or otherwise effectuate any Perfection Act, the Agent and/or such Purchaser is authorized to perform such act and the Debtor is authorized and directed to perform such act to the extent necessary or required by the Agent and/or a Purchaser, which act or acts shall be deemed to have been accomplished as of the date and time of entry of this Interim Order notwithstanding the date and time actually accomplished, and in such event, the subject filing or recording office is authorized to accept, file, and/or record any document in regard to such act in accordance with

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

2.2 Superpriority Administrative Expense. For all Obligations of the Debtor to the Agent and the Purchasers now existing or hereafter arising pursuant to this Interim Order, the Term Sheet, the Financing Agreements or otherwise, Agent, for the benefit of itself and the other Purchasers, is granted an allowed superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities and indebtedness of Debtor, whether now in existence or hereafter incurred by Debtor, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, inter alia sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 364(c)(1), 546(c), 726, and/or 1114 of the Bankruptcy Code (the “Superpriority Claim”), provided, however, the Superpriority Claim shall be *pari passu* with the superpriority claims granted to the Post-Petition Agent in connection with the DIP Facility.

2.3 Carve Out Expenses.

2.3.1 Carve Out Expenses. Upon the declaration by Agent of the occurrence of an Event of Default (as hereinafter defined), Agent’s and Purchasers’ liens, claims and security interests in the Noteholders’ Collateral and its Superpriority Claim shall be subject only to the right of payment of the following expenses (the “Carve Out Expenses”):

- a. statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. section 1930(a)(6);
- b. fees payable to the Clerk of this Court; and

c. subject to the terms and conditions of this Interim Order, the unpaid and outstanding reasonable fees and expenses actually incurred on or after the Petition Date, and approved by a final order of the Court pursuant to sections 326, 328, 330, or 331 of the Bankruptcy Code (collectively, the "Allowed Professional Fees") by attorneys, accountants and other professionals retained by the Debtor and any Committee(s) under section 327 or 1103(a) of the Bankruptcy Code (collectively, the "Professionals") excluding the amount of any retainers then held by each Professionals, in a cumulative, aggregate sum not to exceed \$500,000 (the "Professional Fee Carve Out").

2.3.2 Excluded Professional Fees. Notwithstanding anything to the contrary in this Interim Order, the Professional Fee Carve Out shall not be used to pay any Allowed Professional Fees or any other fees and/or expenses incurred by any Professional in connection with any of the following: (a) an assertion or joinder in (but excluding any investigation into) any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief: (i) challenging the legality, validity, priority, perfection, or enforceability of (w) the Obligations, (x) the Senior Secured Notes, (y) Agent's and Purchasers' liens on and security interests in the Noteholders' Collateral, or (z) the Note Trustee's liens on and security interests in the Noteholders' Collateral, (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the Obligations, the Senior Secured Notes, Agent's and Purchasers' liens on and security interests in the Noteholders' Collateral or the Note Trustee's liens on and security interests in the Noteholders' Collateral, or (iii) preventing, hindering, or delaying the Agent's and/or any Purchasers' assertion or enforcement of any lien, claim, right or security interest or realization upon any Noteholders' Collateral in accordance with the terms and conditions of this Interim Order, (b) a request to use the Noteholders' Collateral (as such term is defined in section 363 of the Bankruptcy Code) without the prior written consent of the Agent and the Purchasers in accordance with the terms and conditions of this Interim Order or the Financing Agreements, (c) a request for authorization to obtain debtor-in-possession financing or other financial

accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code other than from Agent and Purchasers without the prior written consent of Agent and Purchasers, (e) the commencement or prosecution of any action or proceeding of any claims, causes of action, or defenses against Agent, any Purchasers, the Note Trustee or any Noteholders or any of their respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, including, without limitation, any attempt to recover or avoid any claim or interest from Agent, any Purchasers, the Note Trustee or any Noteholders under Chapter 5 of the Bankruptcy Code, or (f) any act which has or could have the effect of materially and adversely modifying or compromising the rights and remedies of the Agent or Purchasers, or which is contrary, in a manner that is material and adverse to the Agent and/or the Purchasers, to any term or condition set forth in or acknowledged by the Term Sheet, the Financing Agreements or this Interim Order and which results in the occurrence of an Event of Default under the Term Sheet, the Financing Agreements and/or this Interim Order.

