

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|--------------------------------------------|---|--------------------------------|
| In re: |) | Chapter 11 |
| |) | |
| DAYTON SUPERIOR CORPORATION, |) | Case No. 09-11351 (BLS) |
| a Delaware corporation,¹ |) | |
| |) | |
| Debtor. |) | Re: Docket No. 17 |

**DEBTOR'S SUPPLEMENTAL MEMORANDUM OF LAW
IN SUPPORT OF DIP FINANCING MOTION AND
AMENDMENT #1 TO DIP CREDIT AGREEMENT**

The above-captioned debtor and debtor-in-possession (the "**Debtor**") submits this supplemental memorandum of law (the "**Supplemental Memorandum of Law**") in support of the Motion Of Debtor For Entry Of Orders (I) Authorizing The Debtor To (A) Obtain Post-Petition Financing, (B) Use Cash Collateral And (C) Repay The Prepetition Revolving Obligations, (II) Granting Adequate Protection To Prepetition Secured Lenders, (III) Granting Security Interests And Super-Priority Administrative Expense Status To The DIP Lenders, And (IV) Granting Related Relief, dated as of April 19, 2009 (Docket No. 17, the "**Motion**").² As described more fully below, the Debtor believes that a consensual resolution has been reached by and among the Debtor, the DIP Lenders (as defined below), the Prepetition Term Loan Lenders and the Objecting Noteholders (as defined below) regarding the Motion, which resolution is memorialized in that certain Amendment #1 to Senior Secured Priming and Superpriority Debtor-in-Possession Revolving Credit Agreement (the "**DIP Amendment**"). A copy of the

¹ The last four digits of the Debtor's federal tax identification number are: EIN: XX-XXX6346. The Debtor's mailing address is 7777 Washington Village Dr , Suite 130, Dayton, Ohio 45459.

² Capitalized terms used, but not otherwise defined, herein shall have the meanings ascribed to them in the Motion.



DIP Amendment is attached hereto as Exhibit A. In support of the Motion, the Debtor respectfully represents as follows:

BACKGROUND

A. Introduction

1. On April 19, 2009 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Case**"). The Debtor is operating its business and managing its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. An official committee of unsecured creditors has been formed in this case.

B. The Debtor's Prepetition Capital Structure

2. General. As described in detail in the Motion, the prepetition capital structure of the Debtor was as follows:

- Approximately \$102,970,000 in secured Prepetition Term Loan Obligations;
- Approximately \$109,770,019 in secured Prepetition Revolving Obligations;
- Approximately \$161,470,500 in unsecured Senior Subordinated Notes. The Senior Subordinated Notes are subordinated in right of payment to the Prepetition Term Loan Obligations and Prepetition Revolving Obligations.

3. Intercreditor Agreement. Pursuant to that certain Intercreditor Agreement, dated as of March 3, 2008 (as amended, the "**Intercreditor Agreement**"), the liens that secure the Prepetition Revolving Obligations (the "**Prepetition Revolving Liens**") are first priority security interests in and liens on the working capital assets of the Debtor, such as accounts, inventory, instruments and chattel paper (collectively, the "**Revolving Credit Priority Collateral**"), and are second priority security interests in and liens on the Debtor's remaining property and assets. The liens that secure the Prepetition Term Loan Obligations (the "**Prepetition Term Liens**") are

first priority security interests in and liens on the Debtor's property and assets other than the Revolving Credit Priority Collateral (subject to such exclusion, the "**Term Loan Priority Collateral**"), and are second priority security interests in and liens on the Revolving Credit Priority Collateral. Pursuant to Section 6.1 and Section 6.2 of the Intercreditor Agreement, the Prepetition Term Loan Lenders agreed not to object to or otherwise contest the proposed use of cash collateral or debtor-in-possession financing under certain circumstances. A copy of the Intercreditor Agreement was attached to the Motion as Exhibit C. For the reasons discussed in the Motion and herein, the Debtor believes the revised DIP Facility and use of cash collateral complies with the Intercreditor Agreement.

C. The DIP Motion and Interim DIP Order

4. On the Petition Date, the Debtor filed the Motion which, among other things, set forth the Debtor's immediate need for debtor-in-possession financing and for the use of cash collateral. *See* Motion, Docket No. 17, ¶ 26-36; Hootnick Declaration, Docket No. 18, ¶ 26-33. Pursuant to the Motion, the Debtor sought approval of that certain Senior Secured Priming and Superpriority Debtor-in-Possession Revolving Credit Agreement, dated as of April 22, 2009 (the "**Original DIP Agreement**") by and among the Debtor, as borrower, the lenders party thereto from time to time (the "**DIP Lenders**") and General Electric Capital Corporation, as collateral and administrative agent (the "**DIP Administrative Agent**"). The Original DIP Agreement required the Debtor to repay all outstanding Prepetition Revolving Obligations as part of the initial funding thereunder (the "**Roll-Up**").

5. On April 20, 2009, certain holders of the Senior Subordinated Notes (the "**Objecting Noteholders**") objected to the Motion and argued, among other things, that the Roll-Up was improper and that the Court should not approve the Original DIP Agreement because a

better financing alternative was otherwise available from the Objecting Noteholders (such financing alternative, the “**Noteholder Proposal**”). The Noteholder Proposal required, among other things, the non-consensual imposition of liens which are *pari passu* to the Prepetition Revolving Liens (the “**Pari Passu Lien Requirement**”).

6. The Court held an interim hearing on the Motion on April 21, 2009 (the “**Interim Hearing**”). At such hearing, the Debtor argued that the Original DIP Agreement was the better alternative because it would allow the Debtor to immediately access its needed liquidity in its critical, early stage of its reorganization efforts, without the protracted, costly and inherently uncertain litigation that would be required given the non-consensual *Pari Passu Lien Requirement* and use of cash collateral contemplated by the Noteholder Proposal. The Debtor was concerned that such litigation could distract the Debtor and its management team and materially delay the infusion of liquidity at a time when the Debtor’s cash needs were greatest. The Debtor also submitted that litigation over its financing could irreparably damage the Debtor’s business due to uncertainty in the marketplace as to whether the Debtor had or would have sufficient financing to operate its business, pay employees, purchase raw material and complete work in process.

7. After extensive legal argument by the respective professionals to the Debtor, DIP Administrative Agent and Objecting Noteholders, this Court entered an interim order (as modified, the “**Interim DIP Order**”) granting the relief requested in the Motion on an interim basis. *See* Docket Nos. 68 & 76. The Interim DIP Order, however, expressly reserved all parties’ rights to object to the Roll-Up (and have such Roll-Up unwound) at the final hearing on the Motion.

DIP AMENDMENT #1

8. Between the Interim Hearing and the date hereof, the Debtor, the DIP Lenders and the Objecting Noteholders, and their respective professionals, had extensive negotiations regarding the terms and conditions of the Original DIP Agreement. As a result of these efforts and the DIP Amendment, the Debtor and DIP Lenders were able to successfully resolve the objections of the Objecting Noteholders and Prepetition Term Loan Lenders to the Motion. The Debtor understands that the Objecting Noteholders are no longer pursuing the Noteholder Proposal and that they and the Prepetition Term Loan Lenders have no material comments or objections to the form of proposed final DIP order.³ A redline of the proposed final DIP order to the Interim DIP Order is attached hereto as Exhibit B. The Debtor further understands that the DIP Lenders and Objecting Noteholders have been negotiating in good faith regarding, and have reached an agreement on, the terms and conditions of a non-binding exit loan term sheet. While the Debtor is still reviewing the proposed exit loan term sheet, an agreement-in-principle between the DIP Lenders and Objecting Noteholders will in all likelihood significantly reduce the time and cost of this chapter 11 case.

