

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:) Chapter 11
) Judge Mullins
)
O’SULLIVAN INDUSTRIES, INC., *et al.*,) Cases Nos.: 05-83049, 05-83076,
) 05-83087 and 05-83102
)
Debtors.) (Jointly Administered Under
_____) Case No. 05-83049

**STIPULATION AND INTERIM CONSENT ORDER PURSUANT TO
SECTIONS 361, 363 AND 364(d)(1) OF THE BANKRUPTCY CODE AND
RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
PROVIDING INDENTURE TRUSTEE FOR SENIOR SECURED NOTEHOLDERS
WITH ADEQUATE PROTECTION IN CONNECTION WITH
DEBTORS’ AUTHORIZATION TO OBTAIN SECURED POSTPETITION FINANCING
AND USE CASH COLLATERAL**

O’Sullivan Industries, Inc. (“**OSI**”), O’Sullivan Industries Holdings, Inc. (“**OSI Holdings**”), O’Sullivan Industries - Virginia, Inc. (“**OSI - Virginia**”) and O’Sullivan Furniture Factory Outlet, Inc. (“**OFFO**” and together with OSI, OSI Holdings and OSI- Virginia, the “**OSI Group**”), as debtors and debtors in possession (collectively, the “**Debtors**”), GoldenTree Asset Management L.P. (“**GoldenTree**”), Mast Credit Opportunities I, (Master) Ltd. (“**Mast**”) and BreakWater Fund Management, LLC (“**BreakWater**” and together with GoldenTree and Mast, the “**Ad Hoc Senior Secured Noteholders Committee**”), each of GoldenTree, Mast and BreakWater acting on behalf of affiliates and/or funds that it manages and each being a holder of

the Senior Secured Notes (as defined herein) issued by OSI, stipulate and agree, and upon entry of this Stipulation and Order, the Court finds, as follows:

A. On October 14, 2005 (the **“Petition Date”**), each of the Debtors commenced in this Court a case under chapter 11 of title 11 of the United States Code (the **“Bankruptcy Code”**). The Debtors are continuing to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. Pursuant to an order of this Court, the Debtors’ chapter 11 cases (the **“Chapter 11 Cases”**) have been consolidated for procedural purposes only and are being jointly administered.

C. No official committee of unsecured creditors has been appointed in the Chapter 11 Cases.

D. This Court has jurisdiction over this proceeding and the parties in interest and properties and interests affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334.

Consideration of this Stipulation and Order constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

E. Prior to the Petition Date, OSI, OSI - Virginia and OFFO, as borrowers (collectively, the **“Borrowers”**), and OSI Holdings, as guarantor, entered into that certain Credit Agreement (together with all documents, instruments and agreements executed in connection therewith or related thereto, as amended from time to time, the **“Prepetition Credit Agreement”**), dated as of September 29, 2003, with General Electric Capital Corporation, as agent, letter of credit issuer, and lender (**“GECC”**), and the other financial institutions party thereto, as lenders, providing for up to \$40 million of revolving loans and letters of credit to the Borrowers.

F. Pursuant to that certain Indenture, dated as of September 29, 2003 (together with all documents, instruments and agreements executed in connection therewith or related thereto, the “**Senior Secured Notes Indenture**”), among OSI, OSI Holdings, OSI - Virginia, OFFO and The Bank of New York, as trustee (in its representative capacity on behalf and for the benefit of the Senior Secured Noteholders (as defined herein), “**BNY**”), OSI issued \$100 million principal amount of 10.63% senior secured notes due 2008 (the “**Senior Secured Notes**”). The Senior Secured Notes are guaranteed by OSI Holdings, OSI - Virginia and OFFO.

G. As of the Petition Date, the Debtors’ indebtedness under the Senior Secured Notes included an outstanding principal balance in the approximate amount of \$100 million, plus accrued and unpaid interest, costs, fees (including, without limitation, attorneys’ fees) and other charges. As of the Petition Date, GoldenTree, Mast and BreakWater held, collectively, approximately \$84.35 million principal amount of the Senior Secured Notes, which sum represents approximately 84 % of the outstanding principal balance of the Senior Secured Notes.