2.4 Payment of Carve Out Expenses. Any payment or reimbursement made either directly by the Agent and Purchasers at any time or by or on behalf of the Debtor on or after the occurrence of an Event of Default in respect of any Allowed Professional Fees or any other Carve Out Expenses shall, in either case, permanently reduce the Professional Fee Carve Out on a dollar-for-dollar basis. Agent's and Purchasers' obligation to fund or otherwise pay the Professional Fee Carve Out and the other Carve Out Expenses shall be added to and made a part of the Obligations, secured by the Noteholders' Collateral, and entitle Agent and Purchasers to all of the rights, claims, liens, priorities and protections under this Interim Order, the Term Sheet, the Financing Agreements, the Bankruptcy Code, and/or applicable law. Payment of any Carve Out Expenses, whether by or on behalf of the Agent and Purchasers, shall not and shall not be deemed to reduce the Obligations and shall not and shall not be deemed to subordinate any of Agent's and Purchasers' liens and security interests in the Noteholders' Collateral or their Superpriority Claim to any junior pre-petition or post-petition lien, interest, or claim in favor of any other party. Except as otherwise provided herein with respect to the Professional Fee Carve

and the other Carve Out Expenses, neither Agent nor any of the Purchasers shall be responsible for the direct payment or reimbursement of any fees or disbursements of any Professionals incurred in connection with the Case under any chapter of the Bankruptcy Code, and nothing in sections 2.3, 2.4, 2.5 or 2.6 of this Interim Order shall be construed to obligate the Agent or any Purchasers in any way, to pay compensation to or to reimburse expenses of any Professional, or to ensure that the Debtor has sufficient funds to pay such compensation or reimbursement.

2.5 Section 507(b) Priority. To the extent Agent's and Purchasers' liens on and security interests in the Noteholders' Collateral or any other form of adequate protection of the Agent's and Purchasers' interests is insufficient to pay indefeasibly in full all Obligations under the Term Sheet, the Financing Agreements or this Interim Order, Agent and Purchasers shall also have the priority in payment afforded by section 507(b) to the extent of any such deficiency.

Section 3. Default; Rights and Remedies; Relief from Stay.

3.1 Events of Default. The occurrence of any of the following events shall constitute an Event of Default under this Interim Order:

a. Debtor's failure to perform, in any respect, any of the terms, conditions or covenants or its obligations under this Interim Order; or

b. An "Event of Default" under the Term Sheet or any of the Financing Agreements.

3.2 Rights and Remedies Upon Event of Default. Upon the occurrence of and during the continuance of an Event of Default, the Debtor shall be bound by all restrictions, prohibitions, and other terms as provided in this Interim Order, the Term Sheet, and the other Financing Agreements, and Agent may elect any and all consequences of such Event of Default, and Agent shall be entitled to take any act or exercise any right or remedy (subject to section 3.4 below) as provided in this Interim Order and/or any Financing Agreement, including, without limitation, declaring all Obligations immediately due and payable, accelerating the Obligations, setting off any Obligations with Noteholders' Collateral or proceeds in the Agent's possession,



and enforcing any and all rights with respect to the Noteholders' Collateral. The Agent and Purchasers shall have no obligation to advance any additional funds to or on behalf of Debtor, or provide any other financial accommodations to Debtor, immediately upon or after the occurrence of an Event of Default or an act, event, or condition that with the giving of notice or the passage of time, or both, would constitute an Event of Default;

3.3 Maturity of Notes. Upon the maturity of the Notes, unless an Event of Default set forth in section 3.2 above occurs sooner and the automatic stay has been lifted or modified pursuant to section 3.4 of this Interim Order, all of the Obligations under the Term Sheet, the other Financing Agreements and this Interim Order shall immediately become due and payable and the Agent and Purchasers shall be automatically and completely relieved from the effect of any stay under section 362 of the Bankruptcy Code or any other restriction on the enforcement of its liens upon and security interests in the Noteholders' Collateral or any other rights granted to the Agent and/or Purchasers pursuant to the terms and conditions of the Term Sheet, the other Financing Agreements or this Interim Order, and Agent and Purchasers shall be and are hereby authorized, in their discretion, to take any and all actions and remedies provided to them in this Interim Order, the Term Sheet, the Financing Agreements and/or applicable law which the Agent and Purchasers may deem appropriate and to proceed against and realize upon the Noteholders' Collateral and any other property of the Debtor's estate.

