

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: :
: Chapter 11
DRUG FAIR GROUP, INC., et al, :
: Case No. 09-09-10897(BLS)
Debtors.¹ :
: Jointly Administered
: Related to Docket No.11
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**INTERIM ORDER PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362, 363 AND 364 AND
RULES 2002, 4001 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (1)
AUTHORIZING INCURRENCE BY THE DEBTORS OF POST-PETITION SECURED
INDEBTEDNESS WITH PRIORITY OVER ALL SECURED INDEBTEDNESS AND WITH
ADMINISTRATIVE SUPERPRIORITY, (2) GRANTING LIENS, (3) AUTHORIZING USE OF
CASH COLLATERAL BY THE DEBTORS PURSUANT TO 11 U.S.C. SECTION 363 AND
PROVIDING FOR ADEQUATE PROTECTION, (4) MODIFYING THE AUTOMATIC STAY
AND (5) SCHEDULING A FINAL HEARING**

THIS MATTER having come before the United States Bankruptcy Court for the District of Delaware (the "Court") upon the Motion (the "DIP Motion") of Drug Fair Group, Inc. ("Debtor OpCo") and CDI Group, Inc. ("Debtor HoldCo"), each as debtor and debtor-in-possession (Debtor OpCo and Debtor HoldCo, collectively, the "Debtors", and individually, a "Debtor") in the above captioned Chapter 11 Cases (the "Cases") seeking, among other things, the entry of an interim order (this "Interim Order") authorizing the Debtors to:

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each Debtor, are Drug Fair Group, Inc. (f/k/a Community Distributors, Inc.) (3660) and CDI Group, Inc. (9976).

(i) Obtain credit and incur debt pursuant to Sections 363, 364(c) and 364(d) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the “**Bankruptcy Code**”), on an interim basis for a period (the “**Interim Period**”) from the commencement of the Cases through and including the date of the Final Hearing (as defined below) up to a maximum amount of \$20,000,000 on an interim basis, and up to a maximum committed amount of \$40,000,000 upon entry of the Final Order (in each case on terms and conditions more fully described herein) secured by first priority, valid, priming, perfected and enforceable liens (as defined in Section 101(37) of the Bankruptcy Code on property of the Debtors’ 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, subject to the terms and conditions contained herein;

(ii) (a) Establish that financing arrangement (the “**DIP Facility**”) pursuant to: (I) that certain Senior Secured, Super-Priority Debtor-In-Possession Loan and Agreement, substantially in the form filed of record in the Cases, by and among Debtor OpCo, as Borrower, Bank of America, N.A., as Agent (in such capacity, the “**DIP Agent**”), for itself and the Revolving Credit Lenders (as defined in the DIP Credit Agreement, the “**DIP Lenders**”) (the DIP Agent and DIP Lenders, collectively, the “**DIP Secured Parties**”); and (II) all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of the DIP Agent and DIP Lenders, including, without limitation, security agreements, notes, guaranties, mortgages, and Uniform Commercial Code (“**UCC**”) financing statements and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto (collectively, as may be amended, modified or supplemented in accordance with the terms of this Interim Order and in effect from time to time, the “**DIP Credit**

Agreement”);¹ and (b) incur the **“Liabilities”** under and as defined in the DIP Credit Agreement (collectively, the **“DIP Liabilities”**);

(iii) Authorize the use of the proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Credit Agreement) in a manner consistent with the terms and conditions of the DIP Credit Agreement and in accordance with the Budget (as defined below) (subject to the variance described in Section 3(a) of this Interim Order), solely for (a) general corporate purposes, (b) payment of costs of administration of the Cases, to the extent set forth in the Budget, (c) upon entry of the Interim Order, all pre-petition **“L/C’s”** (as defined in the Pre-Petition Credit Agreement referred to below) issued under the Pre-Petition Credit Agreement shall be deemed issued under the DIP Credit Agreement, and (d) upon entry of the Final Order, payment in full in cash of the Pre-Petition First Lien Liabilities (as defined below);

(iv) Grant, pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, to the DIP Agent (for the benefit of itself and the other DIP Secured Parties) first priority priming, valid, perfected and enforceable liens, subject only to the Carve-Out and the Permitted Prior Encumbrances (as defined below), upon all of the Debtors’ real and personal property as provided in and as contemplated by this Interim Order, the DIP Facility and the DIP Credit Agreement;

¹ Except as otherwise defined herein, all defined terms used herein shall have the meanings ascribed thereto in the DIP Credit Agreement.

(v) Grant, pursuant to Section 364(c)(1) of the Bankruptcy Code, the DIP Agent (for the benefit of itself and the other DIP Secured Parties) superpriority administrative claim status in respect of all DIP Liabilities, subject only to the Carve-Out 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 First Lien Agent, the Pre-Petition Second Lien Agent and the other Pre-Petition Secured Parties (each as defined below) have an interest;

(vii) (A) grant the Pre-Petition First Lien Agent (for the benefit of the Pre-Petition First Lien Secured Parties) (each as defined below) Pre-Petition Replacement First Liens and Pre-Petition First Lien Superpriority Claims (each as defined below), to the extent of any diminution in the value of the Pre-Petition First Lien Agent's interest in the Pre-Petition First Lien Collateral (as defined below) as adequate protection for the granting of the DIP Liens (as defined below) to the DIP Agent, the use of Cash Collateral, the subordination to the Carve-Out, and for the imposition of the automatic stay, (B) grant the Pre-Petition Second Lien Agent (for the benefit of the Pre-Petition Second Lien Secured Parties) (each as defined below) Pre-Petition Replacement Second Liens and Pre-Petition Second Lien Superpriority Claims (each as defined below), to the extent of any diminution in the value of the Pre-Petition Second Lien Agent's interest in the Pre-Petition Second Lien Collateral (as defined below) as adequate protection for the granting of the DIP Liens (as defined below) to the DIP Agent, the use of Cash Collateral, the subordination to the Carve-Out, and for the imposition of the automatic stay, and (C) make the Adequate Protection Payments;

(viii) 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 Facility and this Interim Order;

(ix) 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 approving the form of notice with respect to the Final Hearing; and

(x) Waive any applicable stay (including under Rule 6004 of the Federal Rules of Bankruptcy Procedure) and provide for immediate effectiveness of this Interim Order.

The Court having considered the DIP Motion, the Declaration of Timothy Boates, Chief Restructuring Officer, in support of the Debtors' first day motions and orders, the exhibits attached thereto, the DIP Facility and the DIP Credit Agreement, and the evidence submitted at the hearing on this Interim Order (the "**Interim Hearing**"); and in accordance with Rules 2002, 4001(b), (c), and (d), and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), due and proper notice of the DIP Motion and the Interim Hearing having been given; an Interim Hearing having been held and concluded on March [], 2009; 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 equity holders, and is essential for the continued operation of the Debtors' business; and it further appearing that the Debtors are unable to

secure (i) unsecured credit for money borrowed allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code, (ii) credit for money borrowed with priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code, (iii) credit for money borrowed secured solely by a lien on property of the estate that is not otherwise subject to an Encumbrance, or (iv) credit for money borrowed secured by a junior Encumbrance on property of the estate which is subject to an Encumbrance; and there is adequate protection of the interests of holders of Encumbrances on the property of the estate on which Encumbrances are to be granted; and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved or overruled by this Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

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

A. Petition Date. On March 17, 2009 (the "**Petition Date**"), the Debtors each filed a voluntary petition under Chapter 11 of the Bankruptcy Code with the Court. The Debtors have continued in the management and operation of its 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, nor has an official committee of unsecured creditors (the "**Creditors' Committee**") has been appointed as of the date hereof.

B. Jurisdiction and Venue. Pursuant to 28 U.S.C. § 1334, this Court has jurisdiction over this proceeding 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)(A), (B), (C), (D), (G), (K), and (O). 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. Notice. The Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001 and Local Rule 9013-1. 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 on [_____, 2009], 2009 to certain parties in interest, including: (i) the Office of the United States Trustee, (ii) the Debtors' twenty (20) largest unsecured creditors, (iii) counsel to the Pre-Petition First Lien Agent (as defined below), (iv) the Pre-Petition First Lien Agent, (v) counsel to the Pre-Petition Second Lien Agent (as defined below), (vi) the Pre-Petition Second Lien Agent, (vii) counsel to the proposed DIP Agent, (viii) all secured creditors of record, (ix) the Office of the United States Attorney General for the District of Delaware; and (x) the Internal Revenue Service. Under the circumstances, such notice of the Interim Hearing and the relief requested in the DIP Motion is due and sufficient notice and complies with Sections 102(1), 364(c) and 364(d) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(c), 4001(d) and the Local Rules.

D. Debtors' Acknowledgments and Agreements. Without prejudice to the rights of parties in interest as set forth in Paragraph 7 below, each Debtor admits, stipulates, acknowledges, and agrees to the following (the "**Debtors' Stipulations**"):

- (i) Pre-Petition Credit Agreement. Prior to the Petition Date, Debtor OpCo entered into a certain Loan and Security Agreement dated as of September 30, 2004 (as amended and in effect, the "**Pre-Petition Credit Agreement**") with, among others, Bank of America, N.A. (successor by merger to LaSalle Retail Finance, a Division of LaSalle Business Credit, LLC, as agent for LaSalle Bank Midwest National Association f/k/a Standard Federal Bank National Association), as Agent (in such capacity, the "**Pre-**

Petition First Lien Agent") for certain "Revolving Credit Lenders" (as defined therein) (the "**Pre-Petition First Lien Lenders**", and together with the Pre-Petition First Lien Agent, collectively, the "**Pre-Petition First Lien Secured Parties**") pursuant to which the Pre-Petition First Lien Secured Parties extended a working capital facility providing for revolving credit loans and letters of credit. Debtor HoldCo guaranteed all the obligations pursuant to the Pre-Petition First Lien Credit Agreement pursuant to a certain Guaranty dated as of September 30, 2004 (the "**Pre-Petition Guaranty**").

