



**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

**The following constitutes the order of the Court.**

Signed February 15, 2006

  
United States Bankruptcy Judge

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

IN RE:

INTEGRATED ELECTRICAL SERVICES,  
INC., *et al.*

DEBTORS.

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CASE NO. 06-30602-BJH-11

(Chapter 11)  
(Jointly Administered)

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, GRANTING SENIOR SECURITY INTERESTS AND ACCORDING PRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO SECTION 364(c) AND 364(d) OF THE BANKRUPTCY CODE, (2) AUTHORIZING THE USE OF CASH COLLATERAL (3) GRANTING ADEQUATE PROTECTION, (4) MODIFYING THE AUTOMATIC STAY, AND (5) APPROVING FORM AND MANNER OF NOTICE AND SCHEDULING A FINAL HEARING UNDER BANKRUPTCY RULE 4001(c)**

This matter came before the Court on motion dated February 14, 2006 (the "Motion") [Docket No. 10] of Integrated Electrical Services, Inc. and those direct and indirect subsidiaries set forth on Addendum 1 to the Motion (collectively, the "Debtors") as Debtors and Debtors in possession, requesting, *inter alia*, entry of an order:

- (i) authorizing the Debtors, pursuant to Sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d)(1) of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to obtain post-petition loans, advances, letters of credit and other financial accommodations on an interim basis from Bank of America, N.A. (in its post-petition capacity, “Agent”), as Agent and Lender, and such other Lenders who may become Lenders (together with their respective successors and assigns, the “DIP Lenders”), in accordance with the DIP Loan Agreement and this Interim Order (as hereinafter defined) and secured by security interests in and liens upon all of the Collateral (as hereinafter defined);
- (ii) authorizing the Debtors to enter into the Debtor-in-Possession Loan and Security Agreement (the “DIP Loan Agreement”) (capitalized terms not otherwise defined in this Interim Order shall have the respective meanings ascribed thereto in the DIP Loan Agreement);
- (iii) affording adequate protection to the DIP Lenders;
- (iv) modifying the automatic stay to the limited extent hereinafter set forth;
- (v) approving form and manner of notice and scheduling a final hearing pursuant to Bankruptcy Rule 4001(c); and
- (vi) granting to the DIP Lenders superpriority administrative claim status and liens pursuant to Sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code.

**BASED UPON THE STIPULATIONS OF THE PARTIES, AND THE EVIDENCE PRESENTED, THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

A. On February 14, 2006 (the "Petition Date"), Debtors filed their voluntary petitions (these "Cases") under chapter 11 of the Bankruptcy Code. The Debtors are currently operating their businesses and managing their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no official committee has been appointed in any of these Cases.

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

C. On February 14, 2006, notice of the preliminary hearing (the "Hearing") was served by facsimile, e-mail or hand-delivery (the "Notice") upon (i) the United States Trustee, (ii) the consolidated list of fifty (50) largest unsecured creditors (the "50 Largest Unsecured Creditors"), (iii) certain known secured creditors and/or their counsel, (iv) counsel to the Debtors' sureties, Ad Hoc Committee of senior subordinated noteholders, and senior convertible noteholders and (v) certain other parties (collectively, the "Noticed Parties"). Copies of the Motion with a proposed order substantially similar to this Order were served on February 14, 2006, on the Noticed Parties by facsimile, e-mail or hand delivery. The Motion was filed with the Court on February 14, 2006, and available for public inspection after that time and date. The

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**

Hearing was a preliminary hearing within the meaning of Bankruptcy Rules 4001(b)(2) and 4001(c)(2).

D. The Debtors acknowledge that, as of the Petition Date, pursuant to a Loan and Security Agreement dated August 1, 2005 (the "Pre-Petition Loan Agreement") between the Debtors and Bank of America, N.A. (in its pre-petition capacity, "BofA"), BofA has issued approximately \$54,590,201.80 of commercial standby letters of credit (the "Pre-Petition Letters of Credit") for the benefit of the Debtors, and provided other financial accommodations to the Debtors (together with all interest, attorneys' fees, and other expenses heretofore or hereafter accruing or chargeable to Debtors and all other obligations of the Debtors to BofA under the Pre-Petition Loan Agreement, the "Pre-Petition Debt"). The Pre-Petition Loan Agreement, together with all other documents related to or evidencing the Pre-Petition Debt shall be collectively referred to herein as the "Pre-Petition Credit Documents." As of the Petition Date, no Pre-Petition Letters of Credit had been drawn upon.