3.4 Relief from Automatic Stay. The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or by law are hereby modified and vacated without further notice, application, or order of the Court to the extent necessary to permit the Agent to perform any act authorized or permitted under or by virtue of this Interim Order, the Term Sheet or the Financing Agreements, including, without limitation, (a) to implement the post-petition financing arrangements authorized by this Interim Order and pursuant to the terms of the Term Sheet and the Financing Agreements, (b) to take any act to create, validate, evidence, attach, or perfect any lien, security interest, right or claim in the Noteholders' Collateral, and (c) to assess, charge, collect, advance, deduct, and receive payments

with respect to the Obligations under the Term Sheet, the other Financing Agreements and this Interim Order, including, without limitation, all interests, fees, costs, expenses permitted under the Term Sheet, the other Financing Agreements, and apply such payments to the Obligations pursuant to the Term Sheet, Financing Agreements and this Interim Order. In addition, and without limiting the foregoing, upon the occurrence of an Event of Default and after providing three (3) business days prior written notice of an Event of Default (the "Enforcement Notice") to counsel for the Debtor, counsel for the Post-Petition Agent, counsel for the Pre-Petition Agent, counsel for the Junior Lender Agent, counsel for the Note Trustee, counsel for the Committee (if appointed), the U.S. Trustee and the Court, Agent and Purchasers shall be entitled to file an emergency motion to obtain relief from the automatic stay without hearing, take any action and exercise all rights and remedies provided to them by this Interim Order, the Term Sheet, the Financing Agreements and/or applicable law as they may deem appropriate in their sole discretion to, among other things, proceed against and realize upon the Noteholders' Collateral and any other assets and properties of Debtor's estate upon which Agent, for itself and the benefit of the other Purchasers, has been or may hereafter be granted liens and security interests to obtain the full and indefeasible repayment of all Obligations. If a party in interest objects to such a motion, the Agent and Purchasers shall be entitled to a prompt hearing thereafter.

Section 4. Representations; Covenants; and Waivers.

4.1 Objections to Pre-Petition Obligations. Any action, claim, or defense (hereinafter, an "Objection") that seeks to object to, challenge, contest, or otherwise invalidate or reduce, whether by setoff, recoupment, counterclaim, deduction, disgorgement or claim of any kind (a) the existence, validity, or amount of the Senior Secured Notes or (b) the extent, legality, validity, perfection, or enforceability of pre-petition liens and security interests in the Noteholders' Collateral shall be filed with the Court (x) by any Committee, and no other party, within sixty (60) calendar days from the date of appointment of the Committee by the U.S. Trustee, or (y) in the event no Committee is appointed within the thirty (30) days following the Petition Date, by any party in interest with requisite standing within seventy-five (75) calendar

days from the date of entry of this Interim Order (the "Objection Period"). If any such Objection is timely filed and successfully pursued, nothing in this Interim Order shall prevent the Court from granting appropriate relief with respect to the Senior Secured Notes, the Obligations, the Noteholders' Collateral and/or Agent's and Purchasers' liens on the Noteholders' Collateral. If no Objection is timely filed or an Objection is timely filed but denied, (a) the claims related to the Senior Secured Notes shall be deemed allowed in full, shall not be subject to any setoff, recoupment, counterclaim, deduction, or claim of any kind, and shall not be subject to any further objection or challenge by any party at any time, and Note Trustee's pre-petition liens on and security interest in the Noteholders' Collateral shall be deemed legal, valid, perfected, enforceable, and non-avoidable for all purposes, subject to only the Obligations, the Agents and Purchasers liens on and security interests in the Noteholders' Collateral, Permitted Liens and Claims, and (b) Note Trustee, Noteholders and Purchasers and each of their respective agents, officers, directors, employees, attorneys, professionals, successors, and assigns shall be deemed released and discharged from any and all claims and causes of action related to or arising out of the Senior Secured Notes and shall not be subject to any further objection or challenge by any party at any time.