(ii) Pre-Petition First Lien Liabilities Amount. Each Debtor stipulates and agrees that as of the Petition Date, the Debtors were indebted to the Pre-Petition First Lien Secured Parties in the approximate principal sum of \$44,112,292.73 in "Revolving Credit Loans" (as defined in the Pre-Petition First Lien Credit Agreement), issued and outstanding "L/C's" (as defined in the Pre-Petition First Lien Credit Agreement) in the amount of \$1,364,000.00, together with all other financial accommodations or services (including, without limitation, any obligations relating to cash management, depository, investments, hedging arrangements and other banking and financial services provided by the Pre-Petition First Lien Secured Parties or their affiliates) accrued interest, costs, fees, the Revolving Credit Early Termination Fee (as defined in the Pre-Petition Credit Agreement), and professional fees and expenses, and all other "Liabilities" (as defined in the Pre-Petition First Lien Credit Agreement) (collectively, hereinafter the "**Pre-Petition First Lien Liabilities**").

(iii) Pre-Petition First Lien Collateral. To secure the Pre-Petition First Lien Liabilities, the Debtors granted security interests and Encumbrances (as defined in the Pre-Petition Credit Agreement) (collectively, the "**Pre-Petition First Liens**") to the Pre-Petition Secured Parties upon substantially all of the Debtors' assets and personal property, including, without limitation, (a) all Accounts and accounts receivable, (b) all Inventory, (c) all General Intangibles², (d) all Equipment, (e) all Goods, (f) all Farm Products, (g) all Fixtures, (h) all Chattel Paper, (i) all Health Care Insurance Receivables, (j) all Letter-of-Credit Rights, (k) all Payment Intangibles, (l) all Supporting Obligations, (m) all books, records, and information relating to the Collateral and/or to the operation of the Debtors' business, and all rights of access to such books, records, and information, and all property in which such books, records, and information are stored, recorded, and maintained, (n) all Leasehold Interests, (o) all Investment Property, Instruments, Documents, Deposit Accounts, money, policies and certificates of insurance, deposits,

² Pursuant to that certain Intellectual Property Security Agreement dated as of September 30, 2004 (as amended, restated, supplemented or otherwise modified and in effect, the "**IP Security Agreement**") by and between the Borrower and the Pre-Petition First Lien Agent, the Borrower granted to the Pre-Petition First Lien Agent, for the benefit of the Pre-Petition First Lien Secured Parties, security interests and Encumbrances in the "IP Collateral" (as such term is defined in the IP Security Agreement), which constitutes Pre-Petition First Lien Collateral hereunder. A copy of the IP Security Agreement is on file with the Pre-Petition First Lien Agent and is available upon request.

impressed accounts, compensating balances, cash, or other property³, (p) all insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing ((a) through (o)) or otherwise, and (q) all liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing ((a) through (p)), including the right of stoppage in transit, and (r) all products, Proceeds, substitutions, and accessions of or to any of the foregoing ((a) through (q)) (collectively, the "**Pre-Petition First Lien Collateral**"), with priority over all other liens, with the sole exception of any liens otherwise expressly permitted to have priority over the Pre-Petition First Liens in accordance with the Pre-Petition Credit Agreement, the Intercreditor Agreement and other applicable documents, and solely to the extent any such permitted liens are valid, properly perfected, unavoidable, and senior to the Pre-Petition First Liens (referred to herein as the "**Permitted Prior Encumbrances**"). To avoid any doubt, the term "**Permitted Prior Encumbrances**" shall not include, and specifically excludes, (i) the Pre-Petition First Liens, and (ii) the Pre-Petition Second Liens (as defined below), each of which pre-petition liens and claims are to be subordinated to, and junior to, the liens and claims of the DIP Secured Parties.

(iv) Pre-Petition Second Lien Credit Agreement. Prior to the Petition Date, Debtor OpCo entered into a certain Loan Agreement dated as of September 30, 2004 (as amended and in effect, the "**Pre-Petition Second Lien Credit Agreement**") with, among others, Fortress Credit Corp., as Agent (in such capacity, the "**Pre-Petition Second Lien Agent**"), and together with the Pre-Petition First Lien Agent, collectively, the "**Pre-Petition Agents**") for certain "Lenders" (as defined therein) (together with the Pre-Petition Second Lien Agent, collectively, the "**Pre-Petition Second Lien Secured Parties**"), and together with the Pre-Petition First Lien Secured Parties, collectively, the "**Pre-Petition Secured Parties**") pursuant to which the Pre-Petition Second Lien Secured Parties provided a term loan to Debtor OpCo. Pursuant to the Pre-Petition Second Lien Credit Agreement and other applicable documents, Debtor HoldCo guarantied all the obligations of Debtor OpCo.

(v) Pre-Petition Second Lien Obligations Amount. Each Debtor stipulates and agrees that as of the Petition Date, the Debtors were indebted to the Pre-Petition Second Lien Secured Parties in the approximate principal sum of \$20,480,700.36, together with all other financial accommodations or services, accrued interest, costs, fees, and

³ Pursuant to that certain Pledge Agreement dated as of September 30, 2004 (as amended, restated, supplemented or otherwise modified and in effect, the "**Pledge Agreement**") by and between Debtor HoldCo and the Pre-Petition First Lien Agent, Debtor HoldCo granted to the Pre-Petition First Lien Agent, for the benefit of the Pre-Petition First Lien Secured Parties, security interests and Encumbrances in outstanding capital stock of the Borrower and other "Collateral" (as such term is defined in the Pledge Agreement), which constitute Pre-Petition First Lien Collateral hereunder. A copy of the Pledge Agreement is on file with the Pre-Petition First Lien Agent and is available upon request.

professional fees and expenses, and all other "Obligations" (as defined in the Pre-Petition Second Lien Credit Agreement) (collectively, hereinafter the "**Pre-Petition Second Lien Obligations**"), and together with the Pre-Petition First Lien Liabilities, collectively, the "**Pre-Petition Liabilities**").

(vi) Pre-Petition Second Lien Collateral. To secure the Pre-Petition Second Lien Obligations, the Debtors granted subordinated security interests and Liens (as defined in the Pre-Petition Second Lien Credit Agreement) (collectively, the "**Pre-Petition Second Liens**"), and together with the Pre-Petition First Liens, collectively, the "**Pre-Petition Liens**") to the Pre-Petition Second Lien Secured Parties upon substantially all of the Debtors' assets and personal property, including, without limitation, (a) all accounts, (b) all chattel paper (whether tangible or electronic), (c) certain specified commercial tort claims, (d) all deposit accounts, all cash, and all other property from time to time deposited therein and the monies and property in the possession or under the control of the Pre-Petition Second Lien Agent or any Pre-Petition Second Lien Lender or any affiliate, representative, agent or correspondent thereof, (e) all documents, (f) all equipment, (g) all fixtures, (h) all general intangibles (including, without limitation, all payment intangibles), (i) all goods, (j) all instruments (including, without limitation, promissory notes), (k) all inventory, (l) all investment property⁴, (m) all patents and trademarks, and all licenses⁵, (n) all letter-of-credit rights, (o), all supporting obligations, and (p) all proceeds, including cash proceeds and non-cash proceeds, and products of any of the foregoing (collectively, the "**Pre-Petition Second Lien Collateral**"), and together with the Pre-Petition First Lien Collateral, collectively, the "**Pre-Petition Collateral**"), with priority over all other liens, and with the sole exception of any liens otherwise expressly permitted to have priority over the Pre-Petition Second Liens in accordance with the Pre-Petition Second Lien Credit Agreement, the Intercreditor Agreement (as defined below) and documents and agreements executed in connection therewith, and solely to the extent any such permitted liens are valid, properly perfected, unavoidable,

⁴ Pursuant to that certain Pledge and Security Agreement dated as of September 30, 2004 (as amended, restated, supplemented or otherwise modified and in effect, the "**Second Lien Pledge Agreement**") by and between Debtor HoldCo and the Pre-Petition Second Lien Agent, Debtor HoldCo granted to the Pre-Petition Second Lien Agent, for the benefit of the Pre-Petition Second Lien Secured Parties, security interests and Encumbrances in outstanding capital stock of the Borrower and other "Collateral" (as such term is defined in the Pledge Agreement), which constitute Pre-Petition Second Lien Collateral hereunder. A copy of the Second Lien Pledge Agreement is on file with the Pre-Petition Second Lien Agent and is available upon request.

⁵ Pursuant to that certain Security Agreement dated as of September 30, 2004 (as amended, restated, supplemented or otherwise modified and in effect, the "**Second Lien Security Agreement**") by and between the Borrower and the Pre-Petition Second Lien Agent, the Borrower granted to the Pre-Petition Second Lien Agent, for the benefit of the Pre-Petition Second Lien Secured Parties, security interests and Encumbrances in certain patents, trademarks and licenses and other "Collateral" (as such term is defined in the Second Lien Security Agreement), which constitutes Pre-Petition Second Lien Collateral hereunder. A copy of the Second Lien Security Agreement is on file with the Pre-Petition Second Lien Agent and is available upon request.

and senior to the Pre-Petition Liens (referred to herein as the “**Permitted Prior Second Liens**”). To avoid any doubt, the term “Permitted Prior Second Liens” (x) specifically includes the Pre-Petition First Liens, and (y) shall not include, and specifically excludes, the Pre-Petition Second Liens, which pre-petition liens and claims are to be subordinated to, and junior to, the liens and claims of the DIP Secured Parties.

(vii) Intercreditor Agreement. Prior to the Petition Date, the Pre-Petition First Lien Agent and the Pre-Petition Second Lien Agent entered into that certain Intercreditor Agreement dated as of September 30, 2004 (as amended and in effect, the “**Intercreditor Agreement**”), which governs the respective rights, interests, obligations, priority, and the positions of the Pre-Petition First Lien Secured Parties and Pre-Petition Second Lien Secured Parties with respect to, among other things, the assets and properties of the Debtors. Pursuant to the Intercreditor Agreement, and except as set forth therein, among other things, (a) the Pre-Petition First Liens are senior and prior in right to the Pre-Petition Second Liens and the Pre-Petition Second Liens, and (b) the Pre-Petition Second Liens are junior and subordinate to the Pre-Petition First Liens, in each case to the extent of the Maximum W/C Debt (as defined in the Intercreditor Agreement).