9. The DIP Amendment provides two significant benefits to the Debtor and its estate: better economics and more time.⁴ With respect to economics, the Applicable Margin is being reduced as follows:

³ The Debtor and DIP Lenders are still in discussions with the Creditors' Committee regarding its objection to the Motion and are hoping to consensually resolve such objection prior to the final hearing on the Motion.

⁴ To the extent of any conflict between the summary provided herein and the DIP Amendment, the terms and conditions of the DIP Amendment control

| <u>Loan Type</u> | <u>Original Amount</u> | <u>Revised Amount</u> |
|------------------------------|------------------------|-----------------------|
| Eurodollar Rate Loan | 12.00% | 7.50% |
| Revolving Loan or Swing Loan | 11.00% | 6.50% |

10. This interest rate reduction will be applied to both (i) the “new money” advanced by the DIP Lenders and (ii) the “rolled-up” Prepetition Revolving Obligations. Most importantly, the effective interest rate under the revised DIP Facility (equal to 10.75%) is lower than the effective default interest rate under Prepetition Revolving Credit Agreement (equal to 12.27%). Thus, the revised DIP Facility addresses this Court’s concern that the Roll-Up under the Original DIP Agreement accrued interest at a higher rate than the default rate of interest on the Prepetition Revolving Facility. *See* April 21, 2009 Hearing Transcript at 56:21-57:2.

11. Moreover, the Debtor will also pay a significantly lower Facility Fee as a result of the DIP Amendment. The DIP Lender has reduced the Facility Fee of \$4,950,000 under the Original DIP Agreement to \$3,000,000 – a decrease of nearly \$2 million. In the end, the Debtor will save up to approximately \$5,662,500 as a result of the DIP Amendment as compared to the Original DIP Agreement (assuming a six month time period).⁵ The DIP Amendment, therefore, offers the Debtor substantially more favorable economic terms than the Original DIP Agreement with a significantly lower interest rate and reduced fees.

12. The DIP Amendment also provides the Debtor with materially more time to commence either its plan of reorganization process or an asset sale under section 363 of the

⁵ The difference in interest expense over the six month period is calculated as if the full \$165.0 million in DIP commitment is drawn.

Bankruptcy Code. The tables below list the “Termination Event” milestones in the Original DIP Agreement as compared to the DIP Amendment:

Plan of Reorganization Milestones

| <u>Event</u> | <u>Original Deadline After the Petition Date</u> | <u>Revised Deadline After the Petition Date</u> |
|----------------------------------------------------------------|---------------------------------------------------------|--------------------------------------------------------|
| Enter into a lock-up agreement or other plan support agreement | 45 days | 120 days |
| File a Disclosure Statement and Plan of Reorganization | 90 days | 125 days |
| Obtain order approving Disclosure Statement | 120 days | 155 days |
| Obtain order confirming Plan of Reorganization | 155 days | 190 days |
| Consummate Plan of Reorganization | 185 days | 195 days |

Section 363 Sale Milestones

| <u>Event</u> | <u>Original Deadline After the Petition Date</u> | <u>Revised Deadline After the Petition Date</u> |
|-------------------------------------------|---------------------------------------------------------|--------------------------------------------------------|
| File a Sale and Bidding Procedures Motion | 45 days | 120 days |
| Obtain Entry of Bidding Procedures Order | 60 days | 145 days |
| Obtain Entry of Sale Order | 105 days | 180 days |
| Consummate Section 363 Sale | 120 days | 185 days |

13. The Debtor believes that the additional ten weeks of lead time before the first “Termination Event” is triggered is more than adequate under the circumstances. Assuming the Court grants the Motion on a final basis, the Debtor and its professionals intend to promptly

commence negotiations with its creditor constituents regarding a plan of reorganization so that the Debtor can quickly and successfully emerge from its chapter 11 case.⁶

APPLICABLE AUTHORITY

14. For this Court to approve the relief requested in the Motion and herein, the Debtor must demonstrate that its decisions to enter the Original DIP Agreement and DIP Amendment were reasonable exercises of its business judgment and that their terms are fair and reasonable. See *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990). Provided that a debtor's business judgment does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts generally grant a debtor considerable deference in acting in accordance therewith.

Under the "business judgment" rule, the management of a corporation's affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, inter alia, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code.

In re Farmland Indus., Inc., 294 B.R. 855, 882 (Bankr. W.D. Mo. 2003); see also *Bray v Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Funding Sys. Asset Mgmt. Corp.*, 72 B.R. 87, 88 (Bankr. W.D. Pa. 1987).

15. In the instant case, the Debtor believes it has satisfied its burden under the business judgment test. The Debtor has engaged in continuous, detailed and arms-length negotiations with the DIP Lenders, the Objecting Noteholders and their respective professionals,

⁶ The DIP Amendment also relaxes the minimum EBITDA covenant contained in Section 5.1 of the Original DIP Agreement.

which resulted in the DIP Amendment. The DIP Amendment provides significant benefits to the Debtor in terms of economics and time as compared to the Original DIP Agreement. As noted above, the Debtor understands that the Objecting Noteholders are no longer pursuing the Noteholder Proposal and that they and the Prepetition Term Loan Lenders have no material comments or objections to the form of proposed final DIP order. In light of the foregoing, the Debtor submits that the terms of the revised DIP Facility are fair and reasonable and that the relief requested in the Motion, as modified herein, is in the best interest of the estate and that the Court should approve the DIP Amendment.

WHEREFORE, the Debtor respectfully requests that this Court (i) approve the Motion on a final basis, (ii) approve the DIP Amendment, and (iii) grant such other and further relief as this Court deems just and proper.

Dated: June 4, 2009
Wilmington, Delaware

Respectfully submitted,



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Paul N. Heath (No. 3704)
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ATTORNEYS FOR THE DEBTOR AND
DEBTOR IN POSSESSION

Exhibit A

[DIP Amendment #1]

AMENDMENT NO. 1

This AMENDMENT NO. 1, dated as of June [], 2009 ("Amendment No. 1"), is entered into by and among DAYTON SUPERIOR CORPORATION, a Delaware corporation, as debtor and debtor-in-possession (the "Borrower"), the persons designated as "Lenders" on the signature pages hereto (the "Lenders"), and GENERAL ELECTRIC CAPITAL CORPORATION ("GE Capital"), a Delaware corporation, as administrative agent (in such capacity, the "Administrative Agent").

WHEREAS, the Borrower, the Lenders and GE Capital, as administrative agent and collateral agent, are party to the Senior Secured Priming and Superpriority Debtor-In-Possession Revolving Credit Agreement dated as of April 22, 2009 (the "Credit Agreement"; all capitalized terms defined in the Credit Agreement and not otherwise defined herein to have the meanings assigned thereto in the Credit Agreement); and

WHEREAS, the Borrower wishes to amend the Credit Agreement in the manner set forth below; and

WHEREAS, the Lenders, subject to the terms and conditions of this Amendment No. 1, are willing to amend the Credit Agreement as provided herein.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the Borrower and the Lenders agree as follows:

SECTION 1. AMENDMENTS

Subject to the satisfaction of the condition to effectiveness referred to in Section 2 below, the Credit Agreement is hereby amended as follows:

(i) The definition of the term "Applicable Margin" appearing in Section 1.1 of the Credit Agreement is amended by (a) replacing the phrase "12.00%" appearing in clause (i) of such definition with the phrase "7.50%" and (b) replacing the phrase "11.00%" appearing in clause (ii) of such definition with the phrase "6.50%".