E. The Pre-Petition Debt constitutes a valid and binding obligation of the Debtors, enforceable in accordance with its terms, and the Debtors will not assert any claims, counterclaims, setoffs or defenses of any kind or nature, which would in any way affect the validity and enforceability of any of the Pre-Petition Debt and BofA's security interests in and liens upon the Pre-Petition Collateral (as hereinafter defined), or which would in any way reduce the obligation of the Debtors to pay to BofA in full all of the Pre-Petition Debt.

F. The Debtors granted to BofA, in connection with the Pre-Petition Debt, first priority liens and security interests in substantially all of the Debtors' assets and

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**

properties, excluding the “Excluded Collateral” (as defined in the Pre-Petition Loan Agreement), but including, without limitation, and by way of general description only, accounts, inventory, equipment, instruments, chattel paper, documents, general intangibles (including, without limitation, all copyrights, deposit accounts, licensing agreements, patents, trademarks, and trade names), real property, securities and other investment property, and products of all of the foregoing, wherever located (collectively, together with any other property of the Debtors’ estates in which a security interest or lien has been granted to or for the benefit of BofA prior to the Petition Date, the “Pre-Petition Collateral”). The Debtors acknowledge that BofA holds valid, enforceable and first priority liens on and security interests in the Pre-Petition Collateral evidenced by various Uniform Commercial Code filings, and other filings, subject to certain Permitted Liens.

G. An immediate and ongoing need exists for the Debtors to obtain financing in order to preserve the value of their business and assets as debtors in possession under Chapter 11 of the Bankruptcy Code and to minimize the disruption of the Debtors as going concerns. The Debtors are unable to obtain financing in the form of unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code, as an administrative expense or solely in exchange for the grant of a superpriority administrative expense priority pursuant to Section 364(c)(1) of the Bankruptcy Code, and other than the financing from the DIP Lenders pursuant to the DIP Loan Agreement, the Debtors are unable to obtain financing in the form of credit secured by liens that are junior to existing liens on property of the Debtors’ estates pursuant to Sections 364(c)(2) and (c)(3) of the

Bankruptcy Code. The relief sought in the Motion is necessary to avoid immediate and irreparable harm and injury to the Debtors' estates.

H. The Debtors have prepared an initial 13-week budget, a copy of which is attached hereto as Exhibit "A" (as supplemented from time to time in accordance with the DIP Loan Agreement, the "Budget"), setting forth, *inter alia* the Debtors' projected cash expenditures and receipts on a weekly basis, commencing as of the week ending February 18, 2006 through and including the week ending May 13, 2006. The Budget is being relied upon by the DIP Lenders in determining to enter into post-petition financing with the Debtors.

I. The Debtors have requested that the DIP Lenders extend credit based upon the Budget, and the DIP Lenders are willing to provide such credit, upon the terms and conditions set forth in the DIP Loan Agreement and this Interim Order.

J. The terms of the financing authorized by this Interim Order are fair and reasonable, reflect the Debtors' exercise of prudent business judgment and are supported by reasonably equivalent value and fair consideration.

K. The DIP Loan Agreement has been negotiated in good faith and at arm's length between the Debtors, on one hand, and the Agent and DIP Lenders on the other hand, and all loans and other extensions of credit made by the DIP Lenders to the Debtors pursuant to the DIP Loan Agreement shall be deemed to have been made in good faith within the meaning of Section 364(e) of the Bankruptcy Code.

**ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. The Motion is granted to the extent provided below. This order shall be referred to as the "Interim Order."

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**

2. The Debtors are hereby authorized (i) to execute and deliver the DIP Loan Agreement, as well as any and all other documents referred to therein or reasonably requested by the DIP Lenders to give effect to the terms thereof, (ii) to obtain post-petition loans, letters of credit and other extensions of credit from the DIP Lenders from time to time pursuant to the DIP Loan Agreement (all such post-petition loans, letters of credit and extensions of credit, collectively, the “DIP Loans”), to incur any and all liabilities and obligations thereunder, to pay all interest, fees (including, but not limited to, the Closing Fee), any attorneys’ fees and expenses and other obligations provided for under the DIP Loan Agreement, and (iii) to pay and perform all obligations, covenants and agreements in accordance with the terms of the DIP Loan Agreement; provided, however, that fees and costs of the DIP Lenders’ case professionals will be subject to review by the Court in accordance with the procedures to be set forth in the Final Order.

