

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re

**Levitz Home Furnishings, Inc., et al.,

Debtors.**

Chapter 11

Case No. 05-45189 (BRL)

Jointly Administered

**INTERIM ORDER (1) APPROVING POST-PETITION FINANCING,
(2) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363,
(3) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE
EXPENSE STATUS PURSUANT TO 11 U.S.C. §§ 363 AND 364, (4) AUTHORIZING
DEBTORS TO REFINANCE AND REPAY IN FULL CERTAIN PRE-PETITION
SECURED DEBT, (5) MODIFYING AUTOMATIC STAY PURSUANT TO
11 U.S.C. § 362 AND (6) SCHEDULING A FINAL HEARING**

THIS MATTER having come before the Court upon motion (the “**DIP Motion**”) by Levitz Furniture, LLC and Seaman Furniture Company, Inc. (each a “**Borrower**” and collectively, the “**Borrowers**”), Levitz Home Furnishings, Inc., (“**LHFI**”), Levitz Furniture Corporation (“**LFC**”), Levitz Furniture Company of the Midwest, Inc. (“**Levitz Midwest**”), Levitz Furniture Company of Washington, Inc. (“**Levitz Washington**”), Levitz Furniture Company of Delaware, Inc. (“**Levitz Delaware**”), John M. Smyth Corporation (“**Smyth**”), Levitz Shopping Service, Inc. (“**Levitz Shopping**”), Seaman Furniture Company of Union Square, Inc. (“**Union Square**”), Paralax Development Industries, Inc. (“**Paralax**”), RHM, Inc. (“**RHM**”), and Seaman Furniture Company of Pennsylvania, Inc. (“**Seaman Pennsylvania**”) (LHFI, LFC, Levitz Midwest, Levitz Washington, Levitz Delaware, Smyth, Levitz Shopping, Union Square, Paralax, RHM and Seaman Pennsylvania, each a “**Guarantor**” and collectively, the “**Guarantors**” and, together with the Borrowers, the “**Debtors**”), each as a debtor and

debtor-in-possession in the above captioned chapter 11 cases (collectively, the ‘**Cases**’) seeking, among other things, entry of an interim order (this ‘**Interim Order**’) authorizing the Debtors to:

(i) Obtain credit and incur debt, pursuant to sections 363, 364(c) and 364(d) of the Bankruptcy Code, on an interim basis for a period (the ‘**Interim Period**’) from the commencement of the case through and including the date of the Final Hearing (as defined below) up to the aggregate committed amount of \$80,000,000 (on terms and conditions more fully described herein) secured by first priority perfected liens (as defined in section 101(37) of chapter 11 of title 11 of the United States Code, as amended (the ‘**Bankruptcy Code**’) and referred to and defined in more detail herein as the ‘**DIP Liens**’) on property of the Borrowers’ estates pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and with priority, as to administrative expenses, as provided in section 364(c)(1) of the Bankruptcy Code;

(ii) (a) Establish that financing arrangement (as amended, modified and in effect from time to time, the ‘**DIP Credit Facility**’) as provided for in that certain Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, substantially in the form filed on record in the Cases and introduced into evidence at the interim hearing on the DIP Motion (as amended, modified and in effect from time to time, and together with any and all other related documents and agreements entered into in connection with or related to the DIP Credit Facility, including, without limitation, any fee letters, the ‘**DIP Credit Agreement**’) by and among the Borrowers, GECC Capital Markets Group, Inc., as Sole Lead Arranger and Book Runner, Prentice Capital Management, LP, as Tranche C Agent, and General Electric Capital Corporation, as Agent (the ‘**DIP Agent**’), for itself and the lenders party thereto (the ‘**DIP Lenders**’), and (b) incur the ‘**Obligations**’ under and as defined in the DIP Credit Agreement (collectively, the ‘**DIP Obligations**’);

(iii) Authorize the use of the proceeds of the DIP Credit Facility in each case in a manner consistent with the terms and conditions of the DIP Credit Agreement for (a) the repayment in full of the Pre-Petition Debt (as defined below) on the Closing Date (as defined in the DIP Credit Agreement), (b) working capital and letters of credit, (c) other general corporate purposes of the Borrowers, including, without limitation, payment of prepetition sales tax to the extent set forth in the Budget (as defined below), (d) payment of costs of administration of the Cases, (e) payment of fees and amounts due under the DIP Credit Agreement, and (f) payment of such prepetition obligations as the Court shall allow and in accordance with the Budget;

(iv) Grant, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, the DIP Agent (for the benefit of the DIP Lenders) first priority perfected liens, subject only to the Carve-Out (as defined below) and the Prior Liens (as defined below), upon all of the Borrowers' real and personal property as provided in and as contemplated by this Interim Order, the DIP Credit Facility and the DIP Credit Agreement;

(v) Grant, pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Agent (for the benefit of the DIP Lenders) superpriority administrative claim status in respect of all DIP Obligations, subject only to the Carve-Out (as defined below), as provided herein;

(vi) Authorize the use of "cash collateral" as such term is defined in section 363 of the Bankruptcy Code (the "**Cash Collateral**") in which the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent and the Senior Noteholders (each as defined below) have an interest;

(vii) Authorize the immediate repayment in full of the Pre-Petition Debt, and the simultaneous subordination of the Pre-Petition Credit Agreement Lenders' liens, claims and encumbrances and the agreement of the Pre-Petition Credit Agreement Lenders to release and

terminate and/or assign such liens, claims and encumbrances on the date that the Final Order (as defined below) has become final and non-appealable and the Challenge Period Termination Date (as defined below) has expired, in accordance with the terms and conditions in this Interim Order;

(viii) Grant, pursuant to sections 361 and 363 of the Bankruptcy Code, as adequate protection for the DIP Liens and the use of Cash Collateral, in favor of the Indenture Collateral Agent (as defined below), for the benefit of the holders of the Senior Secured Notes (as defined below) (the “**Senior Noteholders**”), replacement liens on all of the Debtors’ currently owned or after-acquired property and proceeds thereof, junior to the DIP Liens, the Credit Agreement Replacement Liens (as defined below) and the Pre-Petition Credit Agreement Junior Liens (as defined below) and subject to the Carve-Out (as defined below), which replacement liens will be subject to the terms and conditions contained in the Intercreditor Agreement (as defined below);

(ix) Vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Credit Agreement and this Interim Order; and

(x) Schedule a final hearing (the “**Final Hearing**”) to consider entry of an order (the “**Final Order**”) granting the relief requested in the DIP Motion on a final basis and approve the form of notice with respect to the Final Hearing.

The Court having considered the DIP Motion, the exhibits attached thereto, the DIP Credit Facility and the DIP Credit Agreement, and the evidence submitted at the hearing on this Interim Order (the “**Interim Hearing**”); in accordance with Rules 2002, 4001(b), (c), and (d), and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), due and proper notice of the DIP Motion and the Interim Hearing having been given; an Interim Hearing

having been held and concluded October 12, 2005; and it appearing that approval of the interim relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and their equity holders, and is essential for the continued operation of the Debtors' businesses; and it further appearing that the Borrowers are unable to secure unsecured credit for money borrowed allowable as an administrative expense under Bankruptcy Code section 503(b)(1); and there is adequate protection of the interests of holders of liens on the property of the estates on which liens are to be granted; and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved or overruled by the Court; and upon all pleadings filed with this Court, all proceedings held before the Court, and the evidence adduced in connection therewith; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Petition Date. On October 11, 2005 (the **'Petition Date'**), the Debtors each filed a voluntary petition under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York. The Debtors have filed a motion requesting joint administration of the Cases. The Debtors have continued in the management and operation of their business and property as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

B. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the DIP Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2).

Venue for the Cases and proceedings on the DIP Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Committee Formation. An official committee of unsecured creditors has not yet been appointed.

D. Notice. Notice of the Interim Hearing and the emergency relief requested in the DIP Motion has been provided by the Debtors, whether by telecopy, email, overnight courier or hand delivery, to certain parties in interest, including (i) the Office of the United States Trustee, (ii) the Securities and Exchange Commission, (iii) the Internal Revenue Service, (iv) the Debtors' 40 largest unsecured creditors, (v) counsel to the Pre-Petition Agent for itself and for the Pre-Petition Credit Agreement Lenders, (vi) counsel to the Indenture Collateral Agent (as defined below), (vii) the DIP Agent, (viii) the Tranche C Agent, and (ix) all lessors of real property to the Debtors, including, without limitation, all landlords of the premises at which any of the Debtors' inventory or other items of Collateral (as defined below) are located. Under the circumstances, such notice of the Interim Hearing and the relief requested in the DIP Motion constitutes due and sufficient notice and complies with sections 102(1), 364(c) and 364(d) of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001(c).

E. The Debtors' Business. The Debtors are one of the largest specialty retailers of furniture in the United States, with approximately 98 stores in 11 states.