(viii) Pre-Petition Liens. (a) As of the Petition Date, (i)(x) the Pre-Petition First Liens⁶ are valid, binding, enforceable, and perfected first-priority liens, subject only to any Permitted Prior Encumbrances, and are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (y) the Pre-Petition Second Liens are valid, binding, enforceable, and perfected second-priority liens, subject only to any Permitted Prior Second Liens, and are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, (ii) the Pre-Petition Liabilities constitute legal, valid and binding obligations of the Debtors, enforceable in accordance with the terms of the Pre-Petition First Lien Credit Agreement or the Pre-Petition Second Lien Credit Agreement, as applicable (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code), and no offsets, defenses or counterclaims to any of the Pre-Petition Liabilities exists, and no portion of the Pre-Petition Liabilities is subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (iii) the Pre-Petition Liabilities constitute allowable secured claims, and (b) on the date that this Interim Order is entered, the Debtors have waived, discharged and released the Pre-Petition Secured Parties, 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 Liabilities, (y) to challenge or object to the security for the Pre-Petition Liabilities, and (z) to bring or pursue any and all claims, objections, challenges, causes of action and/or choses in action arising out of,

⁶ Other than with respect to Leasehold Interests, as to which the Debtors make no admission, stipulation, acknowledgment or agreement. The Debtors’ Stipulations made in clause (viii) do not apply with respect to any security interests and Encumbrances on the Leasehold Interests or the proceeds thereof.

based upon or related to the Pre-Petition First Lien Credit Agreement, the Pre-Petition Second Lien Credit Agreement or otherwise.

The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the Pre-Petition First Lien Credit Agreement, the Pre-Petition Second Lien Credit Agreement or the Pre-Petition Liens, or any claim of the Pre-Petition Secured Parties pursuant to the Pre-Petition First Lien Credit Agreement or the Pre-Petition Second Lien Credit Agreement, as applicable.

(ix) Cash Collateral. The Pre-Petition Secured Parties have a security interest in Cash Collateral, including all amounts on deposit in the Debtors' banking, checking, or other deposit accounts and all proceeds of Pre-Petition Collateral, to secure the Pre-Petition Liabilities and to the same extent and order of priority as that which was held by such party pre-petition.

(x) Priming of DIP Facility. In entering into the DIP Credit Agreement, and as consideration therefor, each Debtor hereby agrees that until such time as all DIP Liabilities have been indefeasibly paid in full in cash and the DIP Credit Agreement is terminated in accordance with the terms thereof, such Debtor shall not in any way prime or seek to prime the security interests and DIP Liens provided to the DIP Secured Parties under this Interim Order by offering a subsequent lender or a party-in-interest a superior or *pari passu* lien or claim pursuant to Section 364(d) of the Bankruptcy Code or otherwise.

E. Findings Regarding the Post-Petition Financing.

(i) Need for Post-Petition Financing. An immediate need exists for the Debtors to obtain funds from the DIP Facility in order to continue its operations and to engage in a process for the sale of its assets (the "Sale Process") in order to preserve and maximize the value of its estate. The ability of the Debtors to finance their operations, to pursue the Sale Process, to preserve and maintain the value of the Debtors' assets, and maximize a return for all creditors requires the availability of working capital from the DIP Facility, the absence of which would immediately and irreparably harm the Debtors, their estates, their creditors, and their equity holders.

(ii) No Credit Available on More Favorable Terms. The Debtors have been unable to obtain (A) unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense, (B) credit for money borrowed with priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code, (C) credit for money borrowed secured solely by an Encumbrance on property of the estate that is not otherwise subject to an Encumbrance, or (D) credit for money borrowed secured by a junior Encumbrance on property of the estate which is subject to an Encumbrance, in each case, on more favorable terms and conditions than those provided in the DIP Credit Agreement and this Interim Order. The Debtors are also unable to obtain secured credit, allowable only under Sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code on more favorable terms and conditions than those provided in the Credit Agreement and this Interim Order. The Debtors are unable to obtain credit for borrowed money without granting to the DIP Secured Parties the DIP Protections (as defined below).

(iii) Prior Liens. Nothing herein shall constitute a finding or ruling by this Court that any Pre-Petition Liens or Permitted Prior Encumbrances or Permitted Prior Second Liens are valid, senior, perfected and unavoidable. Moreover, nothing shall prejudice (A) the rights of any party in interest including, but not limited to, the Debtors, the DIP Secured Parties and any committee appointed pursuant to Section 1102 of the Bankruptcy Code to challenge the validity, priority, perfection and extent of any such Pre-Petition Lien, Permitted Prior Encumbrance, Permitted Prior Second Lien and or security interest, or (B) the rights of any committee appointed pursuant to Section 1102 of the Bankruptcy Code to challenge the validity, priority, perfection and extent of the Pre-Petition Liens as set forth in this Interim Order.

F. Section 506(c) Waiver. As a further condition of the DIP Facility and any obligation of the DIP Lenders to make credit extensions pursuant to the DIP Credit Agreement, upon entry of the Final Order, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Cases or any Successor Cases) shall be deemed to have waived any rights or benefits of Section 506(c) of the Bankruptcy Code.

G. Use of Proceeds of the DIP Facility. Proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Credit Agreement) shall be used, in each case in a manner consistent with the terms and conditions of the DIP Credit Agreement, and in accordance with the Budget (as defined below) (subject to the variance described in Section 3(a) of this Interim Order), solely for (a) working capital and general corporate purposes, (b) payment of costs of administration of the Cases, to the extent set forth in the Budget, and (c) upon entry of the Interim Order, all pre-petition "L/C's" (as defined in the Pre-Petition First Lien Credit Agreement) issued under the Pre-Petition First Lien Credit Agreement shall be deemed issued under the DIP Credit Agreement. The Pre-Petition First Lien Secured Parties and the DIP Secured Parties may seek to repay in full any then remaining outstanding balance of the Pre-Petition First Lien Liabilities with a portion of the proceeds of the DIP Facility upon entry of the Final Order.

H. Application of Proceeds of Collateral to Pre-Petition Liabilities. All proceeds of the sale or other disposition of the Collateral (as defined below) shall be applied first, to permanently reduce the Pre-Petition First Lien Liabilities, second, to fund the Pre-Petition First Lien Indemnity Account (as defined below), third, to reduce the DIP Liabilities, fourth, to pay the Pre-Petition Second Lien Obligations, and fifth, to fund the Pre-Petition Second Lien Indemnity Account (as defined below), each in accordance with the terms and conditions of the DIP Credit Agreement, to the extent applicable, and

this Interim Order, subject to the Carve-Out. Payment of the Pre-Petition First Lien Liabilities in accordance with this Interim Order is necessary as the Pre-Petition First Lien Secured Parties will not otherwise consent to the priming of the Pre-Petition First Liens. Such payment will not prejudice the Debtors or their estates because payment of such amounts is subject to the rights of parties-in-interest under Paragraph 7 below.

I. Adequate Protection for Pre-Petition Secured Parties. As a result of the grant of the DIP Liens, the subordination to the Carve-Out, the use of Cash Collateral authorized herein, and any decrease in the value of their respective interest in the Pre-Petition Collateral (including Cash Collateral) resulting from the automatic stay or the Debtors' use, sale, lease, depreciation or disposition of the Pre-Petition Collateral (including Cash Collateral) during the Cases, the Pre-Petition Secured Parties are entitled to receive adequate protection pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code. As adequate protection, the Pre-Petition First Lien Agent (for the benefit of the Pre-Petition First Lien Secured Parties) will receive: (1) First Lien Adequate Protection Payments (as defined below), (2) the Pre-Petition Replacement First Liens, (3) the Pre-Petition First Lien Superpriority Claim, and (4) the Pre-Petition First Lien Indemnity Account. As adequate protection, the Pre-Petition Second Lien Agent (for the benefit of the Pre-Petition Second Lien Secured Parties) will receive, subject in each case to the Intercreditor Agreement: (1) Second Lien Adequate Protection Payments (as defined below), (2) the Pre-Petition Replacement Second Liens, (3) the Pre-Petition Second Lien Superpriority Claim, and (4) the Pre-Petition Second Lien Indemnity Account.

J. Section 552. In light of their agreement to subordinate their liens and superpriority claims (i) to the Carve-Out in the case of the DIP Secured Parties, (ii) the Carve-Out and the DIP Liens in the case of the Pre-Petition First Lien Secured Parties, and (iii) the Carve-Out, the DIP Liens and the

Pre-Petition First Liens in the case of the Pre-Petition Second Lien Secured Parties, the DIP Secured Parties and the Pre-Petition Secured Parties are each entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code and the "equities of the case" exception shall not apply.

K. Extension of Financing. The DIP Secured Parties have indicated a willingness to provide financing to the Debtors in accordance with the DIP Credit Agreement and subject to (i) the entry of this Interim Order and the Final Order, and (ii) findings by this Court that such financing is essential to the Debtors' estates, that the DIP Secured Parties are good faith financiers, and that the DIP Secured Parties' claims, superpriority claims, security interests and liens, and other protections granted pursuant to this Interim Order (and the Final Order) and the DIP 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.

L. Assent of Pre-Petition Second Lien Secured Parties. The Pre-Petition Second Lien Secured Parties have indicated a willingness to assent to the entry of this Interim Order and the Final Order in good faith and the superpriority claims, security interests and liens, and other protections granted to the Pre-Petition Second Lien Secured Parties pursuant to this Interim Order (and the Final Order) 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.

M. Business Judgment and Good Faith Pursuant to Section 364(e). The terms and conditions of the DIP 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 Debtors' exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably

equivalent value and consideration. The DIP Credit Agreement was negotiated in good faith and at arms' length among the Debtors and DIP Secured Parties. Credit to be extended under the DIP Facility and the use of Cash Collateral will be so extended and used in good faith, and for valid business purposes and uses, the consequence of which is that the DIP Secured Parties are entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code.