3. The Pre-Petition Letters of Credit shall continue in full force and effect and, upon execution of the DIP Loan Agreement, shall be deemed to be issued and outstanding under the DIP Loan Agreement. Accordingly, any reimbursement obligations of the Debtors resulting from post-petition draws on any of the Pre-Petition Letters of Credit, as well as all other obligations under the Pre-Petition Credit Documents shall, upon execution of the DIP Loan Agreement, constitute Obligations under the DIP Loan Agreement.

4. All Obligations under the DIP Loan Agreement, including but not limited to, all DIP Loans made by the DIP Lenders to the Debtors under the DIP Loan Agreement, together with all interest, fees (including legal fees) and all other sums and charges at

any time or from time to time payable by the Debtors in connection therewith (collectively, the “Post-Petition Debt”), shall be, and hereby are, secured by: (i) pursuant to Section 364(c)(1) of the Bankruptcy Code, a superpriority claim in these Cases superior to any and all administrative expenses of the Debtors other than the Carve-Out (as hereinafter defined) and Trustee Fees (as hereinafter defined), but *pari passu* with the superpriority claims granted to Federal Insurance Company (“Federal”) and SureTec Insurance Company (“SureTec”) under the DIP bonding facilities with such sureties, (ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, a perfected first priority lien on all unencumbered property of the Debtors, (iii) pursuant to Section 364(c)(3) of the Bankruptcy Code, a perfected junior lien on all property of the Debtors that is subject to valid and unavoidable Permitted Liens in existence at the time of the commencement of these Cases or to Permitted Liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by Section 546(b) of the Bankruptcy Code, in each case, only to the extent such Permitted Liens are not otherwise primed as set forth in clause (iv) below, and (iv) pursuant to Section 364(d)(1) of the Bankruptcy Code, a perfected first priority, senior priming lien on all of the property of the Debtors, subject only to valid and unavoidable Permitted Liens that are in existence on the Petition Date, that under applicable law are senior to and have not been subordinated to the liens and security interests of BofA under the Pre-Petition Loan Agreement (collectively, the “Post-Petition Collateral” and together with the Pre-Petition Collateral, sometimes collectively referred to herein as the “Collateral”). Wherever in this Interim Order reference is made to any property or assets of the Debtors (including, without limitation, any of the Collateral), such reference shall be

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**



understood to mean all property of the estates of the Debtors created pursuant to Section 541 of the Bankruptcy Code; provided, however, the Collateral shall not include avoidance actions created under Chapter 5 of the Bankruptcy Code or other Excluded Collateral under the DIP Loan Agreement.

5. In no event shall any lien or security interest granted to the DIP Lenders pursuant to the DIP Loan Agreement, or conferred upon the DIP Lenders by the terms of this Interim Order, be subject to any pre-petition or post-petition lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under Section 551 of the Bankruptcy Code; and in no event shall any person or entity who pays (or, through the extension of credit to the Debtors, causes to be paid) any of the Post-Petition Debt be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or security interests granted to or in favor of, or conferred upon, the DIP Lenders by the terms of the DIP Loan Agreement or this Interim Order, until such time as all of the Post-Petition Debt is indefeasibly paid and satisfied in full (in the manner specified in the DIP Loan Agreement) and the DIP Loan Agreement is terminated in accordance with its terms.

6. The term of the interim financing arrangements among the DIP Lenders and the Debtors authorized by this Interim Order shall be for a period commencing on the date hereof and ending on the sooner of: (i) forty-five (45) days after the entry of the Interim Order, if the Final Order has not been entered prior to the expiration of such 45-day period, (ii) the effective date of a plan of reorganization that is confirmed pursuant to an order entered by the Court or any other court having jurisdiction in the Cases of the Debtors; or (iii) the acceleration of the loans and the termination of the Commitment in

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**

accordance with the DIP Loan Agreement. On the Commitment Termination Date, all Post-Petition Debt shall be indefeasibly paid and satisfied in full in the manner specified in the DIP Loan Agreement.