H. The respective obligations of the Borrowers under the Prepetition Credit Agreement and of the OSI Group under the Note Documents (as defined in the Indenture) are secured obligations, as described more particularly herein. Pursuant to a certain Security Agreement (the “**Prepetition Security Agreement**”) dated as of September 29, 2003, among the Borrowers and GECC, and a certain Intercreditor Agreement (the “**Intercreditor Agreement**”) dated as of September 29, 2003, among GECC, BNY, and the OSI Group, the obligations of the Borrowers under the Prepetition Credit Agreement are secured by a first-priority lien upon and security interest (the “**Credit Agreement Priority Lien**”) in all of the Borrowers’ accounts receivable, inventory, deposit accounts, certain books and records and certain intellectual property rights licensed to OSI (collectively, as more particularly defined in the Senior Secured

Notes Indenture, the **“Credit Agreement Priority Lien Collateral”**), and a second-priority lien upon and security interest (the **“Credit Agreement Junior Lien”**) in all of the Borrowers’ assets other than the Credit Agreement Priority Lien Collateral. Pursuant to the Indenture, the Intercreditor Agreement and a certain Security and Pledge Agreement (the **“Prepetition Note Security Agreement”**) dated as of September 29, 2003 among the Borrowers, the respective obligations of the OSI Group under the Note Documents are secured by a first-priority lien upon and security interest in all Collateral (as defined in the Senior Secured Notes Indenture) other than the Credit Agreement Priority Lien Collateral (such Collateral in which BNY, on behalf and for the benefit of the holders (the **“Senior Secured Noteholders”**) of the Senior Secured Notes, is granted a first-priority security interest, is referred to herein as the **“Note Priority Lien Collateral”**) and a second-priority lien upon and security interest in the Credit Agreement Priority Lien Collateral (the **“Note Junior Lien Collateral”** and together with the Note Priority Lien Collateral, the **“Prepetition Senior Secured Notes Collateral”**; the related liens and security interests held by BNY in respect of the Prepetition Senior Secured Notes Collateral, the **“Prepetition Senior Secured Notes Liens”**).

I. The Debtors stipulate and agree that (i) the obligations under the Note Documents are valid and enforceable in accordance with their terms, without defense, offset, counterclaim or right of recoupment, are not subject to disallowance under section 502(d) of the Bankruptcy Code, and are not subject to subordination under section 510 of the Bankruptcy Code, except to the extent provided in the Intercreditor Agreement, and (ii) the Prepetition Secured Notes Liens granted by OSI, OSI Holdings, OSI - Virginia and OFFO, respectively, to BNY in the Prepetition Senior Secured Notes Collateral are valid, duly perfected, enforceable and not avoidable under applicable provisions of the Bankruptcy Code and are not subject to

subordination under section 510 of the Bankruptcy Code, except to the extent provided in the Intercreditor Agreement.

J. On the Petition Date, the Debtors filed their motion (the “**DIP Financing Motion**”) seeking authorization and approval, pursuant to sections 364(c) and 364(d)(1) of Bankruptcy Code and Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), (i) for the Debtors to obtain postpetition financing (the “**DIP Facility**”; the final order approving the DIP Facility being referred to herein as the “**Final DIP Financing Order**”) comprising a revolving credit facility in an aggregate amount of up to \$30,000,000 (including a letter of credit subline in an aggregate amount of up to \$20,000,000) and a term loan credit facility in the aggregate amount of up to \$5,000,000, all pursuant to the terms and provisions of that certain Post-Petition Credit and Security Agreement, dated as of October __, 2005, by and among the Debtors, as borrowers, The CIT Group/Business Credit, Inc., as agent (“**CIT**”), L/C Issuer and a Lender, and the other financial institutions from time to time party thereto (collectively, the “**DIP Lenders**”) (as the same may be amended, supplemented or otherwise modified from time to time, the “**Postpetition Credit Agreement**”), such financing to be secured by first-priority, priming liens (the “**Priming Liens**”) on substantially all of the Debtors’ existing and after-acquired personal and real property (as such collateral is described in the Postpetition Credit Agreement, the “**DIP Collateral**”), (ii) pending a final hearing on the DIP Financing Motion, for the Debtors to obtain emergency postpetition loans up to an aggregate principal amount of [_____] under the Postpetition Credit Agreement through and including the date on which the Final DIP Financing Order is entered (the “**Interim Facility**”; the order approving the Interim Facility being referred to herein as the “**Interim DIP Financing Order**” and together with the Final DIP Financing Order, the “**DIP Financing Order**”), and (iii) for the

Debtors to grant to the DIP Agent and the DIP Lenders mortgages, liens, security interests and super-priority claims pursuant to sections 364(c)(1) and (2) and 364(d) of the Bankruptcy Code.