N. Relief Essential; Best Interest. The relief requested in the DIP Motion (and as provided in this Interim Order) is necessary, essential, and appropriate for the continued operation of the Debtors' business, in order to pursue the Sale Process to preserve and maximize the Debtors' assets and personal property. It is in the best interest of the Debtors' estate to be allowed to establish the DIP Facility contemplated by the DIP Credit Agreement.

O. 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 Secured Parties, and the DIP Secured Parties to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. MOTION GRANTED. The DIP Motion is granted in its entirety in accordance with the terms and conditions of this Interim Order and the DIP Credit Agreement.

2. **DIP Credit Agreement.**

(a) Approval of Entry into DIP Credit Agreement. The Debtors are hereby expressly and immediately authorized, empowered, and directed to execute and deliver the DIP Credit Agreement and to incur and perform the DIP Liabilities in accordance with, and subject to, the terms of this Interim Order and the DIP Credit Agreement, and to execute and deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Credit Agreement; in connection therewith, the Debtors are expressly and immediately authorized and empowered to incur any such DIP Liabilities in accordance with, and subject to, the terms of this Interim Order and the DIP Credit Agreement. The Debtors are hereby authorized and directed to do and perform all acts, pay the principal, interest, fees, expenses and other amounts described in the DIP Credit Agreement and all other documents comprising the DIP Facility as such become due, including, without limitation, closing fees, administrative 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, which amounts shall not otherwise be subject to approval of this Court; provided, however, that copies of any such invoices, redacted as necessary to preserve the attorney-client privilege, shall be provided to the United States Trustee and counsel to the Creditors' Committee and shall be subject to a ten (10) day review and objection period for such parties. Upon execution and delivery, the DIP Credit Agreement shall represent

valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with its terms.

(b) Authorization to Borrow. In order to enable the Debtors to continue to operate its business, during the Interim Period and subject to the terms and conditions of this Interim Order, the DIP Credit Agreement, documents comprising the DIP Facility, and the Budget (as defined below), the Debtors are hereby authorized under the DIP Facility to borrow up to \$20,000,000 during the period commencing on the date on which this Interim Order has been entered by this Court and continuing until the earliest to occur of (i) the entry by this Court of a further interim order with respect to the subject matter hereof, (ii) the entry by this Court of the Final Order, or (iii) the Termination Date.

(c) Application of DIP Proceeds. The proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Credit Agreement) shall be used, in each case in a manner consistent with the terms and conditions of the DIP Credit Agreement, and in accordance with the Budget (as defined below) (subject to the variance described in Section 3(a) of this Interim Order) solely for (a) working capital and general corporate purposes, to the extent set forth in the Budget, (b) payment of costs of administration of the Cases, to the extent set forth in the Budget, and (c) upon entry of this Interim Order, all pre-petition "L/C's" (as defined in the Pre-Petition Credit Agreement) issued under the Pre-Petition Credit Agreement shall be deemed issued under the DIP Credit Agreement.

(d) Conditions Precedent. The DIP Secured Parties shall have no obligation to make any loan or advance under the DIP Credit Agreement during the Interim Period unless the conditions precedent to make such loan under the DIP Credit Agreement have been satisfied in full or waived in accordance with the DIP Credit Agreement.

(e) Post-Petition Liens. Effective immediately upon the entry of this Interim Order, the DIP Secured Parties are hereby granted pursuant to Sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, priming first priority, continuing, valid, binding, enforceable, non-avoidable and automatically perfected post-petition security interests and liens (collectively, the "DIP Liens"), senior and superior in priority to all other secured and unsecured creditors of the Debtors' estates except as otherwise provided in this Interim Order and the Final Order, upon and to all presently owned and hereafter acquired assets and real and personal property of the Debtors, including, without limitation, the following:

- a. All Accounts and accounts receivable;
- b. All Inventory;
- c. All General Intangibles (other than causes of action under chapter 5 of the Bankruptcy Code and the proceeds thereof);
- d. All Equipment;
- e. All Goods;
- f. All Farm Products;
- g. All Fixtures;
- h. All Chattel Paper;

- i. All Bankruptcy Recoveries (as defined below);
- j. All Health Care Insurance Receivables;
- k. All Letter-of-Credit Rights;
- l. All Payment Intangibles;
- m. All Supporting Obligations;
- n. All Commercial Tort Claims, to the extent described on Schedule 9.3 of the DIP Credit Agreement and all future Commercial Tort Claims in which a security interest is granted to the DIP Agent pursuant to Section 9.3(c) of the DIP Credit Agreement;
- o. All books, records, and information relating to the Collateral and/or to the operation of any Debtor's business, and all rights of access to such books, records, and information, and all property in which such books, records, and information are stored, recorded, and maintained;
- p. The proceeds of all interests in any Real Property, including, without limitation, proceeds of all Leasehold Interests (but excluding the Leasehold Interests);
- q. All Investment Property, Instruments, Documents, Deposit Accounts, money, policies and certificates of insurance, deposits, impressed accounts, compensating balances, cash, or other property;
- r. All insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing ((a) through (q)) or otherwise;
- s. All liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing ((a) through (r)), including the right of stoppage in transit; and
- t. All products, Proceeds, substitutions, and accessions of or to any of the foregoing ((a) through (r))

(collectively, the "DIP Collateral" and, together with the Pre-Petition Collateral, the "Collateral"). As used herein, "Bankruptcy Recoveries" shall mean any claims and causes of action to which the Borrower may be entitled to assert by reason of any avoidance or other power vested in or on behalf of the Borrower or the estate of the Borrower under Chapter 5 of the Bankruptcy Code, but solely to the extent (a) arising under Section 549 of the Bankruptcy Code, or (b) ^{Subject to entry of a Final Order} constituting proceeds of avoidance actions under Section 547 of the Bankruptcy Code to the extent any Carve-Out under the DIP Credit Agreement funded the Borrower's expenses in investigating such actions, commencing such actions, and conducting the litigation and/or settlement discussions that resulted in the receipt of such proceeds, and any and all recoveries or proceeds of any such claims or causes of action.

(f) Subject to the rights afforded the Creditors' Committee and other parties under paragraph 7 of this Interim Order, the Encumbrances to be created and granted to the DIP Agent, as provided herein, (i) are created pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, (ii) are first, valid, prior, perfected, unavoidable, and superior to any security, mortgage, or collateral interest or lien or claim to the DIP Collateral, subject only to the Carve-Out and Permitted Prior Encumbrances. The DIP Liens shall secure all DIP Liabilities and 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, upon the conversion of these Cases to cases under Chapter 7 of the Bankruptcy Code or in any other proceedings related to the foregoing (any "Successor Case"), and/or upon the dismissal of the Cases. The DIP Liens shall not be subject to Sections 510, 549,

550 or 551 of the Bankruptcy Code or the “equities of the case” exception of Section 552 of the Bankruptcy Code, or if approved in the Final Order, Section 506(c) of the Bankruptcy Code.

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

(h) Protection of DIP Secured Parties and Other Rights. 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 (subject to the variance described in Section 3(a) of this Interim Order).

(i) Superpriority Administrative Claim Status. Subject to the Carve-Out and to the rights afforded the Creditors’ Committee and other parties under paragraph 7 of this Interim Order, all DIP Liabilities shall be an allowed superpriority administrative expense claim (the “DIP Superpriority Claim”, and, together with the DIP Liens, the “DIP Protections”) with priority 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 or their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in, arising, or ordered pursuant to Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to entry of Final Order), 507(a), 507(b),

546(c), 546(d), 552(b), 726, 1113, and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. Other than the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in this proceeding, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to, or on a parity with the DIP Protections or the DIP Liabilities, or with any other claims of the DIP Secured Parties arising hereunder.

3. **Authorization to Use Cash Collateral and Proceeds of DIP Credit Agreement**

(a) Pursuant to the terms and conditions of this Interim Order, the DIP Facility and the DIP Credit Agreement, and in accordance with the budget (as the same may be modified, supplemented or updated from time to time consistent with the terms of the DIP Credit Agreement, the “Budget”), filed on record in the Cases, the Debtors are authorized to use Cash Collateral and to use the advances under the DIP Credit Agreement during the period commencing immediately after the entry of the Interim Order and terminating upon the earlier to occur of: (i) notice being provided by the DIP Agent to the Debtors that an Event of Default (as defined below) has occurred, or (ii) the Termination Date. 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 other proceeds resulting therefrom, except as permitted in the DIP Facility and the DIP Credit Agreement and in accordance with the Budget. In no event shall the Debtors request any transfer nor use any of the Cash Collateral nor use the advances under the DIP Credit Agreement to pay

any item (i) in excess of 110% of the amount set forth for such item in the Budget plus the Carryover Amount (as defined below) for such item, (x) by line item, or (y) in the aggregate, or (ii) in advance of the week in which a cash disbursement is scheduled to be paid. For purposes hereof, the term "Carryover Amount" means an amount equal to five percent (5%) of the difference between (i) the aggregate amount set forth in the Budget for the immediately preceding two (2) week period for such item, less (ii) the actual amount expended for such item during such period, to the extent the result is a positive number.

(b) No Cash Collateral or advances under the DIP Credit Agreement may be used by the Debtors, the Creditors' Committee, or any other person or entity to object to or contest in any manner, or raise any defenses to the validity, extent, perfection, priority or enforceability of the Pre-Petition Liabilities, or any liens or security interests with respect thereto or any other rights or interests of the Pre-Petition Secured Parties, or to assert any claims or causes of action, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code, against the Pre-Petition Secured Parties, or for any other purpose prohibited by the terms of the DIP Credit Agreement.