7. All rents, income, profits, cash in accounts and deposits derived from the Collateral constitute cash collateral (collectively, the "Cash Collateral"). Provided that each of the Cash Collateral Conditions (hereinafter defined) is satisfied, then the Debtors shall be authorized to use the DIP Lenders' Cash Collateral (other than amounts in the Cash Collateral Account) as set forth in the DIP Loan Agreement in the same manner and for the same purposes as the DIP Loans may be used pursuant to the DIP Loan Agreement (but for no other purposes). As used herein, the term "Cash Collateral Conditions" shall mean the following conditions, the satisfaction of each of which shall be a condition to Debtors' authorization to use any Cash Collateral: (i) no Event of Default under (and as defined in) the DIP Loan Agreement exists and is continuing, and (ii) the Commitment Termination Date under (and as defined in) the DIP Loan Agreement has not occurred. Absent further order of the Court, but only to the extent such order provides the DIP Lenders all adequate protection to which they are entitled, on any date if any of the Cash Collateral Conditions is not satisfied, then the Debtors shall not be authorized to use any Cash Collateral unless and until such use is consented to by the DIP Lenders in their sole and absolute discretion. Absent further order of the Court, if the Commitment Termination Date occurs, then the Debtors shall remit to the DIP Lenders any Cash Collateral then in the Debtors' possession for application to the Post-Petition Debt. As adequate protection pursuant to Sections 361 and 363 of the Bankruptcy Code for the diminution in value arising out of the Debtors'

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**

use, sale or other disposition of any of the Cash Collateral the DIP Lenders are hereby granted a continuing, additional and replacement lien and first priority security interest in all of the Collateral, subject only to valid and unavoidable Permitted Liens that are in existence on the Petition Date, that under applicable law are senior to and have not been subordinated to the liens and security interests of BofA under the Pre-Petition Loan Agreement.

8. From and after the date of the entry of this Interim Order (a) all collections and proceeds of any Collateral and (b) except (i) Surety Collateral segregated at the direction of Federal, upon the occurrence of an Event of Default as defined in the order entered February 14, 2006 approving the Federal DIP bonding facility (notice of such segregation shall be provided to the DIP Lenders), or (ii) as detailed in the SureTec Letter, all other cash or cash equivalents which shall at any time come into the possession or control of any of the Debtors, or to which the Debtors shall become entitled at any time, shall be deposited in the same bank accounts into which any of the Debtors' collections and/or proceeds of the Pre-Petition Collateral were deposited under the Pre-Petition Loan Agreement (or in such other accounts as are designated by the Agent and DIP Lenders from time to time), and such collections and proceeds upon such deposit shall become the Agent's and DIP Lenders' Collateral and shall be applied against the Post-Petition Debt, in the order and manner set forth in the DIP Loan Agreement, whether prior to or after the occurrence of an Event of Default.

9. Subject to the Carve Out and Trustee Fees, all Post-Petition Debt shall have superpriority administrative expense status in accordance with the provisions of Section 364(c)(1) of the Bankruptcy Code over all other administrative expenses in

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**

these Cases of the kind specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 507(a), and/or 507(b) of the Bankruptcy Code, but *pari passu* with any superpriority claims granted to Federal and SureTec under their DIP bonding facilities.

10. The Debtors are authorized to use Cash Collateral and the proceeds of the DIP Loans solely for purposes authorized by the DIP Loan Agreement and solely in accordance with the Budget, within the variances set forth below. The Debtors' actual cash receipts shall be: (i) for the first calendar week, at least seventy-five percent (75%) of those projected for the corresponding week in the Budget, (ii) in the aggregate for the first two calendar weeks, at least eighty percent (80%) of the aggregate amount projected for the first two calendar weeks in the Budget, (iii) in the aggregate for the first three calendar weeks, at least eighty-five percent (85%) of the aggregate amount projected for the first three calendar weeks in the Budget, and (iv) in the aggregate for the first four calendar weeks, and for each thereafter occurring trailing four calendar week period, on an aggregate basis at least ninety percent (90%) of those projected for the corresponding period in the Budget. Likewise, the Debtors' actual cash disbursements may not exceed projected cash disbursements by: (i) more than twenty-five percent (25%) per line item for the first calendar week of the Budget, and more than twenty percent (20%) in the aggregate for all cash disbursements during the first calendar week, (ii) more than twenty percent (20%) per line item in the aggregate for the first two calendar weeks of the Budget, and more than fifteen percent (15%) in the aggregate for all cash disbursements during the first two calendar weeks, (iii) more than fifteen percent (15%) per line item in the aggregate for the first three calendar weeks of the Budget, and more than ten percent (10%) in the aggregate for all cash

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**

disbursements during the first three calendar weeks, and (iv) more than ten percent (10%) per line item in the aggregate for the first four calendar week period and for each thereafter occurring trailing four calendar week period with the relevant per line items in the Budget, and more than five percent (5%) in the aggregate for all cash disbursements during the first four calendar week period and for each thereafter occurring trailing four calendar week period. Failure of the Debtors to attain or comply with the Budget (within the variances) shall be an Event of Default, as hereinafter defined.