K. The Priming Liens that the Debtors propose, pursuant to the DIP Financing Motion, to grant to the DIP Agent and the DIP Lenders to secure the Debtors' obligations under the Postpetition Credit Agreement will rank senior in priority to the liens and security interests granted by OSI, OSI Holdings, OSI - Virginia and OFFO to BNY on the [Note Priority Lien Collateral] [the Note Junior Lien Collateral].

L. In the DIP Financing Motion, the Debtors also incorporated a request (the "**Adequate Protection Request**") that the Court approve this Stipulation and Order for the purpose of, among other things, (i) authorizing and approving, pursuant to section 363(c)(2) of the Bankruptcy Code and Bankruptcy Rule 4001(b), the Debtors' use of that portion of the Prepetition Senior Secured Notes Collateral that constitutes BNY's "cash collateral" (the "**Note Cash Collateral**") within the purview of section 363(a) of the Bankruptcy Code, and (ii) in accordance with sections 361, 363(c)(2), and 364(d) of the Bankruptcy Code, providing the Senior Secured Noteholders with adequate protection of their interests in the Prepetition Senior Secured Notes Collateral.

M. Pursuant to section 363(c)(2)(A) of the Bankruptcy Code, the Debtors have requested that GoldenTree, Mast and BreakWater consent to the Debtors' use of the Note Cash Collateral. The Debtors also have requested that GoldenTree, Mast and BreakWater consent to the Interim DIP Financing Order, including, without limitation, the proposed grant by the Debtors to the DIP Agent and the DIP Lenders of the Priming Liens in order to secure the Debtors' obligations arising under the Postpetition Credit Agreement. The Debtors acknowledge and stipulate that BNY, on behalf and for the benefit of the Senior Secured Noteholders, is

entitled to adequate protection, pursuant to sections 361, 363(c), 363(e) and 364(d)(1)(B) of the Bankruptcy Code, of its interest in the Prepetition Senior Secured Notes Collateral, including, without limitation, adequate protection against the aggregate diminution in value of BNY's interest in the Prepetition Senior Secured Notes Collateral on and after the Petition Date resulting from any cause or reason whatsoever, including, without limitation, depreciation, decline in market value, the Debtors' use of the Prepetition Senior Secured Notes Collateral (or any proceeds thereof, including the Note Cash Collateral) to satisfy any of the obligations of the Debtors under the Postpetition Credit Agreement, the Debtors' grant of the Priming Liens to the DIP Agent pursuant to the DIP Financing Order, and the imposition of the automatic stay.

N. GoldenTree, Mast and BreakWater are willing to provide such consent, and shall be deemed to have provided such consent, upon the approval by the Court of this Stipulation and Order.

O. Prior to the Petition Date, GoldenTree, Mast and BreakWater retained Kasowitz, Benson, Torres & Friedman LLP ("**Kasowitz**") and Alston & Bird LLP ("**Alston**"), as their legal advisors, and Rothschild, Inc. ("**Rothschild**"), as their financial advisor, in connection with discussions among GoldenTree, Mast, BreakWater and the OSI Group concerning a potential restructuring of the OSI Group's capital structure.

P. The entry of this Stipulation and Consent Order will facilitate the Court's approval and the consummation of the DIP Facility and is in the best interests of the Debtors, their creditors and their estates.

Q. The relief sought pursuant to the DIP Financing Motion, including the Adequate Protection Request, is critically important to the Debtors' reorganization efforts. In accordance with Bankruptcy Rules 4001(b) and (d), and, in view of the urgent circumstances relating to the

relief requested in the DIP Financing Motion, including the Adequate Protection Request, due and proper notice of the Adequate Protection Request and this Stipulation and Order has been provided to the parties identified in the DIP Financing Motion in the manner described therein. Such notice is sufficient for all purposes under the Bankruptcy Rules and the Bankruptcy Code, including, without limitation, sections 102(1), 361, 363 and 364 thereof, and no other notice need be provided for entry of this Stipulation and Order. The content of the DIP Financing Motion, including the Adequate Protection Request set forth therein, and the exhibits thereto, including a copy of this Stipulation and Order, was sufficient to afford reasonable notice of the provisions of this Stipulation and Order and opportunity for hearing.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY THE DEBTORS, GOLDENTREE, MAST AND BREAKWATER, AND ORDERED, ADJUDGED AND DECREED BY THE COURT, as follows:

1. For so long as the Debtors remain in compliance with the terms of this Stipulation and Order, the Debtors are authorized to use the Prepetition Senior Secured Notes Collateral, including, without limitation, the Note Cash Collateral.