F. Borrowers' Acknowledgements and Agreements. After consultation with their attorneys and financial advisors, but without prejudice to the rights of parties in interest as set forth in paragraph 7 below, the Borrowers admit, stipulate, acknowledge and agree that

(collectively, paragraphs F(i) through F(viii) hereof shall be referred to herein as the “**Borrowers’ Stipulations**”):¹

(i) Pre-Petition Credit Agreement. Prior to the commencement of the Cases, the Borrowers were borrowers under that certain Amended and Restated Credit Agreement dated as of May 20, 2005, as amended and in effect (together with all related documents and agreements, the “**Pre-Petition Credit Agreement**”), by and among the Borrowers, the Guarantors, the lenders and other financial institutions party thereto (each a “**Pre-Petition Credit Agreement Lender**” and, collectively, the “**Pre-Petition Credit Agreement Lenders**”), General Electric Capital Corporation as agent (in such capacity, the “**Pre-Petition Agent**” and, in its individual capacity, “**GE Capital**”) for the Pre-Petition Credit Agreement Lenders, Fleet Retail Group, LLC (successor in interest to Fleet Retail Group, Inc.) as documentation agent for the Pre-Petition Credit Agreement Lenders, and Wells Fargo Retail Finance, LLC, as syndication agent for the Pre-Petition Credit Agreement Lenders.

(ii) Pre-Petition Debt Amount. As of the Petition Date, the Borrowers were indebted to the Pre-Petition Agent and the Pre-Petition Credit Agreement Lenders in the approximate amount of \$56,000,000 in revolving loans, term loans, advances and/or other financial accommodations provided to or for the benefit of the Borrowers (the “**Pre-Petition Revolving Loans**”), including, without limitation, approximately \$13,800,000 in letters of credit (the “**Pre-Petition Letters of Credit**” and together with the Pre-Petition Revolving Loans and any and all unpaid principal, accrued and unpaid interest, any early termination fees which have not been waived, unpaid fees and attorneys’ fees, treasury, cash management and derivative obligations, and other charges, amounts and costs owing, accrued, accruing or chargeable in respect of any of the Borrowers’ obligations pursuant to the Pre-Petition Credit Agreement, the “**Pre-Petition Debt**”).

(iii) Pre-Petition Senior Secured Indenture. Prior to the commencement of the Cases, LHFI entered into that certain Indenture dated as of November 9, 2004 (as amended, the “**Senior Secured Indenture**”) among LHFI, guarantors named therein (the “**Senior Secured Indenture Subsidiary Guarantors**”) and U.S. Bank National Association (successor in interest to Wells Fargo Bank, National Association) as trustee and collateral agent (the “**Indenture Collateral Agent**”) pursuant to which LHFI issued 12% Senior Secured Class A Notes due 2011 and 15% Senior Secured Class B Notes due 2011 (the “**Senior Secured Notes**”).

¹ Subject to the rights of parties in interest as set forth in paragraph 7 hereof, the Debtors intend to request in the Final Order (as defined below) that the Debtors’ Stipulations shall be “so ordered” by the Court.

(iv) Pre-Petition Note Obligations. As of the Petition Date, the outstanding aggregate principal amount of the Senior Secured Notes was \$130,000,000 (together with any and all unpaid principal, accrued and unpaid interest, make-whole premium, any early termination fees which have not been waived, unpaid fees and attorneys' fees, and other charges, amounts and costs owing, accrued, accruing or chargeable in respect of any of the Borrowers' obligations pursuant to the Senior Secured Note Purchase Agreement, the "**Pre-Petition Note Obligations**" and, together with the Pre-Petition Debt, the "**Pre-Petition Obligations**").

(v) Pre-Petition Security Agreement and Intercreditor Agreement. The Borrowers, the Guarantors, Seaman Furniture Company of Union Square, Inc., Paralax Development Industries, Inc., RHM, Inc., Seaman Furniture Company of Pennsylvania, Inc. and the Pre-Petition Agent were party to that certain Security Agreement dated as of November 9, 2004 (the "**Pre-Petition Security Agreement**") pursuant to which the Debtors granted certain liens and certain interests to the Pre-Petition Agent to secure the Pre-Petition Debt. The Pre-Petition Agent and Indenture Collateral Agent were party to that certain Amended and Restated Intercreditor Agreement dated as of May 20, 2005 (as amended, the "**Intercreditor Agreement**"), pursuant to which, *inter alia*, the priority of lien obligations among the parties thereto was established.

(vi) Pre-Petition Senior Notes Security Agreement (in respect of the Pre-Petition Note Obligations). LHFI, the Senior Secured Indenture Subsidiary Guarantors, and the Indenture Collateral Agent are party to that certain Security Agreement dated as of November 9, 2004 (the "**Pre-Petition Senior Note Security Agreement**") pursuant to which certain of the Debtors granted liens and security interests (the "**Indenture Liens**") to the Indenture Collateral Agent for benefit of the Secured Parties (as defined therein) in and upon substantially all of the Debtors' assets other than interests in real property (the "**Pre-Petition Indenture Collateral**"). The Pre-Petition Agent and the Indenture Collateral Agent were among the parties to the Intercreditor Agreement, pursuant to which the priority of lien obligations was established.

(vii) Pre-Petition Credit Liens. (a) As of the Petition Date, (i) the Pre-Petition Credit Liens (as defined below) are valid, binding, enforceable, and perfected first-priority liens subject only to the Prior Liens (as defined below) and are not subject to avoidance, recharacterization or subordination (except in accordance with the terms and conditions contained in the Intercreditor Agreement) pursuant to the Bankruptcy Code or applicable non-bankruptcy law, (ii) the Pre-Petition Debt constitutes legal, valid and binding obligations of the Debtors, enforceable in accordance with the terms thereof (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), no offsets, defenses or counterclaims to any of the Pre-Petition Debt exists, and no portion of the Pre-Petition Debt is subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, (iii) the Pre-Petition Debt constitutes allowed secured claims, (iv) the Indenture Liens are

valid, binding, enforceable, and perfected second-priority liens (except for any Pre-Petition Indenture Collateral in which the Senior Noteholders have a first-priority security interest) subject only to the Pre-Petition Credit Liens and the Prior Liens (as defined below) and are not subject to avoidance, recharacterization or subordination (in accordance with the terms and conditions contained in the Intercreditor Agreement) pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (v) the Pre-Petition Note Obligations constitute legal, valid and binding obligations of the Debtors, enforceable in accordance with the terms thereof (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), no offsets, defenses or counterclaims to any of the Pre-Petition Note Obligations exist, and no portion of the Pre-Petition Note Obligations are subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (b) on the date that this Interim Order is entered, the Debtors have waived, discharged and released the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent and the Senior Noteholders, together with their affiliates, agents, attorneys, officers, directors and employees, of any right the Debtors may have (x) to challenge or object to any of the Pre-Petition Debt or the Pre-Petition Note Obligations, (y) to challenge or object to the security for the Pre-Petition Debt or the Pre-Petition Note Obligations, and (z) to bring or pursue any and all claims, objections, challenges, causes of action and/or choses in action arising out of, based upon or related to the Pre-Petition Credit Agreement, the Senior Secured Indenture, or otherwise.

(viii) Pre-Petition Credit Collateral. To secure the Pre-Petition Debt, the Borrowers granted, assigned and transferred security interests and liens (collectively referred to herein as the “**Pre-Petition Credit Liens**”) to the Pre-Petition Agent, for the benefit of the Pre-Petition Credit Agreement Lenders, as follows: a perfected first-priority security interest in and lien upon all the Borrowers’ right, title and interest in and to all Accounts, Inventory, Investment Property, Deposit Accounts (including all Blocked Accounts, Concentration Accounts, Disbursement Accounts, and all other bank accounts, lockboxes and all deposits therein) including all books and records relating to any of the foregoing, the Household Management Agreement and all Proceeds, customer prepayments or deposits, insurance claims and other rights to payments not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing (each as defined in the Pre-Petition Security Agreement) (collectively, the “**Pre-Petition Credit Collateral**,” and, together with the Pre-Petition Indenture Collateral, the “**Pre-Petition Collateral**”), with priority over all other liens except for those certain liens otherwise permitted by the Pre-Petition Credit Agreement (to the extent any such liens are valid, properly perfected, unavoidable, and senior, they

are referred to as “**Prior Liens**”).²

G. Findings Regarding the Post-Petition Financing.

(i) Need for Post-Petition Financing and Use of Cash Collateral. An immediate need exists for the Borrowers to obtain funds from the DIP Credit Facility and use of Cash Collateral in order continue operations and to administer and preserve the value of their estates. The ability of the Borrowers to finance their operations requires the availability of working capital from the DIP Credit Facility and the use of Cash Collateral, the absence of which would immediately and irreparably harm the Borrowers, their estates, their creditors and equity holders and the possibility for a successful reorganization.