11. The Debtors shall concurrently herewith or hereafter, as requested by the DIP Lenders, execute and deliver to the DIP Lenders all such documents as the DIP Lenders may reasonably request to effectuate, evidence, confirm, validate or perfect the DIP Lenders' liens on and security interests in the Collateral as provided for herein or granted pursuant to any of the DIP Loan Agreement, including, without limitation, UCC-1 financing statements, mortgages, continuation statements, amendments, lock box and blocked account agreements. BofA, the Agent and the DIP Lenders shall not be required to file any UCC-1 financing statements, or any other document, or take any other action (including possession of any of the Pre-Petition Collateral or Post-Petition Collateral) in order to validate or perfect the liens and security interests granted to BofA, the Agent and the DIP Lenders hereunder or under any of the DIP Loan Agreement, as all such liens and security interests shall be deemed automatically perfected by and upon entry of this Interim Order. If BofA, the Agent or the DIP Lenders shall, in their discretion, choose to file such UCC-1 financing statements (or amendments to or continuations of any existing financing statements) and otherwise

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**

confirm perfection of such liens and security interests, all such financing statements or similar instruments shall be deemed to have been filed or recorded at the time and on the date of entry of this Interim Order. BofA, the Agent or the DIP Lenders may, in their discretion, file a certified copy of this Interim Order in any filing or recording office in any jurisdiction in which the Debtors have or maintain any Pre-Petition Collateral or Post-Petition Collateral or an office.

12. All costs and out-of-pocket expenses incurred by the DIP Lenders in connection with the negotiation and drafting of the DIP Loan Agreement, or any amendments thereto, the preservation, protection and enforcement of the DIP Lenders' rights hereunder or under the DIP Loan Agreement, the Interim and/or Final Order providing for financing by the DIP Lenders or in the collection of the Post-Petition Debt, including, without limitation, all filing and recording fees and any attorneys' fees incurred in connection with any of the foregoing, whether any of the foregoing were incurred prior to or after the Petition Date, shall form a part of the Post-Petition Debt, to the extent provided in the DIP Loan Agreement and shall be paid by the Debtors in accordance with the terms of the DIP Loan Agreement; provided, however, that fees and costs of the DIP Lenders' case professionals will be subject to review by the Court in accordance with the procedures to be set forth in the Final Order.

13. The Debtors and the DIP Lenders are hereby authorized to implement by mutual consent after the entry of this Interim Order, in accordance with the terms of the DIP Loan Agreement, any amendments to and modifications of the DIP Loan Agreement, or any of the Loan Documents, without further order of the Court on the following conditions: (i) the amendment or modification does not constitute a material

change to the terms of the DIP Loan Agreement (and, for purposes hereof, a “material change” shall mean a change that operates to increase the rate of interest other than as currently provided in the DIP Loan Agreement, add specific events of default, increase the aggregate amount of the commitments, enlarge the nature and extent of default remedies available to the DIP Lenders following an event of default, or enlarge the scope of Collateral to include any Excluded Collateral), and (ii) copies of the amendment or modification must be served upon counsel for any committee appointed in these Cases (if any) and the U.S. Trustee. Any amendment or modification that constitutes a material change, to be effective, must be approved by the Court.

14. Upon or after the occurrence, and during the continuance, of a Default or an Event of Default under (and as defined in) the DIP Loan Agreement, then, and in any such event, the DIP Lenders shall be fully authorized, in their sole discretion, to cease making DIP Loans to the Debtors. Upon the occurrence and during the continuance of an Event of Default, (i) the DIP Lenders shall be fully authorized, in their sole discretion, to terminate the DIP Loan Agreement and/or demand payment of the Post-Petition Debt then outstanding, and (ii) the DIP Lenders shall be entitled to an emergency hearing upon three (3) days notice with respect to relief from the automatic stay provided for by § 362 of the Bankruptcy Code to allow the DIP Lenders to enforce their security interests and liens granted under the DIP Loan Agreement or provided for in this Interim Order with respect to the Collateral, to take all other action and exercise all other remedies under the DIP Loan Agreement and applicable law which may be deemed necessary or appropriate by the DIP Lenders to collect any of the Post-Petition Debt

and to proceed against or realize upon all or any portion of the Collateral as if these Cases or any superseding cases under Chapter 7 were not pending.