(ii) Section 1.1 of the Credit Agreement is amended by adding the following new defined terms in appropriate alphabetical order:

"Specified Holders" means OCM Principal Opportunities Fund IV, L.P. and any of its Affiliates, and may also include Solus Alternative Asset Management LP, Whippoorwill Associates or any of their Affiliates.

"Specified Holders' Plan Proposal" means a plan of reorganization that (1) provides for (a) payment in full in cash of the Obligations upon consummation thereof, (b) a rights offering of shares of common stock in the reorganized Borrower offered to the Specified Holders and other holders of Senior Subordinated Notes, and (c) conversion of all outstanding obligations under the Senior Subordinated Notes into all shares of common stock in the reorganized Borrower other than the shares issued pursuant to the aforescribed rights offering and any management stock incentive plan and (2) is on terms otherwise reasonably acceptable to Administrative Agent and each Lender in all respects."

(iii) Paragraphs (b), (c) and (d) of definition of the term "Termination Event" appearing in Section 1.1 of the Credit Agreement are amended and restated as follows, and an additional new sentence is added at the end of such definition as follows:

"(b) Borrower's (i) failure within 120 days following the Petition Date to enter into a definitive lock-up or similar agreement (on terms reasonably acceptable to Administrative Agent and each Lender in all respects) with holders of a majority of the outstanding principal amount of the Senior Subordinated Notes supporting the Specified Holders' Plan Proposal, and (ii) failure to file a motion (the "Bid Procedures Motion") to approve bid procedures for the sale of all or substantially all of assets of Borrower (which, to the extent agreed by the Administrative Agent, shall allow credit bids by one or more Lenders) within 120 days after the Petition Date, which motion shall be acceptable to the Administrative Agent in its sole and absolute discretion;

(c) in the event that Borrower has not failed to comply with clause (b)(ii) of this definition, Borrower's (i) failure to obtain an order approving bid procedures for the sale of all or substantially all of the assets of the Borrower within 145 days of the Petition Date, which order shall be acceptable to the Administrative Agent in its sole and absolute discretion, (ii) failure to obtain an order approving the sale of all or substantially all of the assets of Borrower within 180 days after the Petition Date, which order shall be acceptable to the Administrative Agent in its sole and absolute discretion and shall result in payment in full in cash of the Obligations upon consummation of such sale, or (iii) failure to consummate such sale upon the approved terms within 185 days after the date of the Petition Date; provided that, prior to consummating such sale, the Borrower and applicable purchaser shall have agreed on (or the Bankruptcy Court has otherwise approved) a wind-down budget for the Borrower for the period commencing after the applicable closing date; and

(d) in the event that Borrower has not failed to comply with clause (b)(i) of this definition, Borrower's (i) failure to file a plan of reorganization reflecting the Specified Holders' Plan Proposal or otherwise reasonably acceptable to Administrative Agent and each Lender in all respects and related disclosure statement (reasonably acceptable to Administrative Agent and each Lender in all respects) with the Bankruptcy Court within 125 days after the Petition Date that provides for payment in full in cash of the Obligations upon consummation thereof, (ii) failure to obtain the approval of the Bankruptcy Court to the disclosure statement and the authorization of the Bankruptcy Court to solicit approval of the plan within 155 days after the Petition Date, (iii) failure to obtain within 190 days after the Petition Date an order from the Bankruptcy Court confirming a plan of reorganization which provides for payment in full in cash of the Obligations upon consummation thereof or (iv) failure to consummate such plan of reorganization within 195 days after the Petition Date.

For the sake of clarity, it is agreed and understood that so long as the Borrower has not failed to comply with clause (b)(i) above, Borrower shall not be required to undertake any of the actions specified in clause (b)(ii) or (c) above."

(iii) Section 5.1 of the Credit Agreement is amended by amending and restating the table set forth therein as follows:

| <u>Last Day of Month</u> | <u>Minimum Cumulative Consolidated EBITDA</u> |
|--------------------------|-----------------------------------------------|
| May 31, 2009 | \$6,530,000 |
| June 30, 2009 | \$11,046,000 |
| July 31, 2009 | \$16,536,000 |

| | |
|-------------------------------|--------------|
| August 31, 2009 | \$22,006,000 |
| September 30, 2009 | \$28,074,000 |
| October 31, 2009 | \$33,073,000 |
| November 30, 2009 | \$37,023,000 |
| December 31, 2009 | \$39,215,000 |
| January 31, 2010 | \$40,701,000 |
| February 28, 2010 | \$43,045,000 |
| March 31, 2010 and thereafter | \$47,716,000 |

(iv) Section 6.1(m) of the Credit Agreement is amended and restated in its entirety as follows:

“Bank Account Balances. To Administrative Agent, within five (5) Business Days after the end of each month (in the case of bank accounts with KeyBank National Association) or within ten (10) Business Days after the end of each month (in the case of bank accounts with banks other than KeyBank National Association), Borrower shall deliver a report in form and substance reasonably satisfactory to Administrative Agent with respect to the bank account balances of Borrower.”

(v) Section 9.1(k) of the Credit Agreement is amended by deleting the following text therefrom: “(i) a consultant acceptable to Administrative Agent (it being understood that Alix Partners, Alvarez & Marsal or Mesirow Financial Consulting, LLC is acceptable to Administrative Agent) to provide operational advice, perform cash flow modeling and otherwise provide advisory services pursuant to such terms of engagement (including such other duties and responsibilities) as are acceptable to Administrative Agent) and (ii)”.

SECTION 2.
CONDITIONS TO EFFECTIVENESS

This Amendment No. 1 shall be effective upon satisfaction of the following conditions: (i) receipt by the Administrative Agent of one or more counterparts of this Amendment No. 1 executed and delivered by the Borrower, the Administrative Agent and the Lenders, (ii) receipt by the Administrative Agent of an amendment to the Fee Letter in the form provided to the Borrower and (iii) receipt by the Administrative Agent of a copy of the Final Order as entered by the Bankruptcy Court.

SECTION 3.
LIMITATION ON SCOPE

Except as expressly amended hereby, all of the representations, warranties, terms, covenants and conditions of the Loan Documents shall remain in full force and effect in accordance with their respective terms. The amendments set forth herein shall be limited precisely as provided for herein and shall not be deemed to be a waivers of, amendments of, consents to or modifications of any term or provision of the Loan Documents or any other document or instrument referred to therein or of any transaction or further or future action on the part of the Borrower requiring the consent of the Administrative Agent or Lenders except to the extent specifically provided for herein. The Administrative Agent and Lenders have not and shall not be deemed to have waived any of their respective rights and remedies against the Borrower for any existing or future Defaults or Event of Default.

SECTION 4.
MISCELLANEOUS

(a) The Borrower hereby represents and warrants that (i) this Amendment No. 1 has been duly authorized and executed by it, and by order of the Bankruptcy Court, and the Credit Agreement, as amended by this Amendment No. 1, is its legal, valid and binding obligation, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, moratorium and similar laws affecting the rights of creditors in general; and (ii) this Amendment No. 1 is being delivered in the State of New York.

(b) The Borrower hereby ratifies and confirms the Credit Agreement as amended hereby, and agrees that, as amended hereby, the Credit Agreement remains in full force and effect.

(c) The Borrower hereby acknowledges, confirms and agrees that, as of the date hereof, the security interests and liens granted to the Administrative Agent on behalf of itself and the Secured Parties under the Credit Agreement and the other Loan Documents securing the Obligations are in full force and effect, are properly perfected and are enforceable in accordance with the terms of the Credit Agreement and the other Loan Documents.