(ii) No Credit Available on More Favorable Terms. The Borrowers have been unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Borrowers are also unable to obtain secured credit, allowable only under Bankruptcy Code sections 364(c)(2), 364(c)(3), and 364(d) on more favorable terms and conditions than those provided in the DIP Credit Agreement and this Interim Order. The Borrowers are unable to obtain credit for borrowed money without the Borrowers granting to the DIP Agent (i) liens on all of the assets of the Borrowers pursuant to Bankruptcy Code sections 364(c)(2), 364(c)(3) and 364(d) and (ii) superpriority administrative expense claim status pursuant to Bankruptcy Code sections 503(b) and 507(b) as provided in section 364(c)(1) of the

² Nothing herein shall constitute a finding or ruling by this Court that any of the Prior Liens are valid, senior, perfected and unavoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited, to the Debtors, the DIP Agent and the DIP Lenders, and any committee appointed pursuant to section 1102 of the Bankruptcy Code to challenge the validity, priority, perfection and extent of any such lien and or security interest. For the avoidance of doubt, subject to the liens of the DIP Agent, as provided for herein, the Pre-Petition Agent’s liens have priority over and above all other liens except for those liens which were valid, senior, perfected and otherwise unavoidable as of the Petition Date.

Bankruptcy Code (such superpriority administrative expense claim having priority as provided by this Interim Order).

H. Section 506(c) Waiver. The DIP Agent, the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Lenders have indicated that they will request a waiver of the provisions of sections 506(c) and 552(b) of the Bankruptcy Code as part of the DIP Credit Facility, and that they are deferring such request until the Final Hearing.

I. Refinancing and Repayment of Pre-Petition Debt; Use of Proceeds of the DIP Credit Facility. Proceeds of the DIP Credit Facility shall be used, in each case in a manner consistent with the terms and conditions contained in the DIP Credit Agreement, solely for (a) the refinancing and repayment in full of the Pre-Petition Debt on the Closing Date (as defined in the DIP Credit Agreement) other than early termination fees, (b) working capital and letters of credit, (c) other general corporate purposes of the Borrowers, including, without limitation, payment of prepetition sales tax to the extent set forth in the Budget (as defined below), (d) payment of costs of administration of the Cases, (e) payment of fees and amounts due under the DIP Credit Agreement, and (f) payment of such prepetition obligations as the Court shall allow and in accordance with the Budget. Payment of the Pre-Petition Debt as part of this Interim Order is necessary as the Pre-Petition Agent and the Pre-Petition Credit Agreement Lenders will not otherwise consent to the priming of the Pre-Petition Liens. Such payment will not prejudice (i) the Borrowers or their estates, because payment of such amounts is subject to the rights of parties-in-interest under paragraph 7 below or (ii) the rights of any Pre-Petition Credit Agreement Lender to require the payment of early termination fees not waived. Only one lender from the Pre-Petition Lender group, GE Capital, has committed to fund the DIP Credit Facility.

J. Pre-Petition Credit Agreement Lenders' Consent to DIP Liens. The Pre-Petition Credit Agreement Lenders have consented and agreed that, subject to the terms and conditions contained herein, any and all pre-petition or post-petition liens and security interests (including, without limitation, any adequate protection replacement liens at any time granted to the Pre-Petition Credit Agreement Lenders by this Court) shall (a) only secure any Pre-Petition Debt that is (1) at any time repaid with the proceeds of the loans and advances made by the DIP Lenders (including, without limitation, at closing of the DIP Credit Agreement in accordance with this Interim Order) prior to the Final Order becoming final and non-appealable and the expiration of the Challenge Period Termination Date (as defined below), and (2) subsequently reinstated after the full payment thereof because such payment (or any portion thereof) is required to be returned to the Debtors or the DIP Lenders; and (b) shall be junior and subordinate in all respects to the DIP Liens granted under this Interim Order and the DIP Credit Agreement (such junior liens and security interests of the Pre-Petition Credit Agreement Lenders are hereinafter referred to as the **"Pre-Petition Credit Agreement Junior Liens"**). Such reinstated Pre-Petition Debt described in clauses (a)(1) and (2) above in this paragraph is hereinafter referred to as the **"Reinstated Pre-Petition Debt"** and shall be junior and subordinate in all respect to the DIP Obligations. The Pre-Petition Credit Agreement Lenders have further agreed that, (a) until such time as all of the DIP Obligations are indefeasibly paid in full in cash in accordance with the DIP Credit Agreement and this Interim Order, the Pre-Petition Credit Agreement Lenders shall have no right to seek or exercise any enforcement rights or remedies in connection with the Reinstated Pre-Petition Debt or the Pre-Petition Credit Agreement Junior Liens, including, without limitation, in respect of the occurrence or continuance of any Event of Default (as defined below); (b) the Pre-Petition Credit Agreement Lenders shall be deemed to have consented to any sale or disposition

of all or any portion of the Collateral (as defined below) approved by, arranged for or by the DIP Agent and shall terminate and release upon any such sale or disposition all of its Pre-Petition Credit Agreement Junior Liens on and security interests in such Collateral; (c) the Pre-Petition Credit Agreement Lenders shall deliver or cause to be delivered, at the Debtors' costs and expense (for which the Pre-Petition Credit Agreement Lenders shall be reimbursed upon submission to the Debtors of invoices or billing statements), any termination statements, releases and/or assignments (to the extent provided for in paragraph 2(e) herein) in favor of the DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of the Pre-Petition Credit Agreement Junior Liens on any portion of the Collateral subject to any sale or disposition approved or arranged for by the DIP Agent; and (d) upon (i) the Final Order (as defined below) becoming a final and non-appealable order and (ii) the expiration of the Challenge Period Termination Date (as defined below), all Pre-Petition Credit Agreement Junior Liens in the Collateral shall, subject to paragraph 2(e) of this Interim Order, terminate and be released (automatically and without further action of the parties), and the Pre-Petition Credit Agreement Lenders shall execute and deliver such agreements to evidence and effectuate such termination, release or assignments as the DIP Agent may request and the DIP Agent shall be authorized to file on behalf of the Pre-Petition Credit Agreement Lenders such UCC termination statements or such other filings as may be applicable to the extent such authorization is required under the Uniform Commercial Code of the applicable jurisdiction.

K. Adequate Protection. As a result of the grant of the DIP Liens to the DIP Lenders and the use of Cash Collateral authorized herein, the Indenture Collateral Agent and the Senior Noteholders are entitled to receive adequate protection pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code for any diminution in the value of their interest in the Borrowers'

interest in the Pre-Petition Indenture Collateral (including the Cash Collateral) resulting from the Borrowers' use, sale or lease of the Pre-Petition Indenture Collateral (including the Cash Collateral) during the Cases. As adequate protection, the Indenture Collateral Agent, for the benefit of the Senior Noteholders, will receive Noteholder Replacement Liens (as defined below).

L. Waivers. In light of their agreement to subordinate their liens and superpriority claims to the Carve Out in the case of the DIP Lenders, and the Carve Out and the DIP Liens in the case of the Prepetition Credit Agreement Lenders, the DIP Agent, and the DIP Lenders, the DIP Agent, the DIP Lenders and the Pre-Petition Credit Agreement Lenders (a) are each entitled to a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code, and (b) each assert that they are entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code. The Court specifically does not approve such 506(c) waiver at this time, but will consider the issue further at the Final Hearing.

M. Extension of Financing. The DIP Lenders have indicated a willingness to provide financing to the Borrowers in accordance with the DIP Credit Agreement and subject to (i) the entry of this Interim Order and a Final Order, (ii) approval of the terms and conditions of the DIP Credit Facility and the DIP Credit Agreement, and (iii) findings by the Court that such financing is essential to the Debtors' estates, that the DIP Lenders are good faith financiers, and that the DIP Agent's and DIP Lenders' claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Credit Facility will not be affected by any subsequent reversal, modification, vacatur or amendment of this Interim Order or the Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

N. Intercreditor Agreement. The Intercreditor Agreement provides that the Pre-Petition Debt may be amended, restated, renewed, refunded, replaced (whether upon or after termination or otherwise), refinanced, supplemented, or otherwise modified in whole or in part from time to time. Proceeds of the DIP Credit Facility will be used in part to refinance the Pre-Petition Debt on the Closing Date, as permitted under and in accordance with the terms of the Intercreditor Agreement. From and after the Closing Date and the repayment of the Pre-Petition Debt, the DIP Agent is, and is deemed to be, the assignee and successor-in-interest to the Priority Lien Collateral Agent (as such term is defined in the Intercreditor Agreement) for all purposes of the Intercreditor Agreement without the necessity of any further action by the Debtors or any other party, and the DIP Agent is and shall be at all times entitled to all rights and benefits afforded the Priority Lien Collateral Agent by and under the Intercreditor Agreement.