2. As adequate protection of the interests of the Senior Secured Noteholders in the Prepetition Senior Secured Notes Collateral, including the Note Cash Collateral, pursuant to sections 361, 363(c), 363(e) and 364(d) of the Bankruptcy Code:

(a) The Debtors hereby grant, assign and pledge to BNY post-petition replacement security interests in and liens (the “**Postpetition Senior Secured Notes Replacement Liens**”) upon (i) all of the proceeds from the sale or disposition of any of the Prepetition Senior Secured Notes Collateral; and (ii) all of the DIP Collateral now owned or hereafter acquired by any of the Debtors, together with any and all proceeds

from the sale or other disposition of any of such DIP Collateral, subject to the Priming Lien (the property described in clauses (i) and (ii) of this sentence being referred to herein as the “**Postpetition Senior Secured Notes Collateral**”). Notwithstanding anything herein to the contrary, the Postpetition Senior Secured Notes Replacement Liens granted pursuant to this Stipulation and Order by the Debtors to BNY shall be subject and subordinate in priority only to (i) the Priming Lien securing the DIP Facility, (ii) the Carve-Out (as defined herein), (iii) the Credit Agreement Priority Lien and (iv) the Pre-Petition Lender Junior Liens (as defined in the Interim DIP Financing Order) granted to GECC pursuant to the Interim DIP Financing Order, but only to the extent that such liens attach to property of the same kind and character as the property to which the Credit Agreement Priority Lien attaches, and are valid, perfected, enforceable and not avoidable. Upon entry of this Stipulation and Order, the liens and security interests granted hereunder to BNY as adequate protection shall (x) be valid, perfected and enforceable against the Post-Petition Senior Secured Notes Collateral, as of the Petition Date, without further filing or recording of any document or instrument or the taking of any further actions and (y) not be subject to subordination under section 510 of the Bankruptcy Code.

(b) BNY is hereby granted a super-priority claim (the “**BNY Super-Priority Claim**”) pursuant to section 507(b) of the Bankruptcy Code, in an amount equal to the aggregate diminution in value of BNY’s interest in the Prepetition Senior Secured Notes Collateral on or after the Petition Date resulting from any cause or reason whatsoever, including, without limitation, depreciation, decline in market value, the Debtors’ use of the Prepetition Senior Secured Notes Collateral (or any proceeds thereof, including the Note Cash Collateral) to satisfy any of the obligations of the Debtors under the

Postpetition Credit Agreement, the Debtors' grant of the Priming Liens to the DIP Agent pursuant to the DIP Financing Order and the imposition of the automatic stay. The BNY Super-Priority Claim shall be subject and subordinate only to (i) the super-priority claims under section 364(c)(1) of the Bankruptcy Code of the DIP Agent and the DIP Lenders granted pursuant to the Interim DIP Financing Order and the Final DIP Financing Order, (ii) the [DIP Liens] granted pursuant to the Interim DIP Financing Order and the Final DIP Financing Order, (iii) the Prepetition Secured Notes Liens, and (iv) the Carve-Out (as defined herein).

(c) The Debtors shall pay monthly, within fifteen (15) days after the submission of invoices containing appropriate detail but redacted to prevent the disclosure of confidential attorney-client communications, all reasonable fees, charges and expenses incurred by the Ad Hoc Senior Secured Noteholders Committee, including, without limitation, (i) the reasonable fees, charges and expenses of Kasowitz, Alston and Rothchild incurred on and after the Petition Date and (ii) the reasonable fees and expenses incurred by BNY pursuant to the Indenture on and after the Petition Date, including, without limitation, the reasonable fees and expenses of its counsel. The Debtors reserve their rights to object to the reasonableness of any such fees or expenses.

(d) In the event that the Debtors sell or otherwise dispose of any or all of the Postpetition Senior Secured Notes Collateral on which BNY has a senior lien, the proceeds of such use or disposition, as cash collateral of BNY, shall not be used or disposed of by or on behalf of the Debtors without the written consent of the Ad Hoc Senior Secured Noteholders Committee, which consent may not be unreasonably withheld or delayed if adequate protection is provided to BNY.