4. **Adequate Protection for Pre-Petition Liabilities.** Subject to the rights afforded the Creditors' Committee and other parties under paragraph 7 of this Interim Order, as adequate protection for the interest of the Pre-Petition Secured Parties in the Pre-Petition Collateral (including Cash Collateral) on account of the granting of the DIP Liens, subordination to the Carve-Out, the Debtors' use of Cash Collateral and other decline in value arising out of the automatic stay or the Debtors' use, sale, lease, depreciation, or disposition of the Pre-Petition Collateral (including Cash Collateral) (the "Diminution in Value"), the Pre-Petition Secured Parties shall receive adequate protection as follows:

(a) Pre-Petition Replacement First Liens. Solely to the extent of the Diminution in Value of the interests of the Pre-Petition First Lien Secured Parties in the Pre-Petition First Lien Collateral, the Pre-Petition First Lien Secured Parties shall have, subject to the terms and conditions set forth below, pursuant to Sections 361, 363(e) and 364 of the Bankruptcy Code additional and replacement security interests and liens in the DIP Collateral (the "**Pre-Petition Replacement First Liens**"), which shall be junior only to the DIP Liens and the Carve-Out as provided herein.

(b) Pre-Petition First Lien Superpriority Claim. Solely to the extent of the Diminution in Value of the interests of the Pre-Petition First Lien Secured Parties in the Pre-Petition First Lien Collateral, Pre-Petition First Lien Secured Parties shall have an allowed superpriority administrative expense claim (the "**Pre-Petition First Lien Superpriority Claim**") which shall have priority (except with respect to (a) the DIP Liens, (b) the DIP Superpriority Claim, and (c) the Carve-Out), in any Cases 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, 331, 503(a), 503(b), 506(c) (subject to the entry of a Final Order), 507(a), 507(b), 546(c), 546(d), 552, 726, 1113, and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non consensual lien, levy or attachment. Other than the DIP Liens, the DIP Superpriority Claim, and the Carve-Out, no costs or expenses of administration, including, without limitation, professional

fees allowed and payable under Sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in this proceeding, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or on a parity with the Pre-Petition First Lien Superpriority Claim.

(c) First Lien Adequate Protection Payments. The Pre-Petition First Lien Secured Parties shall receive adequate protection in the form of (i) repayment of the outstanding amount of the Pre-Petition First Lien Liabilities (including, principal, interest, fees, costs, expenses) in accordance with this Interim Order, (ii) all "L/C's" (as defined in the Pre-Petition First Lien Credit Agreement) issued under the Pre-Petition Credit Agreement and all obligations on account of cash management services and bank products shall be deemed issued and "Liabilities" under the DIP Credit Agreement, and (iii) payment of costs, expenses, indemnities and other amounts with respect to the Pre-Petition First Lien Liabilities hereafter arising in accordance with the Pre-Petition First Lien Credit Agreement and this Interim Order (including without limitation, any such payments from the Pre-Petition First Lien Indemnity Account (as defined below)) (collectively, the "**First Lien Adequate Protection Payments**").

(d) Pre-Petition First Lien Indemnity Account. Incidental to the payment in full in cash of the Pre-Petition First Lien Liabilities in accordance with the terms of this Interim Order, the Debtors shall establish an account in the "control" (as defined in the UCC) of the Pre-Petition First Lien Agent (the "**Pre-Petition First Lien Indemnity Account**"), into which the sum of \$250,000.00 shall be deposited as security for any reimbursement, indemnification or similar continuing obligations of the Debtors in favor of the Pre-Petition First Lien Secured Parties under

the Pre-Petition First Lien Credit Agreement (the “**Pre-Petition First Lien Indemnity Obligations**”); provided, however, that the Pre-Petition First Lien Indemnity Account shall terminate and all remaining amounts held therein shall be released to the Debtors if the Pre-Petition First Lien Liabilities have been indefeasibly paid in full in cash and the earliest to occur of: (i) the Challenge Period Termination Date (as defined below) if, as of such date, no party has filed or asserted an adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in Paragraph 7 hereof providing for such release; or (ii) the date this Court enters a final order closing the Cases. The Pre-Petition First Lien Indemnity Obligations shall be secured by a first priority lien on the Pre-Petition First Lien Indemnity Account. The Pre-Petition First Lien Indemnity Account and the amounts therein shall remain property of the Debtors and the Debtors’ estates under Section 541 of the Bankruptcy Code, subject to the lien granted herein.

(e) Pre-Petition Replacement Second Liens. Solely to the extent of the Diminution in Value of the interests of the Pre-Petition Second Lien Secured Parties in the Pre-Petition Second Lien Collateral, the Pre-Petition Second Lien Secured Parties shall have, subject to the terms and conditions set forth below, pursuant to Sections 361, 363(e) and 364 of the Bankruptcy Code additional and replacement security interests and liens in the DIP Collateral (the “**Pre-Petition Replacement Second Liens**”, and together with the Pre-Petition Replacement First Liens, collectively, the “**Pre-Petition Replacement Liens**”), junior only to the DIP Liens, the Carve-Out, and the Pre-Petition First Liens (except to the extent set forth in the Intercreditor Agreement) as provided herein.

(f) Pre-Petition Second Lien Superpriority Claim. Solely to the extent of the Diminution in Value of the interests of the Pre-Petition Second Lien Secured Parties in the Pre-Petition Second Lien Collateral, Pre-Petition Second Lien Secured Parties shall have an allowed superpriority administrative expense claim (the “**Pre-Petition Second Lien Superpriority Claim**” and together with the Pre-Petition First Lien Superpriority Claim, collectively, the “**Pre-Petition Superpriority Claims**”) which shall be subject to the Intercreditor Agreement and shall have priority (except with respect to (a) the DIP Liens, (b) the DIP Superpriority Claim, (c) the Carve-Out, (d) the Pre-Petition First Lien Superpriority Claim, and (e) the Pre-Petition First Liens), 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, 331, 503(a), 503(b), 506(c) (subject to the entry of a Final Order), 507(a), 507(b), 546(c), 546(d), 552, 726, 1113, and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non consensual lien, levy or attachment. Other than the DIP Liens, the DIP Superpriority Claim, the Carve-Out, the Pre-Petition First Lien Superpriority Claim and the Pre-Petition First Liens, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in this proceeding, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or on a parity with the Pre-Petition Second Lien Superpriority Claim.

(g) Second Lien Adequate Protection Payments. The Pre-Petition Second Lien Secured Parties shall receive adequate protection in the form of payment of costs, expenses, indemnities and other amounts (including interest payable post-petition to the extent provided for in the Budget) with respect to the Pre-Petition Second Lien Obligations hereafter arising in accordance with the Pre-Petition Second Lien Credit Agreement and this Interim Order (including without limitation, any such payments from the Pre-Petition Second Lien Indemnity Account (as defined below)) (the "**Second Lien Adequate Protection Payments**", and together with the Second Lien Adequate Protection Payments, collectively, the "**Adequate Protection Payments**").

(h) Pre-Petition Second Lien Indemnity Account. Contemporaneously with the payment in full in cash of the Pre-Petition Second Lien Obligations in accordance with the terms of this Interim Order, the Debtors shall establish an account in the "control" (as defined in the UCC) of the Pre-Petition Second Lien Agent (the "**Pre-Petition Second Lien Indemnity Account**", and together with the Pre-Petition First Lien Indemnity Account, collectively, the "**Pre-Petition Indemnity Accounts**"), into which the sum of \$250,000 shall be deposited as security for any reimbursement, indemnification or similar continuing obligations of the Debtors in favor of the Pre-Petition Second Lien Secured Parties under the Pre-Petition Second Lien Credit Agreement (the "**Pre-Petition Second Lien Indemnity Obligations**", and together with the Pre-Petition First Lien Indemnity Obligations, collectively, the "**Pre-Petition Indemnity Obligations**"); provided, however, that the Pre-Petition Second Lien Indemnity Account shall terminate and all remaining amounts held therein shall be released to the Debtors if the Pre-Petition Second Lien

Obligations have been indefeasibly paid in full in cash and the earliest to occur of: (i) the Challenge Period Termination Date (as defined below) if, as of such date, no party has filed or asserted an adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in Paragraph 7 hereof providing for such release; or (ii) the date this Court enters a final order closing the Cases. The Pre-Petition Second Lien Indemnity Obligations shall be secured by a first priority lien on the Pre-Petition Second Lien Indemnity Account. The Pre-Petition First Lien Indemnity Account and the amounts therein shall remain property of the Debtors and the Debtors' estates under Section 541 of the Bankruptcy Code, subject to the lien granted herein.

(i) Consultation on Budget. The DIP Agent shall consult with and provide prior written notice of no less than five (5) business days to the Pre-Petition Second Lien Agent prior to agreeing to any material changes to the Budget (any such change, a "Budget Change"); provided, however, that - (1) in no event shall the Pre-Petition Second Lien Agent have a consent right regarding any Budget Change whatsoever, except to the extent, if any, that the Pre-Petition Second Lien Agent is expressly granted a consent right under the terms of the Intercreditor Agreement, until such time as the Pre-Petition First Lien Liabilities and the DIP Liabilities have been paid in full. For the avoidance of doubt, nothing contained in this subsection (i) shall be deemed to limit, restrict, or constitute a waiver of any of the respective rights and remedies of the DIP Agent or the Pre-Petition Second Lien Agent under the Bankruptcy Code or other applicable law, including, without limitation, any right of the Pre-Petition Second Lien Agent (as such right may be limited by the terms and conditions of the Intercreditor Agreement) to file an objection or

other appropriate pleading with this Court in the event that it does not agree with any Budget Change to which the DIP Agent has consented or the DIP Agent's and Debtors' respective rights to contest such objection.