O. Business Judgment and Good Faith Pursuant to Section 364(e). The terms and conditions of the DIP Credit Facility and the DIP Credit Agreement, and the fees paid and to be paid thereunder are fair, reasonable, and the best available under the circumstances, reflect the Borrowers' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Credit Facility and the use of Cash Collateral were both negotiated in good faith and at arms' length between the Borrowers, the DIP Agent, the Pre-Petition Agent, the DIP Lenders and the Pre-Petition Credit Agreement Lenders. Use of Cash Collateral and credit to be extended under the DIP Credit Facility will be so extended in good faith, and for valid business purposes and uses, the consequence of which is that the DIP Agent and the DIP Lenders are entitled to the protection and benefits of section 364(e) of the Bankruptcy Code.

P. Entry of Interim Order. For the reasons stated above, the Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

NOW, THEREFORE, on the DIP Motion of the Debtors and the record before the Court with respect to the DIP Motion, and with the consent of the Debtors, the Pre-Petition Agent, the Pre-Petition Lenders, the DIP Agent and the DIP Lenders to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. Motion Granted. The Motion is granted subject to the terms and conditions set forth in this Interim Order.

2. DIP Credit Agreement Authorization.

(a) Approval of DIP Credit Agreement. The terms and the conditions of the DIP Credit Facility and the DIP Credit Agreement are hereby approved to the extent necessary to implement this Interim Order. The Debtors are expressly and immediately authorized, empowered and directed to execute and deliver the DIP Credit Agreement and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Credit Agreement, and to deliver all instruments and documents which may be required or necessary for the performance by the Borrowers under the DIP Credit Facility and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Credit Agreement. The Debtors are hereby authorized and directed to pay the principal, interest, fees, expenses and other amounts described in the DIP Credit Agreement and all other documents comprising the DIP Credit Facility as such become due, including, without limitation, agents' fees, facility fees, arranger fees, commitment fees, letter of credit fees and reasonable attorneys', financial advisors' and accountants' fees and disbursements as provided

for in the DIP Credit Agreement and the DIP Credit Facility which amounts shall not otherwise be subject to approval of this Court; *provided, however*, that unresolved disputes as to the reasonableness of any professional fees and expenses may be determined by the Court. Upon execution and delivery, the DIP Credit Agreement shall represent valid and binding obligations of the Borrowers, enforceable against each of the Borrowers in accordance with its terms.

(b) Authorization to Borrow. In order to enable them to continue to operate their business, during the Interim Period and subject to the terms and conditions of this Interim Order, the DIP Credit Agreement, documents comprising the DIP Credit Facility, and the Budget, the Borrowers are hereby authorized under the DIP Facility to request extensions of credit up to a total committed amount of \$80,000,000 composed of three (3) facilities (which facilities may in aggregate principal amount exceed \$80,000,000, but under which availability will never exceed \$80,000,000), including (1) a senior revolving credit facility not to exceed \$60,000,000 in aggregate principal amount (the “**DIP Revolving Loans**”), which includes (i) a sublimit for letters of credit up to \$30,000,000 (the “**DIP Letters of Credit**”) and (ii) a sublimit for swingline loans up to \$10,000,000 to be provided by the DIP Agent and the DIP Lenders (the “**DIP Swingline Loans**”), (2) a senior Tranche B term loan not to exceed \$20,000,000 in aggregate principal amount (the “**DIP Term Loan**”), and (3) a senior Tranche C facility not to exceed \$25,000,000 in aggregate principal amount (the “**Tranche C DIP Facility**”, and, collectively with the DIP Term Loan, the DIP Swingline Loans, the DIP Letters of Credit and the DIP Revolving Loan, the “**DIP Loan**”); *provided, however*, the aggregate principal amount borrowed under the Tranche C DIP Facility during the Interim Period shall not exceed \$15,000,000 outstanding at any one time.

(c) Application of DIP Proceeds. The Borrowers are authorized to borrow the DIP Loan under the DIP Credit Facility solely for (1) the repayment in full of the Pre-Petition Debt on the Closing Date (as defined in the DIP Credit Agreement), subject to the terms of this Interim Order (2) working capital and letters of credit, (3) other general corporate purposes of the Borrowers, including payment of prepetition sales tax to the extent set forth in the Budget (as defined below), (4) payment of costs of administration of the Cases, (5) payment of fees and amounts due under the DIP Credit Agreement, and (6) payment of such prepetition obligations as the DIP Agent shall agree and the Court shall allow, in each case in a manner consistent with the terms and conditions contained in the DIP Credit Agreement.

(d) Conditions Precedent. The DIP Agent and the DIP Lenders shall have no obligation to make any loan or advance or issue any letters of credit under the DIP Credit Agreement during the Interim Period unless the conditions precedent to make such loan or advance or issue such letter of credit under the DIP Credit Agreement have been satisfied in full.

(e) Post-Petition Liens. (1) Effective immediately upon the execution of this Interim Order, the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, first priority, continuing, valid, binding, enforceable, non-avoidable and automatically perfected postpetition security interests in and liens (collectively, the “**DIP Liens**”), senior and superior in priority to all other secured and unsecured creditors of the Debtors’ estates (but subject to the liens and claims set forth in paragraph 2(f) of this Interim Order), upon and to all presently owned and hereafter acquired assets and real and personal property of the Borrowers and the Guarantors, including, without limitation, the following:

- (i) all Accounts;

- (ii) all Chattel Paper;
- (iii) all Documents;
- (iv) all General Intangibles (including payment intangibles and software);
- (v) all Goods (including Inventory, Equipment and Fixtures);
- (vi) all Instruments;
- (vii) all Investment Property;
- (viii) all Deposit Accounts and all other bank accounts and all deposits therein (including, without limitation, cash deposits for future shipment of goods);
- (ix) all money, cash or cash equivalents;
- (x) all Supporting Obligations and Letter of Credit Rights;
- (xi) all (a) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts) and (ii) monies, credit balances, deposits and other property of Borrowers and Guarantors now or hereafter held of received by or in transit to the DIP Agent, any DIP Lender or their respective affiliates or at any other depository or other institution from or for the account of Borrowers or Guarantors, whether for safekeeping, pledge, custody, transmission, collection or otherwise;
- (xii) all Records;
- (xiii) all Commercial Tort Claims;
- (xiv) all real property (owned and leased) including Real Estate and Leasehold Properties;
- (xv) the proceeds of avoidance actions under section 547 of the Bankruptcy Code, to the extent that the Carve-Out (as defined below) funded the Debtors' expenses in investigating

such actions, commencing such actions, and conducting the litigation and/or settlement discussions that resulted in the receipt of such proceeds;

(xvi) proceeds of any avoidance actions brought pursuant to section 549 of the Bankruptcy Code to recover any post-petition transfer of collateral;

(xvii) the Borrowers' rights under section 506(c) of the Bankruptcy Code and the proceeds thereof;

(xviii) any unencumbered assets of the Borrowers;

(xix) all capital stock and other equity interests in the Borrowers and their subsidiaries (the "**Capital Stock**");

(xx) to the extent not otherwise described above, all Receivables and all present and future claims, rights, interests, assets and properties recovered by or on behalf of Borrowers or Guarantors; and

(xxi) to the extent not otherwise included, all Proceeds, insurance claims and other rights to payments not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing.

(collectively, (i) through and including (xxi), the "**DIP Collateral**"³ and, together with the Pre-Petition Collateral, the "**Collateral**").

(2) In no event shall (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code; and (ii) any

³ All defined terms used in the description of DIP Collateral as set forth in paragraph 2(e) shall have the meanings ascribed thereto in the DIP Credit Agreement. All terms not specifically defined in the DIP Credit Agreement and used in paragraph 2(e) shall have the meanings assigned to such term in Article 8 or 9 of the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of New York.

person or entity who pays (or through the extension of credit to any Debtor, causes to be paid) any of the DIP Obligations be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or security interests granted in favor of, or conferred upon the DIP Agent and the DIP Lenders by the terms of the DIP Credit Agreement or this Interim Order, until such time as all of the DIP Obligations shall be indefeasibly paid in full in cash in accordance with the DIP Credit Agreement and this Interim Order. Upon (i) the Final Order becoming final and non-appealable and (ii) the expiration of the Challenge Period Termination Date (as defined below), all pre-petition liens and security interests of the Pre-Petition Agent and the Pre-Petition Credit Agreement Lenders in the Pre-Petition Credit Collateral shall be deemed to be assigned (and not terminated or released to the extent so assigned) to the DIP Agent and the DIP Lenders as additional collateral security for all DIP Obligations, and such assignment shall be in addition to, and shall not limit, prejudice or impair in any way any of the claims or liens of the DIP Agent and the DIP Lenders in the Collateral granted pursuant to the DIP Credit Agreement and this Interim Order. In no event shall the DIP Lenders have any liability in connection with such assignment or the pre-petition liens so assigned.