15. Nothing herein shall be deemed to be a waiver by BofA, Agent or the DIP Lenders of their right to request additional or further protection of their interests in any property of the Debtors, to move for relief from the automatic stay, to seek the appointment of a trustee or examiner or the dismissal of any of these Cases, or to request any other relief. Nor shall anything herein or in any of the Loan Documents constitute an admission by BofA, Agent or the DIP Lenders of the quantity, quality or value of any Collateral securing the Pre-Petition Debt or Post-Petition Debt or constitute a finding of adequate protection with respect to the interests of the DIP Lenders in any Collateral. Subject to the Carve-Out, BofA, Agent and the DIP Lenders shall be deemed to have reserved all rights to assert entitlement to the protections and benefits of Section 507(b) of the Bankruptcy Code in connection with any use, sale or other disposition of any of the Collateral, to the extent that the protection afforded by this Interim Order to BofA, Agent or the DIP Lenders' interests in any Collateral proves to be inadequate.

16. BofA's pre-petition claims, liens, and security interests shall be deemed valid, perfected, and enforceable as to all creditors and parties-in-interest, and shall be subject to no further challenge, unless a creditor or party-in-interest, including, without limitation, any committee appointed in these Cases (if any), (i) shall have commenced an adversary proceeding or contested matter against BofA for the purpose of challenging the validity, extent, priority, perfection, and enforceability of the Pre-Petition Debt or BofA's, claims, mortgages, and security interests in the Pre-Petition Collateral

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**



or otherwise asserting any claims or causes of action against BofA on behalf of the Debtors' estates, no later than forty-five (45) days after the Petition Date and (ii) the Court rules in favor of the plaintiff or movant in any such timely filed adversary proceeding or contested matter. Any person or entity, including without limitation any committee, that fails to commence such an adversary proceeding or contested matter within such periods shall be barred from doing so.

17. As set forth in the Budget, and described in the DIP Loan Agreement, the Debtors may use proceeds of the Collateral and the DIP Loans to pay accrued and unpaid (i) fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) and fees payable to the Clerk of the Bankruptcy Court, or any agent thereof ("Trustee Fees") and (ii) fees and expenses of professionals retained pursuant to Section 327, 328 or 1103 of the Code for the Ad Hoc Committee of Senior Subordinated Noteholders, any statutory creditors committee appointed in these Cases, and the Debtors (collectively, "Professional Fees") incurred from the Petition Date through the date of the occurrence of an Event of Default, but not in excess of the amounts provided for in the Budget for the corresponding time period prior to the occurrence of such an Event of Default. After the occurrence of an Event of Default, the Debtors may use proceeds of Collateral and DIP Loans (the "Carve-Out") to pay (a) up to an aggregate amount not to exceed \$1,600,000 of (i) unpaid Professional Fees and disbursements incurred from the Petition Date through the occurrence of such Event of Default and (ii) Professional Fees incurred after the occurrence of such an Event of Default, and (b) the amount of on-going Trustee Fees. In addition, the payment of any Professional Fees shall be subject to Court approval, and the DIP Lenders reserve the right to file or

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**

make any objection to any professionals' application for payment. In no event shall there be paid from the Carve-Out, any Cash Collateral, or DIP Loans any fees and expenses incurred in (i) seeking to avoid, invalidate, subordinate, or otherwise impair any pre- or post-petition claims of BofA, Agent or the DIP Lenders, or any pre- or post-petition liens or priorities created in favor of BofA, Agent, or the DIP Lenders, (ii) seeking to recover on any claims against or transfers made to BofA, Agent or the DIP Lenders, or (iii) seeking to prevent, hinder or delay BofA, Agent or the DIP Lenders from enforcing or realizing upon any of the Collateral.

18. The Debtors hereby waive and release their rights (i) to challenge or contest the extent, priority, or validity of any liens or security interests securing the Pre-Petition Debt, (ii) to assert counterclaims or setoffs with respect to the Pre-Petition Debt, and (iii) to assert any claims or causes of action against BofA on account of the Pre-Petition Debt or any of the Pre-Petition Credit Documents, including, but not limited to, any claims under Chapter 5 of the Bankruptcy Code or otherwise. BofA, Agent and/or the DIP Lenders shall not be under any obligation to marshal any assets in favor of the Debtors or any other party or against or in payment of any or all of the Pre-Petition Debt and/or Post-Petition Debt.