5. **Section 507(b) Reservation.** Nothing herein shall impair or modify the Pre-Petition Secured Parties' rights under Section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Pre-Petition Secured Parties hereunder is insufficient to compensate for the Diminution in Value of the interest of such Pre-Petition Secured Parties in the applicable Pre-Petition Collateral during the Cases or any Successor Cases, provided, however, that (i) any claim granted in the Cases to the Pre-Petition First Lien Secured Parties pursuant to Section 507(b) of the Bankruptcy Code shall be junior in right of payment to all DIP Liabilities and subject to the Carve-Out, and (ii) any claim granted in the Cases to the Pre-Petition Second Lien Secured Parties pursuant to Section 507(b) of the Bankruptcy Code shall be junior in right of payment to all DIP Liabilities, all Pre-Petition First Lien Liabilities, and subject to the Carve-Out. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Pre-Petition First Lien Agent, Pre-Petition Second Lien Agent or other Pre-Petition Secured Parties that the adequate protection granted herein does in fact adequately protect the Pre-Petition Secured Parties against any Diminution in Value of their respective interests in the Pre-Petition Collateral (including Cash Collateral), subject to the Intercreditor Agreement.

6. **Post-Petition Lien Perfection.** This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and the Pre-Petition Replacement Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking

of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement or securities account control agreement) to validate or perfect the DIP Liens and the Pre-Petition Replacement Liens or to entitle the DIP Liens and the Pre-Petition Replacement Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent, the Pre-Petition First Lien Agent and the Pre-Petition Second Lien Agent (collectively, the "Agents") may, each in their sole discretion, file such financing statements, mortgages, security agreements, 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, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Cases. The Debtors shall execute and deliver to the Agents all such security agreements, financing statements, mortgages, notices and other documents as the Agents may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens and the Pre-Petition Replacement Liens granted pursuant hereto. The DIP Agent, in its discretion, may file a photocopy 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 Debtors have real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Interim Order. The DIP Agent shall, in addition to the rights granted to the DIP Agent under the DIP Credit Agreement, be deemed to be the successor in interest to the Pre-Petition First Lien Secured Parties with respect to all third party notifications in connection with the Pre-Petition First Lien Credit Agreement, all Blocked Account Agreements (as defined in the Pre-Petition First Lien Credit Agreement) and all other agreements with third parties (including any agreement with a landlord, warehouseman, customs broker, freight forwarder, or credit card processor)

relating to, or waiving claims against, any Pre-Petition First Lien Collateral, including without limitation, each collateral access agreement duly executed and delivered by any landlord of the Debtors and including, for the avoidance of doubt, all deposit account control agreements, securities account control agreements, and credit card agreements, provided that the Pre-Petition First Lien Agent shall continue to have all rights pursuant to each of the foregoing.

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 if no committee(s) are appointed, any other party in interest with requisite standing (other than the Debtors), may have (a) to file an adversary proceeding or contested matter or otherwise to object to or challenge the findings herein, including, but not limited to, those in relation to (i) the validity, extent, perfection, enforceability or priority of the mortgage, security interests and liens of the Pre-Petition Secured Parties in and to the Pre-Petition Collateral, or (ii) the validity, allowability, priority, status, enforceability or amount of the Pre-Petition Liabilities, or (b) to bring suit against any of the Pre-Petition Secured Parties in connection with or related to the Pre-Petition Liabilities, or the actions or inactions of any of the Pre-Petition Secured Parties arising out of or related to the Pre-Petition Liabilities; provided, however, that, unless any official committee(s) or any other party in interest with standing commences a contested matter or adversary proceeding raising such filing or other objection or challenge, including without limitation any claim against the Pre-Petition Secured Parties in the nature of a setoff, counterclaim or defense to the Pre-Petition Liabilities (including but not limited to, those under Sections 506, 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against any of the Pre-Petition Secured Parties), by the later of (a) 60 days following the appointment of the first Creditors'

Committee, or (b) if no Creditors' Committee is appointed, 75 days following entry of this Interim Order (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 Creditors' Committee, any Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Cases, receiver, administrator, trustee, examiner with expanded powers, responsible officer, other estate representative and any other party in interest) shall be deemed to be forever waived and barred, and (i) the Pre-Petition Liabilities shall be deemed to be allowed in full and shall be deemed to be allowed as a fully secured claim within the meaning of Section 506 of the Bankruptcy Code for all purposes in connection with these Cases and any Successor Cases and the Debtors' Stipulations shall be binding on all creditors, interest holders and parties in interest (including, any Creditors' Committee, any creditor, or Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Cases, receiver, administrator, trustee, examiner with expanded powers, responsible officer, and other estate representative), (ii) the Pre-Petition Agents' and other Pre-Petition Secured Parties' security interests and Encumbrances upon the Pre-Petition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected security interests and Encumbrances, not subject to recharacterization, subordination or otherwise avoidable, and (iii) the payment of the Pre-Petition Liabilities in accordance with this Interim Order (whether prior or subsequent to the Petition Date) shall be deemed final and indefeasible, not subject to subordination or disgorgement and otherwise unavoidable. To the extent any such objection or complaint is filed, the Pre-Petition Secured Parties shall

be entitled to include such costs and expenses, including but not limited to reasonable attorneys' fees, incurred in defending the objection or complaint as part of the Pre-Petition Liabilities.

8. **Carve-Out.**

(a) Subject to the terms and conditions contained in this Paragraph 8, the DIP Liens, DIP Superpriority Claims, the Pre-Petition Replacement Liens, the Pre-Petition Indemnity Accounts, and the Pre-Petition Superpriority Claims are subordinate only to (i) allowed administrative expenses pursuant to 28 U.S.C. Section 1930(a)(6), (ii) allowed and paid professional fees and disbursements ("**Paid Professional Fees**", and together with the Reported Professional Fees (as defined below), collectively, the "**Professional Fees**") incurred by the Debtors and any Creditors' Committee for any professional retained by a final order of the Court (which order has not been vacated, stayed or appealed) by the Debtors and the Creditors' Committee under sections 327 or 1103(a) of the Bankruptcy Code) (each, a "**Case Professional**") up to an aggregate amount not to exceed \$400,000, and (iii) the Reported Professional Fees (the sum of the amounts described in clauses (i), (ii) and (iii) of this Section 8 are hereinafter referred to as the "**Carve-Out**"). As used herein, the term "**Reported Professional Fees**" shall mean the amount of allowed professional fees and disbursements incurred by the Debtors and any Creditors' Committee which have been incurred, accrued or invoiced (but remain unpaid) prior to such time as the DIP Agent notifies the Debtors of the occurrence and continuation of an Event of Default, provided that "**Reported Professional Fees**" shall be equal to such aggregate amount of allowed professional fees and disbursements as is reflected in the Budget for each Case Professional for the relevant time period minus any payments made on account thereof (or retainers for the payment thereof), which

payments are reported to the DIP Agent in accordance with the provisions hereof. Any such professional fees and disbursements which have been incurred, accrued or invoiced (and remain unpaid) but are in excess of the amounts reflected on the Budget for the relevant time period shall not constitute "Reported Professional Fees" hereunder.

(b) The Carve-Out shall exclude any fees and expenses (x) incurred in connection with the assertion or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (A) invalidating, setting aside, avoiding, or subordinating, in whole or in part, (i) the DIP Liabilities, (ii) the Pre-Petition Liabilities, (iii) the Pre-Petition Liens in the Pre-Petition Collateral, (iv) the DIP Agent's or DIP Secured Parties' Liens in the DIP Collateral, or (v) the Pre-Petition Replacement Liens in the DIP Collateral, or (B) preventing, hindering or delaying, whether directly or indirectly, the DIP Agent's, DIP Secured Parties' or Pre-Petition Secured Parties' assertions or enforcement of their Encumbrances, security interests or realization upon any DIP Collateral, Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Accounts, and no Cash Collateral or proceeds from the DIP Facility may be used to accomplish any of the foregoing, provided, however, that such exclusion does not encompass any investigative work conducted by attorneys and financial advisors employed by the Debtors and any committee pursuant to Sections 327 and 1103 of the Bankruptcy Code prior to bringing any action relating to the foregoing to the extent such fees and expenses do not exceed \$50,000.00, (y) in using Cash Collateral of the DIP Secured Parties, selling or otherwise disposing of any other DIP Collateral, or incurring any indebtedness not permitted under the DIP

Credit Agreement, without the DIP Agent's express written consent or (z) arising after the conversion of the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code.

(c) Except as otherwise provided in this paragraph, nothing contained in this Interim Order shall be deemed a consent by the Pre-Petition Secured Parties, or DIP Secured Parties to any charge, lien, assessment or claim against the DIP Collateral, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Accounts under Section 506(c) of the Bankruptcy Code or otherwise. Nothing herein shall be construed to obligate the Pre-Petition Secured Parties, or DIP Secured Parties, in any way, to pay the Professional Fees, or to assure that the Debtors have sufficient funds on hand to pay any Professional Fees. So long as no Event of Default is continuing, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under Sections 330 and 331 of the Bankruptcy Code and in accordance with the Budget (subject to the variance described in Section 3(a) of this Interim Order), as the same may be due and payable and the same shall not reduce the Carve-Out.

9. **Payment of Compensation.** Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of the Debtors, any official committee (including, without limitation, the Creditors' Committee), or of any person, or shall affect the right of the Agents to object to the allowance and payment of such fees and expenses or to permit the Debtors to pay any such amounts not set forth in the Budget.

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 Secured Parties, the Pre-Petition Secured Parties, their respective claims, or the DIP Collateral, pursuant to Sections 105, and 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Agent. Nothing contained in this Interim Order shall be deemed a consent by the Pre-Petition Secured Parties or the DIP Secured Parties to any charge, lien, assessment, claim or other Encumbrance against the DIP Collateral, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Accounts under Section 506(c) of the Bankruptcy Code or otherwise.