(f) DIP Lien Priority. The DIP Liens to be created and granted to the DIP Agent and the DIP Lenders, as provided herein, (1) are created pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, (2) are first, valid, prior, perfected, unavoidable, and superior to any security, mortgage, or collateral interest or lien or claim to any of the DIP Collateral, including, without limitation, the Noteholder Replacement Liens (as defined below), the Credit Agreement Replacement Liens (as defined below) and the Pre-Petition Credit Agreement Junior Liens, subject only to the Carve Out, the Prior Liens, and the liens of the Senior Noteholders in any Pre-Petition Indenture Collateral in which the Senior Noteholders have a first priority

security interest, and (3) shall secure all DIP Obligations. The DIP Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases; and shall be valid and enforceable against any trustee appointed in the Cases, in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases or in any other proceedings related to any of the foregoing (any ‘**Successor Cases**’), or upon the dismissal of any of the Cases. The DIP Liens shall not be subject to sections 506(c), 510, 549, 550 or 551 of the Bankruptcy Code.

(g) Enforceable Obligations. The DIP Credit Agreement shall constitute and evidence the valid and binding obligations of the Borrowers and the Guarantors, which obligations shall be enforceable against the Borrowers and the Guarantors, their estates and their creditors, in accordance with their terms.

(h) Protection of DIP Lenders and Other Rights. The DIP Lenders shall have no obligation to make any extension of credit pursuant to the DIP Credit Facility unless all of the conditions precedent to the making of such extension of credit under the DIP Credit Facility are satisfied. From and after the Petition Date, the Debtors shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Credit Agreement and this Interim Order and in compliance with the Budget.

(i) Superpriority Administrative Claim Status. All DIP Obligations shall be an allowed superpriority administrative expense claim (the ‘**DIP Superpriority Claim**’ and, together with the DIP Liens, the ‘**DIP Protections**’) with priority (except as otherwise provided in paragraph 8 below) in any Case under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever

including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330 of the Bankruptcy Code (except as otherwise provided in paragraph 8 below), 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726(b), 1113, and 1114. Except for the Carve Out, no costs or expenses of administration including, without limitation, professional fees allowed and payable under Bankruptcy Code sections 328, 330, and 331, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims to the DIP Collateral are, or will be, senior to, prior to, or on a parity with the DIP Protections or the DIP Obligations, or with any other claims of the DIP Agent or the DIP Lenders arising hereunder.

(j) Cash Management Service. (1) in consideration for its provision of cash management services in connection with the Pre-Petition Revolving Loans, Bank of America, N.A. (“**BofA**”), shall share a pro rata interest in the Pre-Petition Lender Junior Liens, the Credit Agreement Replacement Liens and the Pre-Petition Superpriority Claim on a *pari passu* basis with those certain lender under the Pre-Petition Revolving Loans, and (2) in consideration for its provision of cash management services in connection with the DIP Revolving Loans, BofA shall share a pro rata interest in the DIP Protections associated with the DIP Revolving Loans on a *pari passu* basis with those certain lender under the DIP Revolving Loans.

3. Repayment of Pre-Petition Lender Debt; Adequate Protection.

(a) On the Closing Date, as adequate protection for the DIP Liens granted to the DIP Lenders in accordance with the terms and conditions contained in this Interim Order, (1) the Debtors shall use a portion of the proceeds from the DIP Loans in accordance with the DIP Credit Agreement and this Interim Order to repay in full the Pre-Petition Debt (other than early termination fees not waived) and (2) the Pre-Petition Credit Agreement Lenders shall have,

subject to the terms and conditions set forth below, (i) additional and replacement security interests and liens (the “**Credit Agreement Replacement Liens**”), (ii) an allowed superpriority administrative expense claim (the “**Pre-Petition Superpriority Claim**”) with priority (except with respect to the DIP Protections and as otherwise provided in paragraph 8 below) in any Case under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330 of the Bankruptcy Code (except as otherwise provided in paragraphs 8 below), 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726(b), 1113, and 1114, and (iii) the Pre-Petition Credit Agreement Junior Liens to secure any Reinstated Pre-Petition Debt.

(b) The adequate protection granted to the Pre-Petition Credit Agreement Lenders under paragraph 3(a) is expressly conditioned upon the following: (1) the Reinstated Pre-Petition Debt shall be junior and subordinate in right of payment to all DIP Obligations; (2) the Credit Agreement Replacement Liens and the Pre-Petition Credit Agreement Junior Liens shall be junior and subordinate in all respects to the DIP Lenders’ liens and security interests upon and in the Collateral; (3) until such time as all of the DIP Obligations are indefeasibly paid in full in cash in accordance with the DIP Credit Agreement and this Interim Order, the Pre-Petition Credit Agreement Lenders shall have no right to seek or exercise any enforcement rights or remedies in connection with the Reinstated Pre-Petition Debt, the Credit Agreement Replacement Liens or the Pre-Petition Credit Agreement Junior Liens, including, without limitation, in respect of the occurrence or continuance of any Event of Default (as hereinafter defined); (4) the Pre-Petition Credit Agreement Lenders shall be deemed to have consented to

any sale or disposition of Collateral approved, arranged for or by the DIP Agent, and shall terminate and release upon any such sale or disposition all of its liens on and security interests in such Collateral; (5) the Pre-Petition Credit Agreement Lenders shall deliver or cause to be delivered, at the Debtors' costs and expense (for which the Pre-Petition Credit Agreement Lenders shall be reimbursed upon submission to the Debtors of invoices or billing statements), any termination statements, releases or other documents necessary to effectuate and/or evidence the release and termination of the Pre-Petition Credit Agreement Lenders' liens on or security interests in any portion of the Collateral subject to any sale or disposition approved or arranged for by the DIP Agent; and (6) upon the Financing Order becoming final and non-appealable and the expiration of the Challenge Period Termination Date, all the Credit Agreement Replacement Liens and Pre-Petition Credit Agreement Junior Liens shall terminate and be released and assigned to the DIP Lenders (automatically and without further action of the parties), and the Pre-Petition Credit Agreement Lenders shall execute and deliver such agreements to evidence and effectuate such termination and release and assignment as the DIP Agent may request and the DIP Agent shall be authorized to file on behalf of the Pre-Petition Credit Agreement Lenders such UCC termination statements or such other filings as may be applicable to the extent such authorization is required under the Uniform Commercial Code of the applicable jurisdiction. The Credit Agreement Replacement Liens and the Pre-Petition Credit Agreement Junior Liens will not be assigned to the DIP Lenders except pursuant to the Final Order upon the Final Order becoming final and non-appealable and the expiration of the Challenge Period Termination Date. The Credit Agreement Replacement Liens and the Pre-Petition Credit Agreement Junior Liens shall remain in effect solely during the interim period prior to the Final Order becoming final and non-appealable and the expiration of the Challenge Period Termination Date, and shall be

assigned or released upon the Final Order becoming final and non-appealable and the expiration of the Challenge Period Termination Date.

4. Authorization to Use Cash Collateral. Pursuant to the terms and conditions of this Interim Order, the DIP Credit Facility and the DIP Credit Agreement, and in accordance with the budget (as same may be modified from time to time consistent with the terms of the DIP Credit Agreement, the “**Budget**”), filed on record in the Cases and introduced into evidence at the Interim Hearing, the Debtors are authorized to use the Cash Collateral of the Pre-Petition Credit Agreement Lenders (during the period commencing immediately after the filing of the Cases and terminating upon the date upon which the Final Order has become final and non-appealable and the Challenge Period Termination Date has expired (the “**Cash Collateral Use Period**”)), and of the Senior Noteholders. The Debtors’ authorization to use Cash Collateral shall terminate upon an Event of Default, *provided, however*, during the Remedies Notice Period (as defined below) the Debtors may use Cash Collateral solely to meet payroll obligations and pay expenses essential to the preservation of the Debtors and their estates, provided that any such payments are made in a manner consistent with the terms and provisions of the Budget. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business or any Debtor’s use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in the DIP Credit Facility and the DIP Credit Agreement. The Pre-Petition Credit Agreement Lenders and the Senior Noteholders reserve the right to seek, as adequate protection against the diminution in value of the Pre-Petition Credit Agreement Junior Liens the Credit Agreement Replacement Liens or the Noteholder Replacement Liens, as applicable, occasioned by the imposition of the automatic stay and the Debtors’ use of the

Cash Collateral, a Section 507(b) claim in an amount equal to any diminution in the value of the Pre-Petition Credit Agreement Junior Liens, the Credit Agreement Replacement Liens or the Noteholder Replacement Liens, as applicable; *provided, however*, (i) any Section 507(b) claim granted in the Cases shall be junior and subordinate in right of payment to all DIP Obligations, and (ii) any Section 507(b) claim granted to the Pre-Petition Credit Agreement Lenders shall terminate and be released upon the Final Order becoming final and non-appealable and expiration of the Challenge Period Termination Date.