(e) The Debtors shall deliver to GoldenTree, Mast and BreakWater copies of all financial statements, financial reports, borrowing base certificates, collateral reports, accounts payable ageings, accounts receivable and inventory reports and other financial analyses and business reports as the Debtors are required to deliver to the DIP Agent under the Postpetition Credit Agreement. All such analyses, reports and information shall be delivered at the time such documents are delivered to the DIP Agent, accompanied by such supporting detail and documentation as reasonably may be requested by the DIP Agent or the Ad Hoc Senior Secured Noteholders Committee.

(f) The Debtors shall provide to Kasowitz and Alston, as soon as practicable after filing with the Court, copies of all monthly reports, status reports, pleadings, motions, complaints, notices, requests, objections and any other papers filed by the Debtors in connection with the Chapter 11 Cases.

(g) The Debtors shall make available to Rothschild, and provide Rothschild reasonable access, during normal business hours, to all documentation, places of business, officers, consultants and employees of the Debtors, all without material disruption to the operation of the business of any of the Debtors. The Debtors shall provide to Rothschild, with reasonable promptness, such financial information concerning the Debtors' cash flow projections, business plan, and other aspects of its operations and properties as Rothschild reasonably may request from time to time.

(h) The Debtors shall comply at all times with the financial covenants prescribed by the Postpetition Credit Agreement.

(i) The Debtors shall not consent to any amendment, modification, revision or supplement to or of the Postpetition Credit Agreement, in any material respect, without

the written consent of the Ad Hoc Senior Secured Noteholders Committee, which shall not be unreasonably withheld or denied.

(j) The Debtors shall not, collectively or individually, at any time during the Chapter 11 Cases, grant mortgages, security interests, or liens, ranking senior to or *pari passu* with the Prepetition Senior Secured Notes Liens or the Postpetition Senior Secured Notes Replacement Liens, on any of the Postpetition Senior Secured Notes Collateral or the Prepetition Senior Secured Notes Collateral to any parties pursuant to section 364(d)(1) of the Bankruptcy Code or otherwise; provided, however, that the Priming Liens (or any replacement thereof) granted to the DIP Agent, for the benefit of the DIP Lenders, to secure the Debtors' obligations under the Postpetition Credit Agreement or similar agreement shall be excepted from the foregoing prohibition.

(k) Representatives of the Debtors, their financial advisor and Rothschild shall meet from time to time, upon the reasonable request of the Ad Hoc Senior Secured Noteholders Committee or Rothschild, to review and discuss the Debtors' financial performance, its financial and operational turnaround, any revisions or modifications to the Debtors' business plan, and other non-privileged information that bears upon the Debtors' financial and operational restructuring and emergence from chapter 11.

(l) Except for the Carve-Out, and in consideration of the Carve-Out and the consent by GoldenTree, Mast BreakWater to the Interim DIP Financing Order, the Final DIP Financing Order, the Priming Liens and the Debtors' use of the Note Cash Collateral, neither the Debtors, nor any subsequently appointed trustee for any of the Debtors, nor the Committee, nor any other party in interest shall assert or seek to recover from BNY or any Senior Secured Noteholder, or from the Prepetition Senior Secured

Notes Collateral or the Post-Petition Senior Secured Notes Collateral, any costs, expenses, fees or charges that, but for the provisions of this paragraph 2(l) of this Stipulation and Order, would be recoverable under section 506(c) of the Bankruptcy Code.

(m) BNY shall be named as a loss payee, as its interests may appear, on any property or casualty insurance policy of the Debtors in respect of the Debtors' property, including, without limitation, the Postpetition Senior Secured Notes Collateral.

(n) BNY, on behalf of the Senior Secured Noteholders, and the Ad Hoc Senior Secured Noteholders Committee, each reserves the right to request additional or further adequate protection of its interests in the Prepetition Senior Secured Notes Collateral and the Postpetition Senior Secured Notes Collateral. Nothing contained in this Stipulation and Order shall prejudice, impair or otherwise affect the respective rights of BNY, GoldenTree, Mast and/or BreakWater, at any time, to (i) seek the appointment of a trustee under section 1104 of the Bankruptcy Code, (ii) seek relief from the automatic stay under section 362(d) of the Bankruptcy Code, (iii) seek dismissal or conversion of the Debtors' chapter 11 case under section 1112 of the Bankruptcy Code, (iv) seek to terminate the period during which the Debtors have the exclusive right to propose and/or obtain confirmation of a plan of reorganization pursuant to section 1121 of the Bankruptcy Code or (v) seek any other relief as BNY, GoldenTree, Mast and/or BreakWater, in their discretion, may deem appropriate. The Debtors reserve their rights to oppose any such request for additional or further adequate protection or relief.