11. **Collateral Rights.** Unless (x) the DIP Agent and Pre-Petition First Lien Agent have provided their prior written consent or all Pre-Petition First Lien Liabilities and DIP Liabilities 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 (including, without limitation, all "Revolving Credit Dollar Commitments" (as defined in each of the Pre-Petition Credit Agreement and the DIP Credit Agreement, as applicable)) have irrevocably terminated, all L/C's have been cash collateralized as required by the DIP Credit Agreement, all indemnification obligations under the DIP Credit Agreement have been cash collateralized and the Pre-Petition First Lien Indemnity Account has been established, and (y) the Pre-Petition Second Lien Agent has provided its written consent or all Pre-Petition Second Lien Obligations have been paid in full in cash, there shall not be entered in this proceeding, 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, lien, collateral interest or other Encumbrance on all or any portion of the DIP Collateral, Pre-Petition Collateral, or the Pre-Petition Indemnity Accounts and/or entitled to

priority administrative status which is equal or senior to that granted to the Pre-Petition Secured Parties or DIP Secured Parties herein; or

(b) relief from stay by any person other than of the DIP Agent or other DIP Secured Parties on all or any portion of the Collateral; or

(c) the Debtors' return of goods constituting Collateral pursuant to Section 546(h) of the Bankruptcy Code.

12. **Proceeds of Subsequent Financing.** Without limiting the provisions and protections of Paragraph 11, above, if at any time prior to the indefeasible payment in full in cash of all Pre-Petition Liabilities and DIP Liabilities and the termination of the DIP Agent's and DIP Lenders' obligations to make loans and advances under the DIP Credit Agreement (including, without limitation, in respect of the Revolving Credit Dollar Commitments), including subsequent to the confirmation of any Chapter 11 plan or plans (the "**Plan**") with respect to any or all of the Debtors, their estates, any trustee any examiner with expanded responsibilities, or any responsible officer subsequently appointed, shall obtain credit or incur debt pursuant to Sections 364(b), 364(c) or 364(d) of the Bankruptcy Code in violation of the DIP Credit Agreement, then all of the cash proceeds and all Cash Collateral derived from such credit or debt shall immediately be turned over to the Pre-Petition First Lien Agent or DIP Agent, as applicable, in reduction of the Pre-Petition Liabilities and DIP Liabilities in accordance with the terms of the DIP Credit Agreement, the Intercreditor Agreement and this Interim Order.

13. **Termination Date.** Immediately upon the Termination Date, all (i) DIP Liabilities shall be immediately due and payable, and (ii) authority to use the proceeds of the DIP Credit Agreement and, except as provided in Section 20(d) hereof, to use Cash Collateral, shall cease.

14. **Payment from Proceeds of Collateral.** All products and proceeds of the Collateral (including, for the avoidance of doubt, proceeds from receivables and sales in the ordinary course of business or from any Permitted Sale, insurance proceeds, and proceeds of all dispositions of Collateral, whether or not in the ordinary course) regardless of whether such Collateral came into existence prior to the Petition Date, shall be remitted to the DIP Agent for application in accordance with the terms of the DIP Credit Agreement and the Intercreditor Agreement.

15. **Disposition of Collateral.** The Debtors shall not (a) sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral or Pre-Petition Collateral, without the prior written consent of the requisite DIP Secured Parties and Pre-Petition Secured Parties (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Secured Parties, the Pre-Petition Secured Parties, or an order of this Court), except for sales of the Debtors' inventory in the ordinary course of business, in connection with any Permitted Sale or as otherwise provided for in the DIP Credit Agreement and this Interim Order and approved by the Court, provided, however, that if the Pre-Petition First Lien Agent consents to such sale, transfer, lease, encumbrance or other disposition of Collateral, until the Pre-Petition First Lien Liabilities shall have been indefeasibly paid in full in cash and any and all other requirements under the Intercreditor Agreement have otherwise been satisfied, then the Pre-Petition Second Lien Agent shall also be deemed to have consented and the Encumbrances of the Pre-Petition Second Lien Agent on such Collateral shall be automatically released and terminated, with such liens

attaching to the proceeds of such sale, transfer, lease or disposition with the same priorities as set forth herein, without any action by or notice to the Pre-Petition Second Lien Agent, or (b) assume, reject or assign any lease, except as otherwise provided for in the DIP Credit Agreement.

16. **Events of Default.** The occurrence of any Event of Default (as defined in the DIP Credit Agreement) shall constitute an Event of Default under this Interim Order. Unless and until the Pre-Petition Liabilities and DIP Liabilities have been repaid in full in cash, all commitments to lend have irrevocably terminated (including, without limitation, the Revolving Credit Dollar Commitments), all L/C's have been cash collateralized in accordance with the DIP Credit Agreement, all DIP Liabilities that survive termination of the obligations have been cash collateralized to the reasonable satisfaction of the Pre-Petition First Lien Agent and DIP Agent, and the Pre-Petition Indemnity Accounts have been established, the protections afforded to Pre-Petition Secured Parties and the DIP Secured Parties pursuant to this Interim Order and under the DIP Credit Agreement, and any actions taken pursuant thereto, shall survive the entry of any order confirming a Plan or converting these Cases into Successor Cases, and the DIP Liens, the DIP Superpriority Claim, the Pre-Petition Replacement Liens, and the Pre-Petition Superpriority Claims shall continue in this proceeding and in any Successor Cases, and such DIP Liens, DIP Superpriority Claim, Pre-Petition Replacement Liens, and the Pre-Petition Superpriority Claims shall maintain their priority as provided by this Interim Order.

17. **Rights and Remedies Upon Event of Default.**

(a) Any automatic stay otherwise applicable to the Pre-Petition Secured Parties and DIP Secured Parties is hereby modified so that after the occurrence of any Event of Default and at

any time thereafter, upon five (5) business days prior written notice of such occurrence, in each case given to each of the Debtors, counsel to the Debtors, counsel to the Pre-Petition Second Lien Agent, counsel to the Creditors' Committee, if any, and the United States Trustee, the Pre-Petition Secured Parties and the DIP Secured Parties shall be entitled to exercise their rights and remedies in accordance with the Pre-Petition Credit Agreement, the Pre-Petition Second Lien Credit Agreement and the DIP Credit Agreement, as applicable. Immediately following the giving of notice by the DIP Agent of the occurrence of an Event of Default: (i) the Debtors shall continue to deliver and cause the delivery of the proceeds of Collateral to the DIP Agent as provided in the DIP Credit Agreement and this Interim Order; and (ii) the DIP Agent shall continue to apply such proceeds in accordance with the provisions of this Interim Order, the DIP Credit Agreement and the Intercreditor Agreement. Following the giving of written notice by the DIP Agent of the occurrence of an Event of Default, the Debtors shall be entitled to an emergency hearing before this Court solely for the purpose of contesting whether an Event of Default has occurred (such hearing, an "Emergency Stay Hearing"). If the Debtors do not contest the right of the Pre-Petition Secured Parties and DIP Secured Parties to exercise their remedies based upon whether an Event of Default has occurred within the time period specified above, or if the Debtors do timely contest the occurrence of an Event of Default and this Court, after notice and hearing, declines to stay the enforcement thereof, the automatic stay as to the Pre-Petition Secured Parties and DIP Secured Parties shall automatically terminate at the end of such notice period. After the applicable Emergency Stay Hearing, unless this Court shall have entered an order to the contrary: (i) the Debtors shall have no right to use any of such proceeds, nor any other Cash Collateral other than towards the satisfaction of the Pre-Petition Liabilities, the DIP Liabilities and the Carve-Out; and

(ii) any obligation otherwise imposed on the DIP Agent or the other DIP Secured Parties to provide any loan or advance to the Debtors pursuant to the DIP Facility shall be suspended.

(b) Subject to the provisions of paragraph 17(a), upon the occurrence of an Event of Default and unless this Court shall have entered an order to the contrary, the DIP Secured Parties are authorized to exercise their remedies and proceed under or pursuant to the DIP Credit Agreement. All proceeds realized from any of the foregoing shall be turned over to the DIP Agent for application to the Carve-Out (provided that any application of such proceeds to the Carve-Out shall not reduce the DIP Liabilities or the Pre-Petition Liabilities), the DIP Liabilities, and the Pre-Petition First Lien Liabilities under, and in accordance with the provisions of, the DIP Credit Agreement, the Pre-Petition Credit Agreement, and this Interim Order, and the Pre-Petition Second Lien Liabilities under, and in accordance with the provisions of, the Pre-Petition Second Lien Credit Agreement, the Interim Order and this Interim Order.

(c) The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of the DIP Credit Agreement as necessary to (i) permit the Debtors to grant the Pre-Petition Replacement Liens, and the Pre-Petition Indemnity Accounts and the DIP Liens, and to incur all liabilities and obligations to the Pre-Petition Secured Parties, the DIP Secured Parties under the DIP Credit Agreement, the DIP Facility and this Interim Order, and (ii) authorize the DIP Secured Parties and the Pre-Petition Secured Parties to retain and apply payments in accordance with the terms of the DIP Credit Agreement and this Interim Order.

(d) Nothing included herein shall prejudice, impair, or otherwise affect the Pre-Petition Secured Parties' or DIP Secured Parties' rights to seek any other or supplemental relief in respect of the Debtors nor the DIP Agent's or DIP Lenders' rights, as provided in the DIP Credit Agreement, to suspend or terminate the making of loans under the DIP Credit Agreement.

18. **Rights with Respect to Certain Pre-Petition Agreements.** The DIP Agent and the other DIP Secured Parties shall have all the rights and benefits with respect to each Blocked Account Agreement (as defined in the Pre-Petition First Lien Credit Agreement), each other agreement with a third party (including any agreement with a landlord, warehouseman, customs broker, freight forwarder, or credit card processor), and each other notification or agreement received or furnished in connection with the Pre-Petition First Lien Credit Agreement, and all depository banks, blocked account banks, landlords, warehousemen, customs brokers, freight forwarders, credit card processors and other third parties shall continue to comply for the benefit of the DIP Secured Parties, with the terms and conditions of each such agreement or notification, in each such case whether or not, and as if, an additional agreement or notification has been executed or furnished in connection with the DIP Credit Agreement.