(d) The Borrower agrees that all Loan Documents remain in full force and effect notwithstanding the execution and delivery of this Amendment No. 1.

(e) This Amendment No. 1 may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument.

(f) All references in the Loan Documents to the "Credit Agreement" and in the Credit Agreement as amended hereby to "this Agreement," "hereof," "herein" or the like shall mean and refer to the Credit Agreement as amended by this Amendment No. 1 (as well as by all subsequent amendments, restatements, modifications and supplements thereto).

(g) Each of the following provisions of the Credit Agreement is hereby incorporated herein by this reference with the same effect as though set forth in its entirety herein, *mutatis mutandis*, and as if "this Agreement" in any such provision read "this Amendment No. 1": Section 11.11 (Notices), Section 11.13 (Governing Law), Section 11.14 (Jurisdiction), Section 11.15 (Waiver of Jury Trial), Section 11.16 (Severability) and Section 11.18 (Entire Agreement).

[signature pages follow]

WITNESS the due execution hereof by the respective duly authorized officers of the undersigned as of the date first written above.

BORROWER:

DAYTON SUPERIOR CORPORATION,
a Delaware corporation
as debtor and debtor-in-possession

By: _____
Name:
Title:

LENDERS:

GENERAL ELECTRIC CAPITAL CORPORATION,
as Administrative Agent and a Lender

By: _____
Name:
Title: Its Duly Authorized Signatory

Exhibit B

[Redline of Proposed Final DIP Order to Interim DIP Order]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

DAYTON SUPERIOR CORPORATION,
a Delaware corporation,¹

Debtor.

)
) Chapter 11
)
) Case No. 09-11351 (BLS)
)
)
) Re: Docket No ~~Nos.~~ 17 and 43
)

~~INTERIM~~FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364 AND
507

(1) APPROVING POSTPETITION FINANCING, (2) AUTHORIZING USE
OF CASH COLLATERAL AND REPAYMENT OF PREPETITION
REVOLVING
LOAN DEBT, (3) GRANTING LIENS AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, (4) GRANTING ADEQUATE PROTECTION,
AND (5) MODIFYING AUTOMATIC STAY, AND (6) SCHEDULING A FINAL
HEARING

This matter having come before the Court upon the motion (the “DIP Motion”) by Dayton Superior Corporation, (the “Borrower” or the “Debtor”) in the above-captioned Chapter 11 case (collectively with any Successor Case (as defined herein), the “Case”), pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1(b), 4001-2, 9006-1 and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (“Local Rules”), seeking, *inter alia*, entry of ~~this~~an interim and final order (“InterimFinal Order”):

(i) authorizing the Debtor to obtain secured postpetition financing on a superpriority basis (the “DIP Facility”) pursuant to the terms and conditions of that certain Senior Secured

¹ The last four digits of the Debtor’s federal tax identification number are: EIN: XX-XXX6346. The Debtor’s mailing address is 7777 Washington Village Dr., Suite 130, Dayton, Ohio 45459.

Priming and Superpriority Debtor-in-Possession Revolving Credit Agreement (as amended, supplemented, restated, or otherwise modified from time to time, the “DIP Agreement”) by and among the Borrower, as borrower, and General Electric Capital Corporation, as collateral and administrative agent (the “DIP Administrative Agent”) for and on behalf of itself and the other lenders party thereto from time to time (collectively, including the DIP Administrative Agent, the “DIP Lenders”), substantially in the form of Exhibit A annexed to the DIP Motion;

(ii) authorizing the Debtor to execute and deliver the DIP Agreement and the other related loan documents (collectively, together with this Final Order, the “DIP Documents”), by and among the Borrower and the DIP Administrative Agent, and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) granting the DIP Facility and all obligations owing thereunder and under the DIP Documents to the DIP Administrative Agent and DIP Lenders (collectively, and including all “Obligations” as described in the DIP Agreement, the “DIP Obligations”) allowed superpriority administrative expense claim status in the Case pursuant to Section 364(c)(1) of the Bankruptcy Code;

(iv) granting to the DIP Administrative Agent, for the benefit of itself and the DIP Lenders automatically and properly perfected security interests in and liens on all of the DIP Collateral (as defined herein), including, without limitation, all property constituting “Cash Collateral,” as defined in Section 363(a) of the Bankruptcy Code, which liens shall be subject to the priorities set forth herein;

(v) authorizing the Debtor to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such amounts become due and payable, including, without limitation, continuing commitment fees, closing fees, servicing fees, facility fees, administrative agent’s fees, the reasonable fees and disbursements of the DIP Administrative Agent’s attorneys, advisors, accountants, and other consultants, all to the extent provided in and in accordance with the terms of this ~~Interim~~Final Order, of the DIP Agreement and DIP Documents;

(vi) authorizing the use of Cash Collateral of the Prepetition Administrative Agents and the Prepetition Lenders under the Prepetition Credit Documents (each as defined herein) and providing adequate protection to the Prepetition Administrative Agents and Prepetition Lenders for any Diminution in Value (as defined below) of their interests in the Prepetition Collateral (as defined below), including the Cash Collateral;

(vii) providing for indefeasible repayment in full in cash of all obligations owed to the Prepetition Revolving Administrative Agent and Prepetition Revolving Lenders under the Prepetition Revolving Credit Documents (each as defined herein), subject to the reservation of rights provided in paragraph 29 below; and

(viii) vacating and modifying 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 Documents and this ~~Interim~~Final Order, as limited pursuant hereto; and ~~(ix)~~ scheduling a final hearing (the "Final Hearing") to consider the relief requested in the DIP Motion and approving the form of notice with respect to the Final Hearing.

The Court having considered the DIP Motion, the Declaration of Edward J. Puisis, Chief Financial Officer of Dayton Superior Corporation, in Support of the Chapter 11 Petition and First Day Motions (the "Declaration"), the exhibits attached thereto, the DIP Documents and the evidence submitted at the interim hearing held on April 21, 2009 (the "Interim Hearing"); ~~and notice of the Interim, and the evidence and arguments submitted at the Final Hearing held on June 5, 2009 (the "Final Hearing"); and the Bankruptcy Court having entered on April 21, 2009 an order approving the Motion on an interim basis [D.I. 43] (the "Interim Order"); and adequate notice of the Final Hearing having been given~~provided in accordance with Bankruptcy Rules 4001 and 9014; and the Local Rules; and all objections, if any, to the ~~interim~~ relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; ~~and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtor and its estate pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtor and its estate as set forth below;~~ 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 DEBTOR AND FINAL HEARINGS~~, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Commencement of Case. On April 19, 2009 (the "Petition Date") the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court") commencing this Case. The Debtor is

continuing in the management and operation of its business and properties as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Case and the The United States Trustee (the "U.S. Trustee") has not yet appointed the official committee of unsecured creditors in this Case (the "Statutory Committee"); on April 30, 2009.

B. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the DIP Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Rules 2002, 4001 and 9014 of the Bankruptcy Rules and Rules 2002-1(b), 4001-2, 9006-1 and 9013-1 of the Local Rules. Venue for the Case and proceedings on the DIP Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Debtor's Stipulations. Without prejudice to the rights of parties in interest with standing as set forth in paragraph 29 herein, the Debtor admits, stipulates, acknowledges and agrees that (collectively, paragraphs C(i) through C(vii) hereof shall be referred to herein as the "Debtor's Stipulations"):

(i) Prepetition Facility. Pursuant to that certain Prepetition Revolving Credit Agreement dated as of March 3, 2008 (as amended, supplemented, restated, or otherwise modified prior to the Petition Date, the "Prepetition Revolving Credit Agreement," and together with all related loan and security documents, the "Prepetition Revolving Credit Documents"), among the Borrower, as borrower, the other parties thereto that are designated as credit parties, the lenders party thereto (collectively, the "Prepetition Revolving Lenders"), GE Capital Markets, Inc., as sole lead arranger, General Electric Capital Corporation ("GE Capital") as administrative agent (the "Prepetition Revolving Administrative Agent") for itself as Lender and the other Prepetition Revolving Lenders, the Prepetition Revolving Lenders provided a revolving credit facility to or for the benefit of the Borrower (the "Prepetition Revolving Credit Facility"). In addition, pursuant to that certain Prepetition Term Loan Credit Agreement dated as of March 3, 2008 (as amended, supplemented, restated, or otherwise modified prior to the Petition Date,

the "Prepetition Term Loan Agreement,"² and together with all related loan and security documents, the "Prepetition Term Loan Documents"), among the Borrower, as borrower, the other parties thereto that are designated as credit parties, the lenders party thereto (collectively, the "Prepetition Term Loan Lenders," and, together with the Prepetition Revolving Lenders, the "Prepetition Lenders"), GE Capital Markets, Inc., as sole lead arranger, Silverpoint Finance as administrative agent (the "Prepetition Term Loan Administrative Agent," and together with the Prepetition Revolving Administrative Agent, the "Prepetition Administrative Agents") for itself as Lender and the other Prepetition Term Loan Lenders, the Prepetition Term Loan Lenders provided a term loan facility to or for the benefit of the Borrower (the "Prepetition Term Loan Facility," and, together with the Prepetition Revolving Credit Facility, the "Prepetition Facilities").

(ii) *Prepetition Obligations.* The Prepetition Revolving Credit Facility provided the Borrower with, among other things, up to \$150,000,000 in aggregate principal amount of revolving commitments, including letter of credit and swingline loan commitments; provided that additional loans (which loans could not be reborrowed once paid) were permitted to be made to the Borrower in an aggregate amount equal to the amount of interest, fees and other costs permitted to be capitalized pursuant to the terms of the Prepetition Revolving Credit Agreement. The Prepetition Term Loan Facility provided the Borrower with, among other things, up to \$100,000,000 in aggregate principal amount of commitments; provided that additional loans (which loans could not be reborrowed once paid) were permitted to be made to the Borrower in an aggregate amount equal to the amount of interest, fees and other costs permitted to be capitalized pursuant to the terms of the Prepetition Term Loan Agreement. As of the Petition Date, (x) the outstanding principal amount owed by the Borrower under the Prepetition Revolving Credit Facility was not less than \$109,770,019.80, with the outstanding face amount of all letters of credit under the Prepetition Revolving Credit Agreement being not less than \$8,924,107.50, and (y) the outstanding principal amount owed by the Borrower under the Prepetition Term Loan Facility was not less than \$102,970,000 (collectively, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition Term Loan Credit Documents and Prepetition Revolving Credit Documents (collectively, the "Prepetition Credit Documents"), including but not limited to, accrued and unpaid interest, any reimbursement obligations (contingent or otherwise) in respect of letters of credit, any fees, expenses and disbursements (including, without limitation, attorneys' fees, financial advisors' fees, related expenses and disbursements), treasury, cash management and derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Borrower's or any other Credit Parties' (as defined in the Prepetition Credit Documents) obligations pursuant to the Prepetition Credit Documents, including all "Obligations" as described in the Prepetition Credit Agreements, the "Prepetition Obligations").

(iii) *Prepetition Collateral.* To secure the Prepetition Obligations, the Borrowers granted to the Prepetition Administrative Agents and Prepetition Lenders security

² The Prepetition Revolving Credit Agreement and the Prepetition Term Loan Agreement, together, shall be referred to herein as the "Prepetition Credit Agreements."

interests in and liens on (the "Prepetition Liens"), among other things, substantially all of the assets of the Debtor as set forth in the Prepetition Credit Documents, including without limitation, all Collateral, (as defined in the Prepetition Credit Agreements Documents) (collectively, the "Prepetition Collateral"); *provided, however*, that the Prepetition Collateral does not include any property that has been excluded from the definition of "Collateral" in the Prepetition Credit Documents.

(iv) *The Prepetition Liens.* The Prepetition Liens on the Prepetition Collateral were perfected as of the Petition Date.

(v) *Validity of Prepetition Liens and Prepetition Obligations.* Subject to the provisions of paragraph 29 herein, the Debtor and the Prepetition Administrative Agents acknowledge and agree that: (a) the Prepetition Liens are valid, binding, enforceable, non-avoidable and perfected; (b) the Prepetition Liens had priority over any and all other liens on the Prepetition Collateral, subject only to certain liens otherwise permitted by the Prepetition Credit Documents (to the extent any such permitted liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date or after the Petition Date pursuant to section 546(b) of the Bankruptcy Code, the "Permitted Senior Prior Liens");³ (c) the Prepetition Obligations evidenced by the Prepetition Revolving Credit Documents (the "Prepetition Revolving Obligations") and the Prepetition Term Loan Documents (the "Prepetition Term Loan Obligations") constitute legal, valid, binding, and non-avoidable obligations of the Debtor, enforceable in accordance with the terms of the Prepetition Revolving Credit Documents (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code); (d) no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens ~~which secure the Prepetition Revolving Obligations (the "Prepetition Revolving Liens")~~ or the Prepetition Revolving Obligations exist, and no portion of the Prepetition Revolving Liens or the Prepetition Revolving Obligations is subject to any challenge or defense, including, without limitation, avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtor and its estate have no offsets, defenses, claims, objections, challenges, causes of actions, and/or choses in action, including without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code, against the Prepetition Revolving Administrative Agent Agents, the Prepetition Revolving Lenders, and/or any of their respective affiliates, parents, subsidiaries, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to the Prepetition Revolving Credit Documents; (f) as of the Petition Date, the value of the Prepetition Collateral securing the Prepetition Revolving Obligations exceeded the amount of the Prepetition Revolving Obligations, and accordingly the Prepetition Revolving Obligations are allowed secured claims within the meaning of Section 506 of the Bankruptcy Code; (g) the Debtor has waived, discharged and released any right it may have to challenge any of the Prepetition Revolving Obligations and the Prepetition Revolving Liens, and to assert any

³ Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Senior Prior Liens are valid, senior, perfected and non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtor, the DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agents, the Prepetition Lenders and the Statutory Committee (as defined below) to challenge the validity, priority, perfection or extent of any such Permitted Senior Prior Lien and/or security interest.

offsets, defenses, claims, objections, challenges, causes of action and/or choses of action against the Prepetition Revolving Administrative Agent~~Agents~~, Prepetition Revolving Lenders, and/or any of their respective affiliates, parents, subsidiaries, agents, attorneys, advisors, professionals, officers, directors and employees with respect to actions arising out of, based upon or related to the Prepetition Revolving Credit Documents; and (h) any payments made on account of the Prepetition Revolving Obligations to or for the benefit of the Prepetition Revolving Administrative Agent~~Agents~~ or the Prepetition Revolving Lenders prior to the Petition Date were proper and are not subject to disgorgement.

(vi) *Cash Collateral*. The Debtor represents that all of the Debtor's cash, including the cash in its deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitute the Cash Collateral of the Prepetition Administrative Agents and the Prepetition Lenders.

(vii) *Default by the Debtor*. The Debtor acknowledges and stipulates that the Debtor is in default of certain terms and provisions of the Prepetition Credit Documents as of the Petition Date.