3. Upon entry of this Order, subject to the provisions of paragraph 4 hereof, (i) the Prepetition Senior Secured Notes Liens granted to BNY shall be and hereby are deemed valid,

perfected, binding and enforceable, shall not be avoidable under the Bankruptcy Code, and shall not be subject to subordination under section 510 of the Bankruptcy Code, and (ii) the claim of BNY under the Senior Secured Notes against OSI for (x) unpaid principal under the Senior Secured Notes as of the Petition Date in the amount of \$100 million, (y) accrued and unpaid interest under the Senior Secured Notes as of the Petition Date in an amount to be determined by the Court, and (z) BNY's fees, costs, expenses and other charges incurred under the Senior Secured Notes Indenture as of the Petition Date in an amount to be determined by the Court, and the related and identical claim of BNY under the Senior Secured Notes Indenture against each of OSI Holdings, OSI - Virginia and OFFO, in their capacities as Guarantors (as defined in the Senior Secured Notes Indenture), hereby are allowed and are not subject to any offset, defense, counterclaim, right of recoupment, disallowance under section 502(d) of the Bankruptcy Code or subordination under section 510 of the Bankruptcy Code (except to the extent provided in the Intercreditor Agreement) (the claims of BNY described herein being referred to, collectively, in this Stipulation and Order as the **"BNY Claim"**). Subject to the provisions of any applicable order establishing a claims bar date in the Chapter 11 Cases, BNY shall file a proof of claim in the Chapter 11 Cases on behalf of the Senior Secured Noteholders setting forth the BNY Claim.

4. Notwithstanding the provisions of paragraph 3 hereof, the Court's determination that (a) the Prepetition Senior Secured Notes Liens are valid, binding, duly perfected and enforceable, (b) the Prepetition Senior Secured Notes Liens and the BNY Claim are not subject to avoidance under the Bankruptcy Code or subordination under section 510 of the Bankruptcy Code (except to the extent provided in the Intercreditor Agreement), and (c) the BNY Claim against each of the Debtors for unpaid principal in the amount of \$100 million, accrued and unpaid interest under the Senior Secured Notes as of the Petition Date in an amount to be

determined by the Court, and BNY's fees, costs, expenses and other charges incurred under the Senior Secured Notes Indenture as of the Petition Date in an amount to be determined by the Court are allowed and are not subject to any offset, defense, counterclaim, right of recoupment, disallowance under section 502(d) of the Bankruptcy Code or subordination under section 510 of the Bankruptcy Code (except to the extent provided in the Intercreditor Agreement) is without prejudice to the right of any party in interest, including, without limitation, any committee appointed by the United States Trustee pursuant to section 1102 of the Bankruptcy Code (each an "**Authorized Party**"), which shall have obtained, no later than sixty (60) days after the Petition Date, leave of the Court to commence an Adversary Proceeding (as defined herein), to (i) investigate and challenge the validity, amount, enforceability, priority, perfection, or avoidability of the Prepetition Senior Secured Notes Liens, the validity or enforceability of the BNY Claim and whether such liens and claims, as the case may be, are subject to disallowance under section 502(d) of the Bankruptcy Code or subordination under section 510 of the Bankruptcy Code and (ii) to the extent successful, avoid any such liens and claims; provided, however, that any such challenge shall be made by commencement of an adversary proceeding pursuant to Bankruptcy Rule 7001 (an "**Adversary Proceeding**") no later than sixty (60) days after the Petition Date or be forever barred; provided, further, however, and for the avoidance of doubt, that no party in interest, including, without limitation, any committee appointed by the United States Trustee pursuant to section 1102 of the Bankruptcy Code, may seek discovery or commence an Adversary Proceeding against BNY without obtaining authority from the Court to do so following the filing of a written motion and upon notice and a hearing. Despite the initiation of any such challenge by an Authorized Party to any of the Prepetition Senior Secured Notes Liens and the BNY Claim, the Prepetition Senior Secured Notes Liens and the BNY Claim

shall be presumed to be valid and entitled to the benefit of this Stipulation and Order pending the entry of a final nonappealable judgment and order in favor of such Authorized Party with respect to such challenge. If no such Adversary Proceeding properly and timely shall be filed by such date, (i) the Prepetition Senior Secured Notes Liens shall be deemed to be, as of the Petition Date, valid, binding, perfected, enforceable, non-avoidable and not subject to subordination under section 510 of the Bankruptcy Code, (ii) the BNY Claim shall be deemed to be, as of the Petition Date, valid, binding, enforceable, non-avoidable and neither subject to disallowance under section 502(d) of the Bankruptcy Code nor subject to subordination under section 510 of the Bankruptcy Code, and (iii) the Prepetition Senior Secured Notes Liens and the BNY Claim shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, or any of them, including, without limitation, any subsequently appointed trustee.