19. **Proofs of Claim.** Each Debtor acknowledges and agrees that both the Pre-Petition Liabilities and the DIP Liabilities, and the related liens, rights priorities and protections granted to or in favor of the applicable Pre-Petition Secured Parties and DIP Secured Parties, respectively, as set forth herein and in the Pre-Petition Credit Agreement, the Pre-Petition Second Lien Credit Agreement and the DIP Credit Agreement, as applicable, shall each constitute a proof of claim on behalf of the applicable Pre-Petition Secured Parties or DIP Secured Parties in the Cases. Neither the Pre-Petition Secured Parties nor the DIP Secured Parties will be required to file proofs of claim in the Cases or in any Successor

Cases, however, each are hereby authorized and entitled to file (and amend and/or supplement) proofs of claim in the Cases or any Successor Cases.

20. **Other Rights and Obligations**

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code, 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 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, the DIP Secured Parties are entitled to the protections provided in Section 364(e) of the Bankruptcy Code, and no such appeal, modification, amendment or vacation shall affect the validity and enforceability of any advances made hereunder or the liens or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the DIP Secured Parties hereunder arising prior to the effective date of such modification, amendment or vacation of any DIP Protections granted to the DIP Secured Parties shall be governed in all respects by the original provisions of this Interim Order, and the DIP Secured Parties 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 Secured Parties prior to the effective date of any stay, modification or vacation of this Interim Order shall not, as a result of any subsequent order in the Cases, or in any Successor Cases, 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 Secured Parties under this Interim Order and/or the DIP Credit Agreement.

(b) Expenses. As provided in the Pre-Petition First Lien Credit Agreement, the Pre-Petition Second Lien Credit Agreement and DIP Credit Agreement, all costs and expenses of the DIP Secured Parties and Pre-Petition Secured Parties in connection with the DIP Credit Agreement, the Pre-Petition First Lien Credit Agreement and the Pre-Petition Second Lien Credit Agreement, including, without limitation, reasonable, 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 will be paid by the Debtors, whether or not the transactions contemplated hereby are consummated. Payment of such fees shall not be subject to allowance by the Court. Under no circumstances shall professionals for the DIP Secured Parties or Pre-Petition Secured Parties be required to comply with the United States Trustee fee guidelines; provided, however, that copies of any such invoices, redacted as necessary to preserve the attorney-client privilege, shall be provided to the United States Trustee, counsel to the Creditors' Committee and counsel to the Debtors and shall be subject to a ten (10) day review and objection period for such parties.

(c) Continuing Effect of Intercreditor Agreement. Each of the Pre-Petition First Lien Secured Parties, the Pre-Petition Second Lien Parties and the Debtors shall continue to be bound by and subject to all the terms, provisions and restrictions of the Intercreditor Agreement, and the Intercreditor Agreement shall apply and govern respective rights, obligations and priorities of each of DIP Agent, DIP Lenders, the Debtors, the Pre-Petition First Lien Secured Parties and the Pre-

Petition Second Lien Secured Parties in these Cases. All loans made by the DIP Lenders which constitute part of the DIP Facility and all other Liabilities arising thereunder shall be included in the definition of Working Capital Debt (as such term is defined in the Intercreditor Agreement) except to the extent that the sum of aggregate amount of DIP Liabilities arising under the DIP Facility and any unpaid Pre-Petition First Lien Liabilities exceeds the Maximum W/C Debt (as defined under the Intercreditor Agreement). For the avoidance of doubt, the aggregate amount of the DIP Liabilities and the Pre-Petition First Lien Liabilities shall not exceed the Maximum W/C Debt. As of the Petition Date, the Maximum W/C Debt is \$60,000,000. The Intercreditor Agreement is a "subordination agreement" under Section 510(a) of the Bankruptcy Code and shall continue to be effective during and after the pendency of the Cases and any Successor Cases. Nothing in this Interim Order is meant to or shall be deemed to alter or otherwise modify the rights, including consent rights, contained in the Intercreditor Agreement as between and among each of the Pre-Petition First Lien Secured Parties, the Pre-Petition Second Lien Parties and the Debtors.

(d) Rights of Agents. Upon payment in full of the DIP Liabilities and the Pre-Petition First Lien Liabilities, (i) the Pre-Petition Second Lien Agent shall have all of the same rights, claims, priorities, liens and protections afforded to the DIP Agent and DIP Lenders hereunder, including, but not limited to consenting to the Budget and any Budget Change, which the Pre-Petition Second Lien Agent may waive at any time, and (ii) the Pre-Petition Second Lien Agent consents to the Debtors' continued use of Cash Collateral consistent with the Budget and this Interim Order.

(e) Binding Effect of Interim Order. The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Secured Parties and the Pre-Petition Secured Parties, the Debtors and their 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 estates of the Debtors) whether in the Cases, in any Successor Cases, or upon dismissal of any such Chapter 11 or Chapter 7 Cases.

(f) No Waiver. The failure of the Pre-Petition Secured Parties or the DIP Secured Parties to seek relief or otherwise exercise their rights and remedies under the DIP Credit Agreement, the DIP Facility, this Interim Order, the Pre-Petition First Lien Credit Agreement or the Pre-Petition Second Lien Credit Agreement, as applicable, shall not constitute a waiver of any of the Pre-Petition Secured Parties' and the DIP Secured Parties' 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 the Pre-Petition Secured Parties or the DIP Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the Pre-Petition Secured Parties or the DIP Secured Parties to: (i) request conversion of the Cases to Cases under Chapter 7, dismissal of the Cases, or the appointment of a trustee in the Cases, or (ii) propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a Plan or (iii) exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Secured Parties or the Pre-Petition Secured Parties.

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

(h) No Marshaling. Neither the DIP Secured Parties nor Pre-Petition Secured Parties shall be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to any of the Collateral.

(i) Section 552(b). In light of their agreement to subordinate their liens and superpriority claims (i) to the Carve-Out in the case of the DIP Secured Parties, (ii) to the Carve-Out and DIP Liens in the case of the Pre-Petition First Lien Secured Parties, and (iii) to the Carve-Out, the DIP Liens and the Pre-Petition First Liens in the case of the Pre-Petition Second Lien Secured Parties, the DIP Secured Parties and the Pre-Petition Secured Parties shall each be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code and the “equities of the case” exception under Section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties or the Pre-Petition Secured Parties with respect to proceeds, product, offspring or profits of any of the Pre-Petition Collateral or the DIP Collateral.

(j) Amendment. The Debtors and the DIP Agent may amend, modify, supplement, or waive any provision of the DIP Facility, provided that such amendment or waiver, in the judgment of the Debtors and the DIP Agent, is either nonprejudicial to the rights of third parties or is not material. Except as otherwise provided herein, no material waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed

by the Debtors and the DIP Agent (after having obtained the approval of the requisite DIP Lenders in accordance with the terms of the DIP Credit Agreement) and approved by the Court.

(k) Survival of Interim Order. The terms of this Interim Order and any actions taken pursuant hereto, shall survive the entry of any order which may be entered: (a) confirming any Plan in the Cases; (b) dismissing the Cases; (c) converting the Cases to any other Chapter under the Code; (d) withdrawing of the references of the Cases from the Court; and (e) providing for abstention from handling or retaining of jurisdiction of these Cases in the Court. 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 Debtors to the DIP Secured Parties pursuant to the DIP Credit Agreement, and all obligations of the Debtors to the Pre-Petition Secured Parties under the Pre-Petition First Lien Credit Agreement and Pre-Petition Second Lien Credit Agreement have been indefeasibly paid in full in cash and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms). The DIP Liabilities shall not be discharged by the entry of an order confirming a Plan, the Debtors having waived such discharge pursuant to Section 1141(d)(4) of the Bankruptcy Code. The Debtors shall not propose or support any Plan that is not conditioned upon the indefeasible payment in full in cash of all of the DIP Liabilities and the Pre-Petition First Lien Liabilities, on or prior to the earlier to occur of (i) the effective date of such Plan and (ii) the Termination Date.

(l) 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.

(m) 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.

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

(o) No Waivers or Modification of Interim Order. Each Debtor irrevocably waives any right to seek any modification or extension of this Interim Order without the prior written consent of the Agents and no such consent shall be implied by any other action, inaction or acquiescence of the Agents.

(p) Waiver of any Applicable Stay. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Interim Order.

21. Final Hearing. Each Debtor shall, on or before March ²³~~14~~, 2009 serve by U.S. mail copies of the notice of entry of this Interim Order, together with a copy of this Interim Order and proposed Final Order to (i) parties having been given notice of the emergency hearing, (ii) any other party which has filed a request for special notice with this Court and served such request upon the Debtors' counsel, (iii) counsel for any statutory committee, and (iv) the United States Trustee. The notice of entry

of this Interim Order shall state that any party in interest objecting to the DIP Facility or the terms of the Final Order shall file written objections with the United States Bankruptcy Court Clerk for the District of Delaware no later than April 8, 2009, which objections shall be served so that same are received by no later than 4:00 p.m. (Eastern time) on such date by: (a) United States Trustee for Region 3, Office of the U.S. Trustee, 844 King Street, Suite 2313, Lockbox 35, Wilmington, DE 19801-3519; Attn: Richard Schepacarter, Esq. ; (b) counsel for the Debtors, Klehr, Harrison, Harvey, Branzburg & Ellers, LLP, 919 Market Street, Suite 1000, Wilmington, Delaware 19801, Attention: Domenic Pacitti, Esq.; (c) counsel for the DIP Agent, Riemer & Braunstein LLP, Three Center Plaza, Boston, Massachusetts 02108, Attention: Donald E. Rothman, Esq.; (d) counsel to any committee; (e) counsel to the Pre-Petition First Lien Agent, Riemer & Braunstein LLP, Three Center Plaza, Boston, Massachusetts 02108, Attention: Donald E. Rothman, Esq.; and (f) counsel to the Pre-Petition Second Lien Agent, Kasowitz, Benson, Torres & Friedman LLP, 1633 Broadway, New York, New York 10019, Attention: Robert M. Novick, Esq.

The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

The Final Hearing to consider the Motion and Final Order shall be held on April 15, 2009 at 2:30 p.m. before the Honorable Brendan L. Shannon, United States Bankruptcy Judge. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtors and entered by this Court.

SO ORDERED by the Court this 20th day of March, 2009.


UNITED STATES BANKRUPTCY JUDGE