D. *Findings Regarding Postpetition Financing*.

(i) *Request for Postpetition Financing*. The Debtor seeks authority on a final basis to (a) enter into the DIP Facility on the terms described herein and in the DIP Documents, including Amendment No. 1 to the DIP Agreement dated as of the date hereof by and between the Debtor and the DIP Administrative Agent (the "DIP Amendment"), and (b) use Cash Collateral on the terms described herein to administer its Case and fund its operations. ~~At the Final Hearing, the Debtor will seek final approval of the proposed postpetition financing arrangements and use of Cash Collateral arrangements pursuant to a proposed final order (the "Final Order"), which shall be in form and substance acceptable to the DIP Administrative Agent and Prepetition Revolving Administrative Agent (each in their sole discretion), and notice of which Final Hearing and Final Order will be provided in accordance with this Interim Order.~~

(ii) *Priming of Liens*. The priming of the Prepetition Liens on Revolving Credit Priority Collateral (as defined in that certain Intercreditor Agreement dated as of March 3,

2008 by and among the Debtor and the Administrative Agents (the “Intercreditor Agreement”) and all other liens of the Prepetition Revolving Administrative Agent and the Prepetition Revolving Lenders on the Prepetition Collateral under Section 364(d) of the Bankruptcy Code, as contemplated by the DIP Facility and as further described below, ~~will enable~~enabled the Debtor to obtain the DIP Facility and to continue to operate its business to the benefit of the estate and creditors. However, the Prepetition Administrative Agents and the Prepetition Lenders are entitled to receive adequate protection as set forth in this ~~Interim~~Final Order pursuant to Sections 361, 363 and 364 of the Bankruptcy Code until such time as the Prepetition Obligations owed by the Borrower under the Prepetition Facilities are paid in full, for any diminution in the value of each of their respective interests in the Prepetition Collateral (including Cash Collateral) resulting from, among other things, the Debtor’s use, sale or lease of such collateral, market value decline of such collateral, the imposition of the automatic stay, the priming (to the extent provided for herein) of the Prepetition Liens on Revolving Credit Priority Collateral, and the subordination to the Carve Out (collectively, and solely to the extent of any such diminution in value, the “Diminution in Value”).

(iii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtor’s has an immediate and critical need to continue to use Cash Collateral ~~on an interim basis and to obtain credit on an interim basis pursuant to the DIP Facility is immediate and critical~~ to enable the Debtor to continue operations and to administer and preserve the value of its estate. The ability of the Debtor to finance its operations, maintain business relationships with its vendors, suppliers and customers, to pay its employees and otherwise finance its operations ~~requires~~has required the availability of working capital from the DIP Facility and the

use of Cash Collateral, the absence of any one of which would immediately and irreparably harm the Debtor, its estate and its creditors, and the possibility for a successful reorganization. The Debtor does not have sufficient available sources of working capital and financing to operate its business or maintain its properties in the ordinary course of business without the DIP Facility and authorized use of Cash Collateral.

(iv) *No Credit Available on More Favorable Terms.* Given its current financial condition, financing arrangements, and capital structure, and the present state of the economy, and the limited availability of credit being provided by lenders in general, the Debtor is unable to obtain financing from sources other than the DIP Lenders on terms more favorable than provided for in the DIP Facility. The Debtor has been unable to obtain unsecured credit allowable under Bankruptcy Code Section 364(b)(1) as an administrative expense. The Debtor has also been unable to obtain sufficient credit: (a) having priority over that of administrative expenses of the kind specified in Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the Debtor and its estate that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtor and its estate that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Administrative Agent, for the benefit of itself and the DIP Lenders: (1) perfected security interests in and liens on (each as provided herein) all of the Debtor's existing and after-acquired assets with the priorities set forth in paragraph 6 hereof, (2) superpriority claims and liens, and (3) the other protections set forth in this ~~Interim~~Final Order.

(v) *Use of Proceeds of the DIP Facility.* As a condition to entry into the DIP Agreement, the extension of credit under the DIP Facility and the authorization to use Cash

Collateral, the DIP Administrative Agent, the DIP Lenders, the Prepetition Revolving Administrative Agent and the Prepetition Revolving Lenders ~~require~~required, and the Debtor ~~has~~ agreed, that proceeds of the DIP Facility shall be used, in each case in a manner consistent with the terms and conditions of the DIP Documents and in accordance with an Approved Budget (as defined below), solely for (i) working capital and other general corporate purposes, (ii) permitted payment of costs of administration of the Case, (iii) payment of such prepetition expenses as consented to by the DIP Administrative Agent, in its sole discretion, and as approved by the Court, and (iv) in connection with the initial advance under the DIP Facility, the repayment in full in cash of all revolving loans, swing loans and all interest, fees expenses and other amounts (other than prepetition letters of credit ("Prepetition Letters of Credit")) outstanding under the Prepetition Revolving Credit Facility as of the date of the Interim Order (the "Prepetition Revolving Loan Debt"). Pursuant and subject to the terms of the Interim Order, the Debtors executed and delivered the DIP Documents other than the DIP Amendment on April 22, 2009 and used a portion of the proceeds of the DIP Facility to repay the Prepetition Revolving Loan Debt. The repayment in full in cash of the Prepetition Revolving Loan Debt ~~on the date of the Interim Order~~ is~~was~~ necessary as the Prepetition Revolving Administrative Agent and the Prepetition Revolving Lenders ~~will~~would not otherwise consent to providing the DIP Facility and providing postpetition credit to the Debtor ~~hereunder~~, and the Prepetition Revolving Administrative Agent and the Prepetition Revolving Lenders would not ~~have not~~ otherwise consented to the use of their Cash Collateral or the subordination of their liens to the DIP Liens (as defined herein). For the avoidance of doubt, the repayment in full in cash of the Prepetition

Revolving Loan Debt is subject to the reservation of rights provisions contained in paragraph 29 below.

E. Adequate Protection.

(i) The Prepetition Revolving Administrative Agent, for the benefit of itself and the Prepetition Revolving Lenders, are each entitled to receive adequate protection to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral) until such time as the Prepetition Revolving Obligations owed by the Borrower under the Prepetition Revolving Credit Facility are indefeasibly paid in full. Pursuant to Sections 361, 363 and 507(b) and subject to the terms of this ~~Interim~~Final Order, as adequate protection, the Prepetition Revolving Administrative Agent, for the benefit of itself and the Prepetition Revolving Lenders, will receive, until such time as the Prepetition Revolving Obligations owed by the Borrower under the Prepetition Revolving Credit Facility are indefeasibly paid in full, (a) adequate protection liens ~~and claims~~, as more fully set forth in paragraph 11 herein, and (b) the payment of the reasonable fees, costs and expenses, including, without limitation, legal and other professionals' fees and expenses, of the Prepetition Revolving Administrative Agent and Prepetition Revolving Lenders under the Prepetition Revolving Credit Documents; ~~and (c) prior to the payment of the Prepetition Revolving Loan Debt, the payment of interest at the respective contractual rates (including the additional contractual default rates) set forth in the Prepetition Revolving Credit Agreement after an acceleration of the secured obligations thereunder.~~

(ii) The Prepetition Term Loan Administrative Agent, for the benefit of itself and the Prepetition Term Loan Lenders, are each entitled to receive adequate protection to the

extent of any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral) until such time as the Prepetition Term Loan Obligations owed by the Borrower under the Prepetition Term Loan Credit Facility are paid in full, subject to the Intercreditor Agreement. Pursuant to Sections 361, 363 and 507(b) and subject to the terms of this ~~Interim~~Final Order, as adequate protection, the Prepetition Term Loan Administrative Agent, for the benefit of itself and the Prepetition Term Loan Lenders, will receive, until such time as the Prepetition Obligations owed by the Borrower under the Prepetition Term Loan Facility are paid in full, adequate protection liens and claims, as more fully set forth in paragraph 11 herein.