4.2 Debtor's Waivers. At all times during the Case and whether or not an Event of Default has occurred, the Debtor irrevocably waives any right that it may have to seek authority in accordance with this Interim Order (i) to use Noteholders' Collateral of the Agent or any Purchaser under section 363 of the Bankruptcy Code, (ii) to obtain post-petition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code other than from the Agent and/or the Purchasers, or as may be otherwise expressly permitted pursuant to the Term Sheet or Financing Agreements, (iii) to challenge the application of any payments authorized by this Interim Order as pursuant to section 506(b) of the Bankruptcy Code, (iv) to propose or support a plan of reorganization that does not provide for the indefeasible payment in full and satisfaction of all Obligations on the effective date of such plan, or (v) to seek relief under the Bankruptcy Code, including without limitation, under section 105, to the extent any

such relief would in any way restrict or impair the rights and remedies of the Agent, Purchasers or Note Trustee, on behalf of the Noteholders, as provided in this Interim Order and the Financing Agreements or Agent's, any Purchaser's or Note Trustee's exercise of such rights or remedies; provided, however, the Agent, Purchasers or Note Trustee may otherwise consent in writing, but no such consent shall be implied from any other action, inaction, or acquiescence by Agent, Purchasers or Note Trustee.

4.3 Section 506(c) Claims. Subject to the entry of a final order (the "Final Order") or an order extending this Interim Financing Period for more than twenty (20) calendar days, no costs or expenses of administration which have or may be incurred in the Case at any time during the Interim Financing Period shall be charged against the Agent and/or any Purchaser, their claims, or the Noteholders' Collateral pursuant to section 506(c) of the Bankruptcy Code without the prior written consent of the Agent and Purchasers, and no such consent shall be implied from any other action, inaction, or acquiescence by the Agent and Purchasers.

4.4 Collateral Rights. Until all of the Obligations shall have been indefeasibly paid and satisfied in full: (a) no other party, shall foreclose or otherwise seek to enforce any junior lien or claim in any Noteholders' Collateral, and (b) subject to further order of the Court, upon and after the occurrence of an Event of Default and subject to section 3.4 of this Interim Order, the Agent (together with its agents, employees, representatives, consultants and/or contractors), in its discretion, in connection with a liquidation or other disposition of any of the Noteholders' Collateral, may enter upon, occupy, and use any real property, equipment, leasehold interests, warehouse arrangements, trademarks, tradenames, copyrights, licenses, patents, or any other assets of the Debtor, which are owned by or subject to a lien of any party other than the Debtor and which are used by the Debtor in its businesses, all without interference from the respective lessors, licensors, or owner of such property for the purpose of conducting liquidation sales of the Debtor's assets and properties; provided that, Agent and Purchasers will be responsible for the payment of any fees, rentals, royalties, or other amounts due such lessor,

licensor, or owner of such property and any reasonable costs or expenses incurred by such lessor, licensor, or owner for the period of time that the Agent actually occupies or uses the premises, equipment, or the intellectual property (but in no event for any accrued and unpaid fees, rentals, or other amounts due for any period prior to or after the date that the Agent actually occupies or uses such assets or properties).