5. Without limiting the effect of the provisions of paragraphs 2(a) and 2(b) of this Stipulation and Order, the BNY Super-Priority Claim granted to BNY pursuant to paragraph 2(b) hereof and the Postpetition Senior Secured Notes Replacement Liens granted to BNY pursuant to paragraph 2(a) hereof shall be subject and subordinate to (a) the quarterly fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6), and (b) the postpetition fees and expenses of professionals retained, respectively, by the Debtors, the statutory committee of unsecured creditors (the "**Committee**") to be appointed in the Chapter 11 Cases and the Ad Hoc Senior Secured Noteholders Committee in an amount (collectively, the "**Carve-Out**") not to exceed: (i) prior to the occurrence of an Event of Default (as defined in the Postpetition Credit Agreement), an amount equal to the sum of (x) unpaid professional fees and disbursements incurred or accrued by the professionals (collectively, the "**Professionals**") retained, pursuant to

sections 327, 328 or 1103(a) of the Bankruptcy Code, by the Debtors and the Committee, respectively, and approved and allowed by this Court pursuant to sections 330 and 331 of the Bankruptcy Code, less, in the case of each Professional, the amount of any retainer received by such professional, whether received prior to, on or after the Petition Date, plus (y) unpaid professional fees and disbursements incurred or accrued by the Professionals retained by the Ad Hoc Senior Secured Noteholders Committee and approved as reasonable by the Debtors, plus (z) fees due and owing by the Debtors pursuant to 28 U.S.C. § 1930 and (ii) following the occurrence of an Event of Default, \$1,500,000; provided, however, that, notwithstanding anything herein to the contrary, whether prior to or following the occurrence of the Commitment Termination Date, the aggregate amount of unpaid professional fees and disbursements incurred or accrued by the professionals retained by the Committee, whether incurred or accrued prior to or following the occurrence of the Commitment Termination Date, that shall be eligible to be included in and paid from the Carve-Out shall be limited to \$200,000.

For the avoidance of doubt, the Carve-Out set forth herein is co-extensive with, and not in addition to, the carve-out provided under the DIP Financing Order. Upon the depletion of the Carve-Out, there shall be no additional carve-out for professional fees and expenses and fees arising under 28 U.S.C. § 1930(a)(6) that shall be senior to the interests of BNY absent the express, written consent of BNY or upon further order of the Court after notice and a hearing. The fees and expenses of the respective Professionals for the Debtors and/or the Committee shall not be eligible for inclusion in or payment from the Carve-Out, and no Note Cash Collateral shall be used to pay any fees and expenses of the respective Professionals for the Debtors and/or the Committee, to the extent such fees or expenses were incurred in connection with an Adversary Proceeding, contested matter or other action or proceeding (excluding the DIP Financing

Motion) that (a) challenges or seeks to invalidate, avoid, subordinate or disallow the Prepetition Senior Secured Notes Liens and/or the BNY Claim for any reason or under any theory, (b) seeks to avoid and/or recover any transfers by any of the Debtors to BNY, (c) seeks any other relief that is adverse to BNY's interest in the Postpetition Senior Secured Notes Collateral, the Postpetition Senior Secured Notes Replacement Liens, the BNY Super-Priority Claim, BNY's interest in the Prepetition Senior Secured Notes Collateral and the Prepetition Senior Secured Notes Liens.

The provisions of this paragraph 5 shall not be construed as consent by BNY, GoldenTree, Mast, BreakWater or any Senior Secured Noteholder to the allowance of any fees and expenses referred to above and shall not prejudice, impair or otherwise affect the right of such parties to object to the allowance and payment of such fees and expenses.