5. Replacement Liens. As adequate protection for (a) the DIP Liens granted to the DIP Lenders in accordance with the terms and conditions contained in the DIP Credit Agreement and this Interim Order, and (b) the use of Cash Collateral as authorized herein, to the extent that the Senior Noteholders' interest in the Borrowers' interest in the Pre-Petition Indenture Collateral, including the Cash Collateral, is diminished by the use, sale or lease thereof, including the use of Cash Collateral, the Indenture Collateral Agent, for the benefit of the Senior Noteholders, is hereby granted adequate protection in the form of additional and replacement security interests and liens (the **'Noteholder Replacement Liens'**), in each case in a manner consistent with and subject to the terms and conditions contained in the Intercreditor Agreement. The Noteholder Replacement Liens shall be subject and subordinate to the DIP Liens, the Carve Out, the Credit Agreement Replacement Liens and the Pre-Petition Credit Agreement Junior Liens in the Cases, in any Successor Cases, or upon the dismissal of any of the Cases.

6. Post-Petition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens, without the necessity of filing or recording any financing statement or other instrument or document which

may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens or to entitle the DIP Agent to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent may, in its sole discretion, file such financing statements, mortgages, notices of liens and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the respective Cases. The Borrowers and Guarantors shall execute and deliver to the DIP Agent all such financing statements, mortgages, notices and other documents as the DIP Agent or any of the DIP Lenders may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens granted pursuant hereto. The DIP Agent, in its discretion, may file a xerographic copy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Borrowers have real or personal property, and in such event, the subject filing or recording officer shall file or record such copy of this Interim Order. The DIP Agent shall, in addition to the rights granted to it under the DIP Credit Agreement, be deemed to be the successor in interest to the Pre-Petition Agent with respect to all Pre-Petition Collateral access agreements and other agreements with third parties granting rights in, or waiving claims against, any Pre-Petition Collateral, including without limitation, each collateral access agreement duly executed and delivered by any landlord of the Debtors.

7. Reservation of Certain Third Party Rights and Bar of Challenges and Claims.

Nothing in this Interim Order or the DIP Credit Agreement shall prejudice whatever rights any official committee(s) or any other party in interest other than the Borrowers and Guarantors may

have (a) to object to or challenge the findings herein, including, but not limited to, those in relation to (i) the validity, extent, perfection or priority of the mortgage, security interests and liens of the Pre-Petition Agent and the Pre-Petition Credit Agreement Lenders in and to the Pre-Petition Collateral, or (ii) the validity, allowability, priority, status or size of the Pre-Petition Obligations, or (b) to bring suit against the Pre-Petition Agent or the Pre-Petition Credit Agreement Lenders in connection with or related to the Pre-Petition Credit Agreement, or the actions or inactions of the Pre-Petition Agent or the Pre-Petition Credit Agreement Lenders arising out of or related to the Pre-Petition Credit Agreement, or (c) to object to the reasonableness of the closing fees and the administrative agent fee of the DIP Agent, and the commitment fee and facility fee of the Tranche C Agent; *provided, however*, that, unless any official committee(s) or any other party in interest commences a contested matter or adversary proceeding raising such objection or challenge, including without limitation any claim against the Pre-Petition Agent or the Pre-Petition Credit Agreement Lenders in the nature of a setoff, counterclaim or defense to the Pre-Petition Obligations (including but not limited to, those under sections 506, 544, 547, 548, 550 and/or 552 of the Bankruptcy Code or by way of suit against the Pre-Petition Agent or the Pre-Petition Credit Agreement Lenders), within (a) 60 days following the appointment of counsel for the first official committee, if any, or (b) if no official committee(s) shall be appointed, 75 days following entry of the Final Order (as defined below) (collectively, (a) and (b) shall be referred to as the **‘Challenge Period’**, and the date that is the next calendar day after the termination of the Challenge Period, in the event that no objection or challenge is raised during the Challenge Period shall be referred to as the **“Challenge Period Termination Date”**), upon the Challenge Period Termination Date, any and all such challenges and objections by any party (including, without limitation, any official creditors’ committee(s)

and any Chapter 11 or Chapter 7 trustee appointed herein) shall be deemed to be forever waived and barred, and the Pre-Petition Obligations shall be deemed to be allowed in full and, to the extent of the value of the Pre-Petition Credit Collateral on the Petition Date, shall be deemed to be allowed as a secured claim within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with these Cases and the Borrowers' Stipulations shall be binding on all creditors, interest holders and parties in interest.

8. Carve Out. During the Interim Period and subject to the terms and conditions contained in this paragraph 8, the DIP Protections, the Pre-Petition Lender Junior Liens, the Credit Agreement Replacement Liens and the Noteholder Replacement Liens are subordinate only to the following (the "**Carve Out**"): (a) allowed administrative expenses pursuant to 28 U.S.C. § 1930(a)(6); and (b) \$1,000,000 for allowed reasonable fees and expenses of professionals of the Debtors, any official committee(s) of creditors, and any chapter 7 trustee. The Debtors and the DIP Agent will agree to an appropriate Carve Out for purposes of the Final Order. The DIP Lenders' obligation to fund or otherwise pay the Carve Out, including allowed professional fees, shall be added to and made a part of the DIP Obligations, secured by the Collateral, and the DIP Lenders shall be entitled to all of the rights, claims, liens, priorities and protections under this Interim Order, the DIP Credit Agreement, the Bankruptcy Code, and/or applicable law in connection therewith. No portion of the Carve Out may be used to litigate, object, contest or challenge in any manner or raise any defenses to the debt or collateral position of the DIP Agent and the DIP Lenders under the DIP Facility or the Pre-Petition Credit Agreement, whether by challenging the validity, extent, amount, perfection, priority or enforceability of the indebtedness under the DIP Facility or the Pre-Petition Credit Agreement or the validity, perfection or priority of any mortgage, security interest or lien with respect thereto

or any other rights or interests or replacement liens with respect thereto or any other rights or interests of the Agent and the Lenders, or by seeking to subordinate or recharacterize the DIP Facility or the Pre-Petition Credit Agreement or disallow any claim, mortgage, security interest, lien, or replacement lien or by asserting any claims or causes of action, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code, against the DIP Agent, the DIP Lenders, or any of their respective officers, directors, agents or employees. Unless otherwise ordered by the Court, the Carve-Out shall not be used in connection with (i) preventing, hindering or delaying the DIP Lenders' or the DIP Agent's enforcement or realization upon the DIP Collateral once an Event of Default has occurred, (ii) using or seeking to use cash collateral or selling or otherwise disposing of the DIP Collateral without the consent of the DIP Agent, (iii) using or seeking to use any insurance proceeds without the consent of the DIP Agent; or (iv) incurring Indebtedness (as defined in the DIP Revolving Loans) without the consent of the DIP Agent. The DIP Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any professionals incurred in connection with the Cases under any chapter of the Bankruptcy Code, and nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lenders in any way, to pay compensation to or to reimburse expenses of any professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Without limiting any of the DIP Lenders' rights under the DIP Credit Agreement and this Interim Order, the DIP Lenders shall implement a Reserve (as such term is defined in the DIP Credit Agreement) in respect of the Carve Out in accordance with the terms and conditions of the DIP Credit Agreement. Such Reserve shall reduce the amount of Loans and Letters of Credit otherwise available to the Borrowers under the DIP Credit Agreement.

9. Payment of Compensation. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, any Committee or of any Person or shall affect the right of the DIP Agent, the DIP Lenders, the Pre-Petition Agent and/or the Pre-Petition Credit Agreement Lenders to object to the allowance and payment of such fees and expenses.

10. Section 506(c) Claims. Subject to the entry of a Final Order, no costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the DIP Agent or the DIP Lenders, their claims, or the DIP Collateral, pursuant to sections 105, 506(c) or 522 of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Agent and the DIP Lenders, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent or the DIP Lenders.

11. Collateral Rights. Unless the DIP Agent has provided its prior written consent or all DIP Obligations have been paid in full in cash (or will be paid in full in cash upon entry of an order approving indebtedness described in subparagraph (a) below), all commitments to lend have terminated and all DIP Letters of Credit have been cash collateralized as required by the DIP Credit Agreement, there shall not be entered in these proceedings, or in any Successor Cases, any order which authorizes any of the following:

(a) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the Collateral and/or entitled to priority administrative status which is equal or senior to those granted to the DIP Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Credit Agreement Lenders herein; or

(b) the enforcement of any claimed security, mortgage, or collateral interest or other lien of any person other than of the DIP Agent on all or any portion of the Collateral (other than in connection with the Prior Liens); or

(c) the Borrowers' return of goods constituting Collateral pursuant to section 546(h)⁴ of the Bankruptcy Code.