4.5 Release. Upon the earlier of (a) the entry of a Final Order approving the Motion or (b) the entry of an Order extending the Interim Financing Period beyond twenty (20) calendar days after the date of this Interim Order, and in each instance subject to paragraph 4.1 above, in consideration of Agent and Purchasers making post-petition advances and providing other credit and financial accommodations to the Debtor pursuant to the provisions of the Term Sheet, the Financing Agreements and this Interim Order, Debtor, on behalf of itself and its successors and assigns, (collectively, the "Releasers"), shall, forever release, discharge and acquit Agent and each Purchaser, and their respective officers, directors, agents, attorneys and predecessors-in-interest (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, including, without limitation, any so-called "lender liability" claims or defenses, that Releasers had, have or hereafter can or may have against Releasees as of the date hereof, in respect of events that occurred on or prior to the date hereof with respect to the Debtor, the Senior Secured Notes, the Obligations, the Term Sheet, the Financing Agreements and any Notes or other financial accommodations made by Purchasers to Debtor pursuant to the Term Sheet and Financing Agreements. In addition, upon the indefeasible payment in full of all Obligations owed to Agent and Purchasers by Debtor and termination of the rights and obligations arising under the Term Sheet and Financing Agreements and this Interim Order (which payment and termination shall be on terms and conditions acceptable to Lender), Agent and each Purchaser shall be released from any and all obligations, liabilities, actions, duties, responsibilities and causes of action arising or occurring in connection with or related to the Term Sheet, Financing Agreements and/or this Interim Order (including without

limitation any obligation or responsibility (whether direct or indirect, absolute or contingent, due or not due, primary or secondary, liquidated or unliquidated) to pay or otherwise fund the Carve-Out Expenses), on terms and conditions acceptable to Agent and Purchasers.

4.6 Noteholder Adequate Protection. The Note Trustee, for the benefit of the Noteholders, is entitled, pursuant to sections 361, 363(e) and 364(d)(1)(B) of the Bankruptcy Code, to adequate protection of their interests in the Noteholders' Collateral, to the extent there is a diminution in the value of the Noteholders' interests in the Noteholders' Collateral, from and after the date hereof. As adequate protection for any diminution in value of the Noteholders' interests in the Noteholders' Collateral, the Note Trustee, on behalf of the Noteholders, is hereby granted valid, perfected and enforceable security interests (the "Adequate Protection Liens") immediately junior to the liens, claims and interests granted under section 364 of the Bankruptcy Code in and upon the Noteholders' Collateral in favor of the Agent and the Purchasers and subordinate only to the Permitted Liens and Claims.

4.7 The Adequate Protection Liens herein granted: (i) are and shall be in addition to all security interests, liens and rights of set-off existing in favor of the Note Trustee, on behalf of the Noteholders, on the Petition Date or the date hereof; and (ii) are and shall be valid, perfected, enforceable and effective as of the date hereof without any further action by the Debtor, the Note Trustee or the Noteholders and this Interim Order shall be sufficient and conclusive evidence of the priority, perfection and validity of all of the liens and security interests in and upon the Noteholders' Collateral in the priorities set forth herein, without the necessity of filing, recording or serving any financing statements, mortgages, deeds of trust or other agreements, documents or instruments which may otherwise be required under federal or state law in any jurisdiction or the taking of any other action to validate or perfect the Adequate Protection Liens. To the extent that any applicable non-bankruptcy law would otherwise restrict the grant, scope, enforceability, attachment or perfection of the Adequate Protection Liens authorized or created hereby, or otherwise would impose filing or registration requirements with respect thereto, such law is hereby pre-empted to the maximum extent permitted by the United

States Constitution, the Bankruptcy Code, applicable federal law, and the judicial power of the United States Bankruptcy Court or other federal courts.

4.8 Noteholder Adequate Protection Superpriority Claim. In addition to the Adequate Protection Liens granted to the Note Trustee, on behalf of the Noteholders, the Note Trustee is hereby granted an administrative claim under sections 503(b)(1), 507(a) and 507(b) of the Bankruptcy Code (the "Adequate Protection Superpriority Claim") to the extent and for the amount by which the adequate protection afforded herein for any diminution of value of the Noteholders' Collateral from and after the Petition Date proves to be inadequate. Such Adequate Protection Superpriority Claim shall have priority in right of payment over any and all other obligations, liabilities and indebtedness of the Debtor, now in existence or hereafter incurred by the Debtor and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, *inter alia*, sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 364(c)(1) and/or 726 of the Bankruptcy Code, but subordinate to the Superpriority Claim and the claims granted to the Post-Petition Agent in connection with the DIP Facility and the Agent and the Purchasers granted herein.