6. The agreements and adequate protection authorized and approved by this Stipulation and Order have been negotiated at arms' length by the Debtors, on the one hand, and GoldenTree, Mast and BreakWater, on the other hand, each of such parties having been represented by counsel. Such agreements and adequate protection are fair and reasonable under the circumstances and are enforceable in accordance with their terms.

7. The provisions of this Order shall be binding upon and inure to the benefit of BNY, the Senior Secured Noteholders, the Debtors, and their respective successors and assigns. This Stipulation and Order shall bind any trustee hereafter appointed for the estate of any of the Debtors, whether in the Chapter 11 Cases or in the event of the conversion of any Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Stipulation and Order.

8. If any or all of the provisions of this Stipulation and Order hereafter are modified, vacated, amended or stayed by subsequent order of the Court or any other court, such modification, vacatur, amendment or stay shall not affect the validity or enforceability of any security interests, liens or priority authorized or created hereby prior to the effective date of such modification, vacatur, amendment or stay. The validity and enforceability of all security interests, liens, priorities and adequate protection authorized or created hereby shall survive the conversion of any chapter 11 case of any of the Debtors to a case administered under chapter 7 of the Bankruptcy Code or the dismissal of any such chapter 11 or chapter 7 case.

9. This Stipulation and Order constitutes findings of fact and conclusions of law and takes effect and becomes enforceable immediately upon entry hereof. All findings of fact that more appropriately are characterized as decretal provisions or conclusions of law (in whole or in part) will be deemed to be such, and *vice versa*.

10. This matter is set for a final hearing at [_____] (Eastern Time) on [_____] , 2005 in this Court, at which time any party-in-interest may appear and state its objections, if any, to the matters addressed herein. The Debtors shall cause the following parties (or their counsel) to be served, no event later than _____, 2005 with a copy of this Stipulation and Order, together with a notice setting forth the objection and hearing requirements set forth herein: the Office of the United States Trustee for this district, Attn: Felicia S. Turner, United States Trustee, 75 Spring Street, S.W., Room 362, Atlanta, Georgia 30303; The Bank of New York, as trustee, Attn: Stuart Kratter, Vice President, Default Administration Group, Corporate Trust, 101 Barclay Street - 8W, New York, New York 10286; the Debtors' twenty largest creditors; all creditors known to the Debtors who may have liens against the Debtors' assets; and the United States Internal Revenue Service. Objections, if any, to the relief provided in this Stipulation and

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Order shall be in writing, shall conform to the Bankruptcy Rules and the local rules of the Court, shall set forth the name of the objector, the nature and amount of claims or interests held or asserted by the objector against the Debtors' estates or property, the basis for the objection, and the specific grounds therefor, and shall be filed with the Court (with a hard copy delivered directly to Chambers) and served on the following parties so as to be received no later than _____, 2005 at 4:00 (Eastern Time): (i) Dechert LLP, Attn: Joel H. Levitin, 30 Rockefeller Plaza, New York, New York 10112, counsel to the Debtors; (ii) Lamberth, Cifelli, Stokes & Stout, P.A., Atlanta Financial Center, 3343 Peachtree Road, NE, East Tower, Suite 550, Atlanta, Georgia 30326-1022, counsel to the Debtors, (iii) Kasowitz, Benson, Torres & Friedman LLP, Attn: David M. Friedman and Richard F. Casher, 1633 Broadway, New York, New York 10019, counsel to GoldenTree, Mast and BreakWater; (iv) Alston & Bird LLP, Attn: Dennis Connolly, One Atlantic Center 1201 West Peachtree Street, Atlanta, Georgia 30309-3424, counsel to GoldenTree, Mast and BreakWater; (v) The Bank of New York, as trustee, Attn: Stuart Kratter, Vice President, Default Administration Group, Corporate Trust, 101 Barclay Street - 8W, New York, New York 10286; and (vi) Office of the United States Trustee, Attn: Felicia S. Turner, United States Trustee, 75 Spring Street, S.W., Room 362, Atlanta, Georgia 30303. Unless objections to any of the provisions of this Order shall be filed and received by such date and time, any such objections shall be deemed waived, there will not be a hearing, and this Stipulation and Order shall become a final order of the Court.

DECHERT LLP

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and

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Atlanta Financial Center
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Atlanta, Georgia 30326-1022

By: _____

Attorneys for the Debtors and
Debtors in Possession

SO ORDERED:

Dated: Atlanta, Georgia
_____, 2005

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By: _____

Attorneys for GoldenTree, Mast and
BreakWater

United States Bankruptcy Judge