(iii) Further, the payment of adequate protection pursuant to this ~~Interim~~Final Order is subject to the rights of the Statutory Committee and other parties in interest with standing other than the Debtor to assert that the aforementioned payments should be allocated to a reduction of principal amounts owed pursuant to Section 506(b) of the Bankruptcy Code.

F. Sections 506(c) and 552(b). In light of (i) the DIP Administrative Agent's and DIP Lenders' agreement to subordinate their liens and superpriority claims to the Carve Out, and (ii) the Prepetition Administrative Agents' and the Prepetition Lenders' agreement to subordinate their liens to the Carve Out and the DIP Liens, ~~and upon the entry of a Final Order~~ (a) the Prepetition Administrative Agents and Prepetition Lenders are entitled to a waiver of any "equities of the case" claims under Section 552(b) of the Bankruptcy Code, and (b) the DIP Administrative Agent, DIP Lenders, ~~Prepetition Revolving Administrative Agent~~Agents and the ~~Prepetition Revolving Lenders will each be~~entitled to a waiver of the provisions of Section 506(c) of the Bankruptcy Code (which waiver shall be without prejudice to the contention of the

DIP Administrative Agent and DIP Lenders that Section 506(c) of the Bankruptcy Code does not apply to secured claims incurred pursuant to Section 364 of the Bankruptcy Code).

G. Good Faith of the Agents and the Lenders.

(i) *Willingness to Provide Financing.* The DIP Lenders have indicated a willingness to continue to provide financing to the Debtor subject to: (a) the entry of this ~~Interim Order and the~~ Final Order; (b) approval of the terms and conditions of the DIP Facility and the DIP Documents including, and subject to, the repayment of the Prepetition Revolving Loan Debt; and (c) entry of findings by this Court that such financing is essential to the Debtor's estate, that the DIP Administrative Agent and DIP Lenders are extending credit to the Debtor pursuant to the DIP Documents in good faith, and that the DIP Administrative Agent's and DIP Lenders' claims, superpriority claims, security interests and liens and other protections granted pursuant to this ~~Interim~~Final Order and the DIP Documents will have the protections provided in Section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of this ~~Interim~~Final Order or any other order.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e).* The terms and conditions of the DIP Facility and the DIP Documents and the fees paid and to be paid thereunder are fair, reasonable, and the best available to the Debtor under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtor, the DIP Administrative Agent, the DIP Lenders, the Prepetition Revolving Administrative Agent

and the Prepetition Revolving Lenders. Use of Cash Collateral and extensions of credit to be
~~extended~~ under the DIP Facility shall be deemed to have been so allowed, advanced, made, used
or extended in good faith, and for valid business purposes and uses, within the meaning of
Section 364(e) of the Bankruptcy Code, and the DIP Administrative Agent and the DIP Lenders
are therefore entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code
and this ~~Interim~~Final Order.

H. Notice. Notice of the ~~Interim~~Final Hearing and the ~~emergency-relief~~ requested in
the DIP Motion has been provided by the Debtor, in accordance with the Interim Order, and
whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest,
including: (i) the U.S. Trustee; (ii) the Securities and Exchange Commission; (iii) the Internal
Revenue Service; (iv) the parties included on the Debtor's list of twenty (20) largest unsecured
creditors; (v) counsel to the Prepetition Administrative Agents for themselves and for the
Prepetition Lenders; (vi) counsel to the Statutory Committee; ~~(vii) counsel to the~~ DIP
Administrative Agent for itself and the DIP Lenders; ~~(viii)~~ all other known parties with liens
of record on assets of the Debtor as of the Petition Date; ~~(ix)~~ all financial institutions at which
the Debtor maintains deposit accounts; ~~(x)~~ [the landlords for all non-residential real properties
occupied by the Debtor as of the Petition Date]; ~~(xi)~~ Odyssey Investment Partners; and (xi) all
other parties required to receive notice pursuant to Bankruptcy Rules 2002, 4001 or 9014 and
Local Rules 2002-1(b), 4001-2 and 9013-1 or requesting to receive notice prior to the date
hereof. The Debtor has made reasonable efforts to afford the best notice possible under the
circumstances and such notice is good and sufficient to permit the ~~interim~~-relief set forth in this
~~Interim~~Final Order.

Based upon the foregoing findings and conclusions, the DIP Motion and the record before the Court with respect to the DIP Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. ~~Interim Financing~~DIP Motion Approved. The DIP Motion is granted to the extent provided herein, the Interim Financing (as defined herein) is authorized and approved, and the use of Cash Collateral on an interim basis is authorized, subject to the terms and conditions set forth in this ~~Interim~~Final Order. All actions taken in connection with or in reliance on the ~~Interim Order~~ are hereby reaffirmed in full as if taken in connection with or in reliance on this ~~Final~~ Order.

2. Objections Overruled. ~~ALOCM Principal Opportunities Fund IV, L.P., Whippoorwill Associates, and Solus Alternative Asset Management (collectively, the “Bondholders”)~~ and the Statutory Committee have withdrawn their Objections to the DIP Motion, effective upon the entry of this Final Order approving the DIP Amendment. The objections are withdrawn based on the negotiations with the DIP Administrative Agent and reliance on the good faith pursuit of an exit facility on terms stated in the non-binding term sheet to which the Bondholders and the DIP Administrative Agent have agreed. Notwithstanding the foregoing, it is expressly understood that the terms of the Interim Order and this Final Order and the relief granted therein and herein are not in any way conditioned upon consummation of an exit facility by the Bondholders and the DIP Administrative Agent on the terms set forth in the agreed upon non-binding term sheet or otherwise. The objection of the Prepetition Term Loan Administrative Agent and Prepetition Term Lenders to the DIP Motion has been withdrawn. All

other objections to the ~~interim~~ relief sought in the DIP Motion to the extent not withdrawn or resolved as set forth herein are hereby overruled.

DIP Facility Authorization

3. Authorization of the DIP Financing. ~~The Interim Financing is hereby approved.~~ The Debtor is expressly and immediately authorized and empowered on a final basis to execute and deliver the DIP Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this ~~Interim~~Final Order and the DIP Documents, and to deliver all instruments and documents which may be required or necessary for the performance by the Debtor under the DIP Facility and the creation and perfection of the DIP Liens. The Debtor is hereby authorized to pay, in accordance with this ~~Interim~~Final Order, the principal, interest, fees, expenses, legal fees and other amounts described in the DIP Documents and all other documents comprising the DIP Facility as such become due and payable without need to obtain further Court approval, including, without limitation, closing fees, letter of credit fees (including issuance, fronting, and other related charges), unused facility fees, commitment fees, servicing fees, audit fees, facility fees, administrative agent's fees, the reasonable fees and disbursements of the DIP Administrative Agent's attorneys, advisors, financial advisors, accountants, and other consultants and DIP Lenders' attorneys, all to the extent provided in the DIP Documents. ~~Upon execution and delivery, the~~The DIP Documents ~~shall represent~~evidence the valid and binding obligations of the Debtor, which obligations shall be enforceable against the Debtor and its estate in accordance with their terms. Any DIP Documents entered into by any Debtor prior to the date of this Final Order in accordance with the terms and conditions of the Interim Order are hereby approved and ratified in full.