4.9 Further Noteholder Adequate Protection. As further adequate protection for the use of the Noteholders' Collateral in addition, and supplemental, to the adequate protection provided to the Note Trustee on behalf of the Noteholders in the Interim Order (i) the Noteholders and the Note Trustee shall receive from the Debtor immediate cash payment of all accrued and unpaid fees and disbursements (including, but not limited to, fees owed to the Noteholders and the Note Trustee, any professionals or advisors retained by the Ad Hoc Committee of Noteholders and counsel to the Note Trustee (together, the "Advisors") owing and incurred prior to or after the Petition Date; and (ii) subject to the provisions of the Term Sheet, the Debtor shall make current cash payments of all fees and expenses of the Advisors, including, but not limited to, the reasonable fees and disbursements of counsel and other consultants for the Ad Hoc Committee of Noteholders and the Note Trustee. The payments to be made in accordance with the provisions of this paragraph are being made for the purpose of, among other

things, protecting the Note Trustee's and the Noteholders' respective claims, obligations and collateral interests in the Noteholders' Collateral from potential depreciation as a result of the automatic stay and the Debtor's use of the Noteholders' Collateral.

Section 5. Other Rights and Obligations.

5.1 No Modification or Stay of This Interim Order. Notwithstanding (i) any stay, modification, amendment, supplement, vacating, revocation, or reversal of this Interim Order, the Financing Agreements, or any term hereunder or thereunder, (ii) the failure to obtain a Final Order pursuant to Bankruptcy Rule 4001(c)(2), or (iii) the dismissal or conversion of the Case (each a "Subject Event"), (x) the acts taken by the Agent and Purchasers in accordance with this Interim Order and (y) the Obligations incurred or arising prior to the Agent's actual receipt of written notice from Debtor expressly describing the occurrence of such Subject Event shall be governed in all respects by the original provisions of this Interim Order, and the acts taken by Agent and/or any Purchaser in accordance with this Interim Order, and the post-petition liens granted to (a) Agent and Purchasers and (b) Note Trustee on behalf of the Noteholders, and all other rights, remedies, privileges, and benefits in favor of the Agent, Purchasers, Note Trustee and Noteholders pursuant to this Interim Order and the Financing Agreements shall remain valid and in full force and effect pursuant to section 364(e) of the Bankruptcy Code. For purposes of this Interim Order, the term "appeal", as used in section 364(e) of the Bankruptcy Code, shall be construed to mean any proceeding for reconsideration, amending, rehearing, or re-evaluating this Interim Order by this Court or any other tribunal.

5.2 Power to Waive Rights; Duties to Third Parties. The Agent and Purchasers shall have the right to waive any obligations of the Debtor, or any rights and remedies provided or acknowledged in this Interim Order (the "Purchaser Rights"), and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce any Purchaser Rights. Any waiver by the Agent or any Purchaser of any Purchaser Rights shall not be or constitute a continuing waiver. A delay in or failure to exercise or enforce any Purchaser Right shall neither constitute a waiver of such Purchaser Right, subject



the Agent or any Purchaser to any liability to any other party, nor cause or enable any other party to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtor to the Agent and Purchasers.

5.3 Disposition of Collateral. Debtor shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Noteholders' Collateral without the prior written consent of the Agent and Purchasers (and no such consent shall be implied, from any other action, inaction or acquiescence by the Agent and Purchasers) and an order of this Court, except for sales of Debtor's Inventory in the ordinary course of its business or as approved by the Bankruptcy Court.

5.4 Reservation of Rights. Except as may be inconsistent with the provisions of this Interim Order, the terms, conditions and provisions of this Interim Order is in addition to and without prejudice to the rights of Agent, any Purchaser, the Note Trustee or any Noteholder to pursue any and all rights and remedies under the Bankruptcy Code, the Term Sheet, the Financing Agreements, or any other applicable agreement or law, including, without limitation, rights to seek adequate protection and/or additional or different adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any request for use of cash collateral or granting of any interest in the Noteholders' Collateral or priority in favor of any other party, to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of Professionals or other parties seeking compensation or reimbursement from the estate.