19. Subject to the entry of the Final Order, no costs or expenses of administration or other charge, lien, assessment or claim incurred at any time (including, without limitation, any expenses set forth in any Budget) by any person or entity shall be imposed against BofA, Agent or the DIP Lenders, their claims, or their collateral under § 506(c) of the Bankruptcy Code or otherwise, unless, prior to incurring such costs or expenses the party proposing to incur such cost or expense shall obtain the written

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**

consent of BofA and the DIP Lenders allowing such charge to be imposed against BofA, Agent and the DIP Lenders, their claims or their collateral under § 506(c) of the Bankruptcy Code. Nothing in the Final Order or any Budget shall constitute the consent by BofA, Agent and the DIP Lenders to the imposition of any costs or expense of administration or other charge, lien, assessment or claim (including, without limitation, any amounts set forth in the Budget) against BofA, Agent or DIP Lenders, their claims or their collateral under § 506(c) of the Bankruptcy Code or otherwise.

20. The automatic stay provisions of Section 362 of the Bankruptcy Code are hereby lifted and terminated as to BofA, Agent and the DIP Lenders to the limited extent necessary to implement the provisions of this Interim Order and the DIP Loan Agreement, thereby permitting BofA, Agent and the DIP Lenders to, among other things, file or record any UCC-1 financing statements, mortgages and other instruments and documents evidencing the liens and security interests granted to the DIP Lenders in the Pre-Petition Collateral and Post-Petition Collateral, and to take all other actions authorized by the Court in this Interim Order.

21. The Debtors shall provide the DIP Lenders with (i) all financial statements, certificates, and reports required pursuant to the DIP Loan Agreement in accordance with the time-frames specified therein and (ii) such additional information as the DIP Lenders shall reasonably request from the Debtors. The DIP Lenders and their agents shall, upon reasonable advance notice, have access to the Debtors' business premises and to the Collateral to review and evaluate the physical condition of any of the Collateral. The DIP Lenders and their agents may also, upon reasonable advance notice, inspect the financial records and other records of the Debtors concerning the

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**

operation of the Debtors' business, and may review the Debtors' overall financial condition, the expenditure of funds generated therefrom, the accrual of expenses relating thereto, and any other records relating to the operation of the Debtors.

22. All DIP Loans are made in reliance on this Interim Order and the Debtors shall not (i) seek at any time prior to the termination or non-renewal by the DIP Lenders of the DIP Loan Agreement, authority to sell, lease, or otherwise dispose of property of any of the Debtors' estates out of the ordinary course of business, unless the same is permitted by the DIP Loan Agreement or the DIP Lenders shall have given their express prior written consent thereto (no such consent being implied from any other action, inaction or acquiescence by the DIP Lenders), (ii) use Cash Collateral, at any time after the termination or non-renewal by the DIP Lenders of the DIP Loan Agreement, unless the DIP Lenders shall have given their express prior written consent thereto (no such consent being implied from any other action, inaction or acquiescence by the DIP Lenders) or the Court orders otherwise, or (iii) at any time seek, propose or support (directly or indirectly) the entry of any order which authorizes the obtaining of credit or the incurring of indebtedness under Section 364 of the Bankruptcy Code that is secured by the Collateral on a basis (x) priming or (y) *pari passu* to the Post-Petition Debt, unless (a) the DIP Lenders shall have given express prior written consent thereto, no such consent being implied from any other action, inaction or acquiescence by the DIP Lenders or (b) such other order requires that the Post-Petition Debt shall first be indefeasibly paid and satisfied in full (in the manner specified in the DIP Loan Agreement), including all debts and obligations of the Debtors to the DIP Lenders which arise or result from the DIP Loans and liens in the Collateral authorized herein. The

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**

liens and security interests granted to or for the benefit of the DIP Lenders hereunder and the rights of the DIP Lenders pursuant to this Interim Order with respect to the Obligations and the Collateral are cumulative and shall not be altered, modified, extended, impaired, or affected by any plan of reorganization, or otherwise without the DIP Lenders' express prior written consent thereto, no such consent being implied from any other action, inaction or acquiescence by the DIP Lenders.

23. No terms or provisions of the DIP Loan Agreement, Interim Order or Final Order, or any other of the DIP Loan Documents may be altered, amended or modified by any plan of reorganization or otherwise, without the DIP Lenders' express prior written consent thereto, no such consent being implied from any other action, inaction or acquiescence. The provisions of this Interim Order shall be binding upon the Debtors and their respective successors and assigns, including, without limitation, any trustee appointed in any of these Cases or any case to which any of these Cases are subsequently converted. The rights, remedies, powers and privileges conferred upon BofA, Agent and the DIP Lenders pursuant to this Interim Order shall be in addition to and cumulative with those contained in the DIP Loan Agreement and Pre-Petition Loan Agreement. Except as otherwise explicitly set forth in this Interim Order, no third parties are intended to be or shall be deemed to be third party beneficiaries of this Interim Order or the DIP Loan Documents.