12. Proceeds. Without limiting the provisions and protections of paragraph 11 above, if at any time prior to the repayment in full of all DIP Obligations and the termination of the DIP Agent's and DIP Lenders' obligation to make loans and advances under the DIP Credit Facility, including subsequent to the confirmation of any plan with respect to any or all of the Borrowers, the Borrowers' estates, any trustee, any examiner with enlarged powers or any responsible officer, subsequently appointed shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d), then all of the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent in pro rata reduction of the DIP Obligations.

13. Commitment Termination Date. All (i) DIP Obligations of the Debtors to the DIP Agent and the DIP Lenders shall be immediately due and payable, and (ii) authority to use the Cash Collateral shall cease, both on the date (the '**Commitment Termination Date**') that is the earliest to occur of:

(a) nine (9) months from the Petition Date;

(b) thirty-five (35) days after the commencement of the Cases, if the Final Order has not been entered prior to the expiration of such period;

⁴ As correctly numbered in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

- (c) the effective date of any plan of reorganization for one or more of the Debtors confirmed pursuant to Bankruptcy Code section 1129;
- (d) the consummation of a sale of all or substantially all of one or more of the Debtors' assets pursuant to section 363 of the Bankruptcy Code; and
- (e) the date that is a "Termination Declaration Date" as defined herein;

14. Payment Upon Maturity. The DIP Obligations shall be due and payable in accordance with the terms of the DIP Credit Agreement, without notice or demand, on the Commitment Termination Date. Any DIP Letter of Credit outstanding on the Commitment Termination Date shall be cash collateralized in an amount equal to 110% of the maximum drawing amount. If any such Cash Collateral is subject to the Carve-Out, then the amount thereof shall be increased by the amount of the Carve-Out to which it is subject.

15. Payment on Effective Date of Plan. The DIP Obligations shall be paid indefeasibly in full on the effective date of any plan of reorganization confirmed in the Cases.

16. Disposition of Collateral. Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Collateral, or assume, reject or assign any Leasehold Property (as defined in the DIP Credit Agreement) without the prior written consent of the DIP Agent (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Agent or the DIP Lenders or an order of this Court), except for sales of the Debtors' inventory in the ordinary course of business or except as otherwise provided for in the DIP Credit Agreement and this Interim Order; provided, however, that nothing herein shall impair the Debtors' exercise of their fiduciary duties with respect to the assumption, rejection, or assignment of real property leases.

17. Events of Default; Remedies.

(a) Events of Default. The occurrence of any of the following events shall constitute an Event of Default under this Interim Order.⁵

(1) failure to pay interest, principal, or fees when due (including, without limitation, the occurrence of an Overadvance);

(2) any representation or warranty of the DIP Credit Agreement found to be materially incorrect;

(3) breach of any affirmative, negative or financial covenant under the DIP Credit Agreement;

(4) any post-petition judgment in excess of an amount to be agreed or which would operate to divest the Debtors of any assets of a value in an amount to be agreed;

(5) the Debtors being enjoined from conducting business;

(6) the material disruption of business operations of the Debtors;

(7) material damage to or loss of assets of the Debtors;

(8) conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code;

(9) the dismissal of any of the Cases;

(10) the appointment in any of the Cases of a Chapter 11 trustee or an examiner with expanded powers;

(11) the grant of any superpriority administrative expense claim or any lien which is pari passu with or senior to those of the DIP Agent and the DIP Lenders;

⁵ Capitalized terms used in this paragraph and not defined herein shall have the meanings ascribed

(12) the Bankruptcy Court's entry of an order granting relief from the automatic stay to permit foreclosure of security interests in assets of the Debtors of a value in excess of an amount to be agreed;

(13) an order terminating exclusivity having been entered (or requested, unless actively contested by the Debtors) or failure of the Bankruptcy Court to enter, within thirty-five (35) days following the commencement of the Cases, the Final Order in form and substance satisfactory to the DIP Agent in its sole discretion;

(14) if the Bankruptcy Court does not approve the Debtors' motion to sell all or substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code within ninety (90) days of the commencement of the Cases, the failure of the Debtors to file with the Bankruptcy Court, within ninety (90) days of the commencement of the Cases, a plan of reorganization acceptable to the DIP Agent in its sole discretion;

(15) any reversal, revocation or modification without the consent of the DIP Agent of the Final Order or any other order of the Bankruptcy Court with respect to the Cases and affecting the DIP Facility;

(16) in connection with the consummation of a sale of all or substantially all of one or more of the Debtors' assets pursuant to section 363 of the Bankruptcy Code, the Debtors' failure to pay such sale proceeds to the DIP Agent in accordance with the DIP Credit Agreement;

to them in the DIP Credit Agreement.

(17) the failure of the Debtors to pay indefeasibly in full the DIP Obligations on the effective date of any plan of reorganization confirmed in the Cases;

(18) an Event of Default under the DIP Credit Agreement.

(b) Rights and Remedies Upon Event of Default.

(1) Immediately upon the occurrence and during the continuation of an Event of Default, (i) the DIP Agent may declare all obligations owing under the DIP Credit Agreement to be immediately due and payable and may declare the termination, reduction or restriction of any further commitment to extend credit to the Borrowers to the extent any such commitment remains (the declaration of any of the foregoing being herein referred to as a “**Termination Declaration**” and the date of such declaration being herein referred to as the “**Termination Declaration Date**”), (ii) the Pre-Petition Agent may declare a termination, reduction or restriction of the ability of the Debtors to use any Cash Collateral, and (iii) the DIP Agent may increase the rate of interest applicable to the Loans and the Letter of Credit Fees to the Default Rate under the DIP Credit Agreement.

(2) In addition to the remedies described above and other customary remedies, any automatic stay otherwise applicable to the DIP Agent or the DIP Lenders is hereby modified so that upon the occurrence and during the continuance of an Event of Default, and following the giving of three (3) business days’ notice (the “**Remedies Notice Period**”) to the Borrowers, any official committee(s) of creditors appointed in the Cases, and the United States Trustee, the DIP Agent shall be entitled to foreclose on all or any portion of the DIP Collateral, collect accounts receivable and apply the proceeds thereof to the obligations, occupy the Borrowers’ premises to

complete inventories, fulfill orders and sell inventories, execute going out-of-business sales or otherwise exercise remedies against the DIP Collateral permitted by applicable nonbankruptcy law. During the Remedies Notice Period, the Borrowers shall be entitled to an emergency hearing with the Bankruptcy Court and, unless ordered otherwise prior to the expiration of the Remedies Notice Period, the automatic stay, as to the DIP Lenders and the DIP Agent, shall be automatically terminated at the end of the Remedies Notice Period and without further notice or order.

(3) If the DIP Agent or the DIP Lenders exercise any of their rights and remedies upon the occurrence of an Event of Default, the DIP Agent may retain one or more agents to sell, lease, or otherwise dispose of the DIP Collateral. In any exercise of their rights and remedies upon an Event of Default under the DIP Credit Agreement, the DIP Agent and DIP Lenders are authorized to proceed under or pursuant to the DIP Credit Agreement.

All proceeds realized from any of the foregoing (subject to the Carve-Out Amount and any Prior Liens) shall be turned over to the DIP Agent for indefeasible application to the DIP Obligations under, and in accordance with the provisions of, the DIP Credit Agreement and this Interim Order, and thereafter, after the DIP Obligations have been repaid in full, to the extent any such proceeds remain, to the Pre-Petition Agent to partially satisfy the Pre-Petition Obligations, if any, as “proceeds of Collateral” as per the terms of the Pre-Petition Credit Agreement.

(c) Modification of Automatic Stay. The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified as necessary to (1) permit the Debtors to grant the Credit Agreement Replacement Liens, the Noteholder Replacement Liens and the DIP Liens and to

incur all liabilities and obligations to the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent, the Senior Noteholders, the DIP Agent and the DIP Lenders under the DIP Credit Agreement, the DIP Credit Facility and this Interim Order, and (2) authorize the DIP Agent and the Pre-Petition Agent to retain and apply payments hereunder.

(d) Other Remedies. Nothing included herein shall prejudice, impair, or otherwise affect (1) the Pre-Petition Agent's and the Pre-Petition Credit Agreement Lenders' right to seek any other or supplemental relief in respect of the Debtors, (2) the DIP Agent's or DIP Lenders' rights to seek any other or supplemental relief in respect of the Debtors, or (c) the DIP Agent's or DIP Lenders' (or their affiliates') rights, as provided in the DIP Credit Agreement or the DIP Credit Facility, to suspend or terminate providing any form or type of financial accommodation to the Borrowers, including, without limitation, in relation to any of the DIP Loan, the DIP Obligations, the DIP Credit Agreement, or the DIP Facility, in accordance with the terms of and to the extent provided for in the DIP Credit Agreement.

18. Proofs of Claim. Neither the DIP Agent nor any of the DIP Lenders will be required to file proofs of claim in any of the Cases. The Pre-Petition Agent is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) aggregate proofs of claim in each of the Cases on behalf of the Pre-Petition Credit Agreement Lenders. Any proof of claim so filed shall be deemed to be in addition and not in lieu of any other proof of claim that may be filed by any of the Pre-Petition Credit Agreement Lenders. Any order entered by the Bankruptcy Court in relation to the establishment of a bar date in any of the Cases will so provide.