5.5 Binding Effect. This Interim Order shall be binding upon Debtor, the Pre-Petition Agent, the Prepetition Lenders, the Junior Lenders, all parties in interest in the Case, and their respective successors and assigns, including any trustee or other fiduciary appointed in the Case or any subsequently converted bankruptcy case(s) of the Debtor. This Interim Order shall also inure to the benefit of Agent, Purchasers, Note Trustee, Noteholders, Debtor, and their respective successors and assigns. The provisions of this Interim Order, the Term Sheet and the Financing Agreements and any and all rights, remedies, privileges, and benefits in favor of the

Agent, Purchasers, Note Trustee or Noteholders provided or acknowledged in this Interim Order, and any actions taken pursuant thereto, shall be effective immediately upon entry of this Interim Order pursuant to Bankruptcy Rules 6004(g) and 7062, shall continue in full force and effect, and shall survive entry of any other order.

5.6 Term; Termination. Notwithstanding any provision of this Interim Order to the contrary, the term of the financing arrangements among Debtor, Agent and Purchasers authorized by this Interim Order may be terminated pursuant to the terms of the Term Sheet or other Financing Agreements.

5.7 Limited Effect. Unless the Interim Order specifically provides otherwise, in the event of a conflict between the terms and provisions of any of the Term Sheet, Financing Agreements and this Interim Order, the terms and provisions of this Interim Order shall govern, interpreted as most consistent with the terms and provisions of the Term Sheet and the Financing Agreements.

5.8 Objections Overruled. All objections to the Interim Order are hereby overruled.

Section 6. Final Hearing and Response Dates. The Final Hearing on the Motion pursuant to Bankruptcy Rule 4001(c)(2) is scheduled for 8/30/, 2005, at 12:30 before this Court. *The Debtor shall promptly mail copies of this Interim Order to the Noticed Parties, and to any other party that has filed a request for notices with this Court and to counsel for any Creditors' Committee after same has been appointed. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections, which objections shall be served upon (a) counsel for the Debtor, Carlton Fields Attorneys at Law, Corporate Center Three at International Plaza, 4221 West Boy Scout Boulevard, Suite 1000, Tampa, Florida 33607; Attn: Robert A. Soriano, Esq., Fax: (813) 229 4133; (b) counsel to the Agent, Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178; Attn: Mark Somerstein, Esq.; (c) counsel for the Purchasers, Akin Gump Strauss Hauer & Feld LLP, 590 Madison Avenue, New York, New York 10022; Attn: Ira S. Dizengoff, Esq., David H. Botter, Esq.; (d) counsel for the Post-*

*Petition Agent, Otterbourg, Steindler, Houston & Rosen, P.C., 230 Park Avenue, New York, New York 10169-0075; Attn: Jonathan N. Helfat, Esq., Fax: (212) 682-6104; (e) counsel for the Junior Lender Agent; (f) counsel for the Note Trustee; (g) counsel to any Committee; and (h) the U.S. Trustee; and shall be filed with the Clerk of the United States Bankruptcy Court for the Middle District of Florida, in each case to allow actual receipt of the foregoing no later than 8/22/05, prevailing Eastern time. In the event this Court modifies any of the provisions of this Interim Order, the Term Sheet or the Financing Agreements following such further hearing, such modifications shall not affect the rights and priorities of Agent and Purchasers pursuant to this Interim Order with respect to the Noteholders' Collateral, and any portion of the Obligations which arises or is incurred or is advanced prior to such modifications (or otherwise arising prior to such modifications), and this Interim Order shall remain in full force and effect except as specifically amended or modified at such Final Hearing.*

DONE AND ORDERED on \_\_\_\_\_ ~~AUG 10 2005~~

  
\_\_\_\_\_  
ALEXANDER L. PASKAY  
United States Bankruptcy Judge

Copy to:

Robert A. Soriano, Esq.  
Carlton Fields, P.A.  
P.O. Box 3239  
Tampa, FL 33601-3239

Mr. Soriano is directed to serve a copy of this order on the attached Service List.