24. Other than with respect to Excluded Collateral securing the DIP bonding facilities with SureTec and Federal, for so long as any Pre-Petition Debt or Post-Petition Debt remains outstanding, the Debtors shall not, directly or indirectly, create, incur, assume or permit to exist any security interest, encumbrances, lien or other security

arrangement of any kind, on or with respect to any of their assets, or take or fail to take any action which would grant or create a lien in favor of any person in such assets, except as otherwise provided for in the DIP Loan Agreement

25. Consistent with 11 U.S.C. § 364(e), if any or all of the provisions of this Interim Order are hereafter modified, vacated or stayed:

(i) such stay, modification or vacation shall not affect the validity of any obligation, indebtedness, liability or lien granted or incurred by the Debtors to the DIP Lenders prior to the effective date of such stay, modification or vacation, or the validity, enforceability or priority of any lien, priority or right authorized or created under the original provisions of this Interim Order or pursuant to the DIP Loan Agreement; and

(ii) any indebtedness, obligation or liability incurred by the Debtors to the DIP Lenders under the DIP Loan Agreement prior to the effective date of such stay, modification or vacation shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lenders shall be entitled to all the rights, remedies, privileges and benefits, including the liens, security interests and priorities granted herein and pursuant to the DIP Loan Agreement, with respect to any such indebtedness, obligation or liability. All DIP Loans made pursuant to the DIP Loan Agreement are made in reliance upon this Interim Order, and, therefore, the indebtedness resulting from such DIP Loans prior to the effective date of any stay, modification or vacation of this Interim Order cannot (a) be subordinated, (b) lose its lien priority or superpriority administrative expense claim status, or (c) be deprived of the benefit of the status of the liens and claims granted to the DIP Lenders under this

Interim Order and/or the DIP Loan Agreement, as a result of any subsequent order in these Cases, or in any superseding case.

26. Until all Post-Petition Debt shall have been indefeasibly paid and satisfied in full (in the manner specified in the DIP Loan Agreement) and without further order of the Court, no party in interest shall foreclose or otherwise seek to enforce any lien junior or subordinate to the DIP Lenders' liens on and security interests in the Collateral or other right such other party may have in and to any Collateral; provided, however, that the foregoing shall not be construed to prohibit any other party in interest having standing to do so to seek adequate protection of its interest in any of the Collateral.

27. To the extent the terms and conditions of the DIP Loan Agreement is in conflict with the terms and conditions of this Interim Order, the terms and condition of this Interim Order shall controls.

28. The provisions of this Interim Order shall be effective immediately upon entry of this Interim Order pursuant to Bankruptcy Rules 6004(g) and 7062 by the Court and any actions taken pursuant thereto shall survive entry of, and shall govern with respect to any conflict with any Order which may entered confirming any plan(s) of reorganization, dismissing any of these Cases, or converting any of these Cases from Chapter 11 to Chapter 7.

29. Service of a copy of this Order shall be accomplished by Debtors via regular first class U.S. mail upon the Noticed Parties and such other parties as the Court may direct within 5 days of entry of this Order, which shall be deemed good and sufficient service and notice hereof for all purposes.

30. A final hearing on the Motion pursuant to Bankruptcy Rule 4001(c)(2) (the "Final Hearing") is scheduled for March 10, 2006, at 9:00 a.m., in Courtroom 2 located at 1100 Commerce Street, 14<sup>th</sup> Floor, Courtroom 2, Dallas Texas, 75242. Notice of the Final Hearing shall be provided by Debtors via regular first class U.S. Mail to all parties entitled to notice on or before February 17, 2006. Any opposition to the Motion at the Final Hearing shall be served on (i) counsel for Debtors, Vinson & Elkins L.L.P., 3700 Trammell Crow Center, 2001 Ross Avenue, Dallas, Texas 75201, Attn: Daniel C. Stewart, (ii) counsel for Agent for the DIP Lenders, Patton Boggs LLP, 2001 Ross Avenue, Suite 3000, Dallas, Texas 75181, Attn: Robert W. Jones, and (c) the United States Trustee, and filed with the Court and received by the foregoing parties by March 8, 2006.

STIPULATED AND AGREED:

**VINSON & ELKINS L.L.P.**  
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**PROPOSED ATTORNEYS FOR THE DEBTORS**

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**



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**COUNSEL FOR BANK OF AMERICA, N.A.**

**INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, etc.**