19. Good Faith under Section 364(e) of the Bankruptcy Code. The DIP Agent and the DIP Lenders have acted in good faith in connection with this Interim Order and their reliance

on the provisions of this Interim Order is in good faith. Accordingly, if any provision of this Interim Order is hereafter modified, vacated, or stayed by subsequent order of this Court or any other court for any reason, the DIP Agent and the DIP Lenders are entitled to the protections provided in section 364(e) of the Bankruptcy Code.

20. Other Rights and Obligations.

(a) No Modification or Stay of this Interim Order. Based on the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Credit Facility contemplated by this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by a subsequent order of this or any other Court, no such modification, amendment or vacation shall affect the validity and enforceability of any advances made hereunder or lien or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the DIP Agent or the DIP Lenders hereunder arising prior to the effective date of such modification, amendment or vacation of any DIP Protections granted to the DIP Agent for the sole benefit of the DIP Agent and the DIP Lenders shall be governed in all respects by the original provisions of this Interim Order, and the DIP Agent and the DIP Lenders shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Protections granted herein, with respect to any such claim. Since the loans made pursuant to the DIP Credit Agreement are made in reliance on this Interim Order, the obligations owed the DIP Lenders prior to the effective date of any stay, modification or vacation of this Interim Order cannot, as a result of any subsequent order in the Cases, or in any Successor Case, be subordinated, lose their lien priority or superpriority administrative expense claim status, or 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 Credit Agreement.

(b) Expenses. As provided in the DIP Credit Agreement, including, without limitation, reasonable, documented legal, accounting, collateral examination, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, indemnification and reimbursement of fees and expenses, and other out of pocket expenses of the DIP Agent and the DIP Lenders in connection with the DIP Credit Facility will be paid by the Borrowers, whether or not the transactions contemplated hereby are consummated.

(c) Binding Effect. The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Agent, the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Credit Agreement Lenders, the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estate of the Debtors) whether in the Cases, in any Successor Cases, or upon dismissal of any such Chapter 11 or Chapter 7 case.

(d) No Waiver. The failure of the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the DIP Agent or the DIP Lenders to seek relief or otherwise exercise their rights and remedies under the DIP Credit Agreement, the DIP Credit Facility or this Interim Order, as applicable, shall not constitute a waiver of any of the Pre-Petition Agent's, the Pre-Petition Credit Agreement Lenders', the DIP Agent's or DIP Lenders' rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair (1) the rights of the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the DIP Agent or the DIP Lenders under the Bankruptcy Code or under non-bankruptcy law,

including without limitation, the rights of the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the DIP Agent or the DIP Lenders to (i) request conversion of any of the Cases to cases under Chapter 7, dismissal of any of the Cases, or the appointment of a trustee in any of the Cases (but only in the event an Event of Default has occurred and is continuing), or (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans or (2) any of the rights, claims or privileges (whether legal, equitable or otherwise) of the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the DIP Agent or the DIP Lenders.

(e) No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

(f) No Marshalling or 552(b) Claim. None of the DIP Agent, the DIP Lenders and/or the Pre-Petition Credit Agreement Lenders shall be subject to (a) the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Collateral, or (b) an “equities of the case” claim under section 552(b) of the Bankruptcy Code against any of the DIP Agent, the DIP Lenders and/or the Pre-Petition Credit Agreement Lenders with respect to proceeds, product, offspring or profits of any of the Pre-Petition Credit Collateral or the Collateral.

(g) Amendment. The Borrowers and the DIP Agent (after having obtained the approval of the DIP Lenders to the extent required by the DIP Credit Agreement) may amend or waive any provision of the DIP Credit Agreement, provided that such amendment or waiver, in the judgment of the Borrowers and the DIP Agent, is either nonprejudicial to the rights of third parties or is not material. Except as otherwise provided herein, no waiver, modification, or

amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by on behalf of all the Borrowers and the DIP Agent (after having obtained the approval of the DIP Lenders as provided in the DIP Credit Agreement) and approved by the Bankruptcy Court.

(h) Survival of Interim Order. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (1) confirming any plan of reorganization in any of the Cases, (2) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code, or (3) dismissing any of the Cases, and the terms and provisions of this Interim Order as well as the DIP Protections granted pursuant to this Interim Order and the DIP Credit Agreement, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Protections shall maintain their priority as provided by this Interim Order until all the obligations of the Borrowers to the DIP Agent, the DIP Lenders pursuant to the DIP Credit Agreement, and this Interim Order are indefeasibly paid in full and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Credit Facility which survive such discharge by their terms). The DIP Obligations shall not be discharged by the entry of an order confirming a Plan, the Borrowers and the Guarantors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code. None of the Debtors shall propose or support any Plan that is not conditioned upon the payment in full in cash of all of the DIP Obligations, on or prior to the earlier to occur of (i) the effective date of such Plan and (ii) the Commitment Termination Date.

(i) Inconsistency. In the event of any inconsistency between the terms and conditions of the DIP Credit Agreement and of this Interim Order, the provisions of this Interim Order shall govern and control.

(j) Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Borrowers' or Guarantors' estates, it being understood, however, that the Borrowers and Guarantors shall be jointly and severally liable to the DIP Agent and the DIP Lenders in accordance with the terms of the DIP Credit Facility and the DIP Credit Agreement.

(k) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

(l) Objections Overruled. All objections to the DIP Motion to the extent not withdrawn or resolved, are hereby overruled.

(m) No Waivers or Modification of Interim Order. Debtors irrevocably waive any right to seek any modification or extension of this Interim Order without the prior written consent of the DIP Agent and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent.

(n) Interim Financing Term. The authorization of Debtors to obtain loans from the DIP Lenders in accordance with the DIP Credit Agreement and this Interim Order shall expire thirty-five (35) days from the commencement of the Cases, unless a Final Order in form and substance satisfactory to the DIP Lenders is entered on or before such date.

(o) Waiver and Deferral of Early Prepayment Fees. Provided that no challenge or objection is raised before expiration of the Challenge Period Termination Date, then:

(1) with respect to the Revolving Credit Facility (as defined in the Pre-Petition Credit Agreement), all Early Prepayment Fees (other than early termination

fees owed to UBS and Wells Fargo Retail Finance) due shall be waived on the Challenge Period Termination Date; and

(2) with respect to the Tranche B Loan (as defined in the Pre-Petition Credit Agreement), (i) \$300,000 of the Early Prepayment Fees shall be waived on the Challenge Period Termination Date, and (ii) the remaining \$300,000 owed to GE (A) shall be due and payable on the date when the DIP Term Loan is accelerated or paid by any party or upon any buyout of the DIP Term Loan, or (B) waived if GE acts as lead arranger and administrative agent in connection with a financing of the Borrowers' emergence from the Cases by way of a confirmed plan or sale or in connection with a refinancing of the facilities provided under the DIP Credit Agreement; *provided, however*, GE shall have no obligation to provide such financing.

(p) Final Hearing. The Final Hearing to consider entry of the Final Order and final approval of the DIP Credit Facility is scheduled for November 8, 2005 10:00 a.m. in Courtroom 623 at the United States Bankruptcy Court, SDNY, New York, New York. On or before October 13, 2005, the Borrowers shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the **'Final Hearing Notice'**), together with copies of this Interim Order, the proposed Final Order and the DIP Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; (c) counsel for any official committee(s), if any; (d) the Securities and Exchange Commission; (e) the Internal Revenue Service; and (f) any known holders of Prior Liens. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of

the Bankruptcy Court no later than on November 4, 2005, which objections shall be served so that the same are received on or before such date by: (i) the Borrowers, care of their counsel, Richard H. Engman, Esq., Jones Day, 222 E. 41st Street, New York, NY 10017, and David Heiman, Esq., Jones Day, 901 Lakeside Ave., Cleveland, OH 44114; (ii) the DIP Agent and the DIP Lenders, care of the DIP Agent's counsel, Tina L. Brozman, Esq., Bingham McCutchen LLP, 399 Park Avenue, New York, NY 10022, Patrick J. Trostle, Esq., Bingham McCutchen LLP, One State Street, Hartford, CT 06103, and Robert A. J. Barry, Esq., Bingham McCutchen LLP, 150 Federal Street, Boston, MA 02110; (iii) counsel for Prentice Capital Management, LP, as Tranche C Agent under the Tranche C DIP Facility, D.J. Baker, Esq. and Alexandra Margolis, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036-6522; and (iv) the United States Trustee's Office, 33 Whitehall Street, 21st Floor, New York, New York 100040, Greg W. Zipes.

(q) Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

SO ORDERED by the Court this 12th day of October, 2005.

/s/Burton R. Lifland
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

DIP CREDIT AGREEMENT