4. Authorization to Borrow. ~~Prior to entry of the Final Order, to prevent immediate and irreparable harm to the Debtor's estate~~Until the DIP Termination Date (as defined herein), the Debtor is hereby authorized on a final basis to request, obtain and use extensions of credit ~~upon the entry of the Interim Order under the DIP Facility, in an amount equal to the Prepetition Revolving Loan Debt, plus \$35,000,000, plus an amount equal to~~up to an aggregate principal amount of \$165,000,000 at any one time outstanding, including a sublimit for letters of credit up to \$25,000,000 under the DIP Facility, which includes the Roll-Over DIP Letters of Credit (as defined in paragraph 9 below) (the "Interim Financing"), subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Documents and the DIP Facility, as applicable, and this ~~Interim~~Final Order.

5. Postpetition Liens. To secure the DIP Obligations, ~~effective immediately upon entry of this Interim Order,~~ pursuant to Sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Administrative Agent, for the benefit of itself and the DIP Lenders, are hereby granted, on a final basis, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the "DIP Liens") any and all of the existing and after-acquired real and ~~person~~personal, tangible and intangible assets of the Debtor or its estate, including, without limitation, (a) 100% of the stock of its domestic subsidiaries and 65% of the stock of its foreign subsidiaries; (b) cash and cash equivalents; (c) bank accounts; (d) all accounts and other receivables; (e) contract rights; (f) instruments, documents and chattel paper; (g) securities (whether or not marketable); (h) equipment, inventory and fixtures; (i) real property interests; (j) franchise rights, (k) patents, tradenames, trademarks, copyrights and all other intellectual property, (l) general intangibles;

(m) capital stock; (n) investment property; (o) supporting obligations; (p) letter of credit rights; (q) all commercial tort claims and all other causes of action and claims, ~~including but not limited to, upon entry of a Final Order approving such relief, but excluding~~ any claim or cause of action under Chapter 5 of the Bankruptcy Code and the proceeds thereof (“Avoidance Actions”); and (r) to the extent not covered in the foregoing, all other ~~personal~~ property of the Debtor, whether tangible or intangible, real or personal, and all proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Borrower from time to time with respect to any of the foregoing; and the proceeds thereof (collectively, the “DIP Collateral”). The DIP Collateral shall not include any Avoidance Actions.

6. DIP Lien Priority. The DIP Liens are valid, automatically and properly perfected, non-avoidable, senior in priority and superior to any security, mortgage, collateral interest, lien or claim to any of the DIP Collateral, except that the DIP Liens shall be junior only to: (a) Permitted Senior Prior Liens; (b) Prepetition Liens of the Prepetition Term Loan Lenders on the Term Loan Priority Collateral (as defined in the Intercreditor Agreement); (c) to the extent required by the Intercreditor Agreement, the Prepetition Term Lenders’ Adequate Protection Liens (as defined herein); and (d) the Carve Out. ~~Pursuant to Section 364(d) of the Bankruptcy Code, the DIP Liens shall be senior to the Prepetition Liens (other than the Prepetition Liens and, to the extent required by the Intercreditor Agreement, the Prepetition Term Lenders’ Adequate Protection Liens, of the Prepetition Term Loan Lenders on the Term Loan Priority Collateral, the Prepetition Revolving Lenders’ Adequate Protection Liens and the~~

~~Prepetition Term Lenders' Adequate Protection Liens (each as defined herein) on all DIP Collateral).~~ Except as expressly set forth herein, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Case or any other subsequent proceedings under the Bankruptcy Code, including, without limitation, any Chapter 7 proceeding if the Case is converted to a case under Chapter 7 of the Bankruptcy Code (the "Successor Case"), and shall be valid and enforceable against any trustee appointed in the Case, upon the conversion of the Case to a case under Chapter 7 of the Bankruptcy Code, and/or upon the dismissal of the Case. The DIP Liens shall not be subject to Sections 510, 549 (to the extent a successful action is brought against any DIP Lender), or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to Section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

7. Superpriority Claims. ~~Upon entry of this Interim Order, the~~The DIP Administrative Agent and DIP Lenders are hereby granted, on a final basis, pursuant to Section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Case (the "DIP Superpriority Claim") for all DIP Obligations: (a) except as set forth herein, with priority over any and all administrative expense claims and unsecured claims against the Debtor or its estate in the Case, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b) (except as set forth herein), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114, and any other provision of the Bankruptcy Code, as provided under Section 364(c)(1) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtor and its

estate, and any successor trustee or other estate representative to the extent permitted by law. Notwithstanding the foregoing, the DIP Superpriority Claim ~~(i)~~ shall be subject to the Carve Out and ~~(ii)~~ shall not be payable from or have recourse to the apply to Avoidance Actions or proceeds thereof unless approved by the Final DIP Order.

8. No Obligation to Extend Credit. The DIP Administrative Agent and DIP Lenders shall have no obligation to make any loan or advance, or to issue any letters of credit under the DIP Documents, unless all of the conditions precedent to the making of such extension of credit or the issuance of such letter of credit under the DIP Documents ~~and~~ including this ~~Interim~~ Final Order (i) have been satisfied in full or (ii) waived by the DIP Administrative Agent in its sole discretion.

9. Use of Proceeds: Repayment of Prepetition Revolving Loan Debt. From and after the entry of the Interim Order, the Debtor shall use advances of credit under the DIP Facility only for the purposes specifically set forth in this ~~Interim~~ Final Order, the DIP Documents and in compliance with the Approved Budget. ~~Immediately upon~~ Pursuant to the entry terms of the Interim Order, (i) the Debtor ~~is authorized to draw~~ drew on the DIP Facility to pay in full the liquidated Prepetition Revolving Loan Debt (including, without limitation, accrued and unpaid interest, fees, expenses, legal fees, disbursements and other amounts properly chargeable thereunder, other than Prepetition Letters of Credit) ~~and any amounts owing under the Prepetition Revolving Credit Documents that are contingent and unliquidated and subsequently become liquidated. All;~~ and (ii) all Prepetition Letters of Credit outstanding under the Prepetition Revolving Credit Agreement shall ~~be~~ were deemed to be reissued under the DIP Facility (the "Roll-Over DIP Letters of Credit") ~~upon entry of the Interim Order.~~ The repayment

of the Prepetition Revolving Loan Debt provided for herein ~~shall be~~ hereby ratified and confirmed on a final basis subject to the reservation of rights of parties in interest set forth in paragraph 29 of this ~~Interim~~Final Order, and upon expiration, without a challenge being brought, of the Challenge Period (as defined in ~~paragraph 30 hereof~~herein) or the final resolution of a challenge brought in compliance with the provisions of this ~~Interim~~Final Order and applicable law (where such challenge did not have the effect of successfully impairing any of the Prepetition Revolving Loan Debt), the Debtor's repayment of the Prepetition Revolving Loan Debt shall be deemed to be infeasible, final and not subject to challenge or disgorgement. The Debtor shall continue to be authorized to draw financing available under the DIP Facility to pay any amounts owing under the Prepetition Revolving Credit Documents that are contingent and unliquidated and subsequently become liquidated.

Authorization to Use Cash Collateral

10. Authorization to Use Cash Collateral. Subject to the terms and conditions of this ~~Interim~~Final Order, the DIP Facility, the DIP Documents and in accordance with the Approved Budget, the Debtor is authorized to use Cash Collateral until the DIP Termination Date ~~(as defined herein)~~. Nothing in this ~~Interim~~Final Order shall authorize the disposition of any assets of the Debtor or its estate outside the ordinary course of business, or the Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this ~~Interim~~Final Order, the DIP Facility, the DIP Documents and in accordance with the Approved Budget.

11. Adequate Protection Liens.

(a) Prepetition Revolving Lenders' Adequate Protection Liens. Pursuant to Sections 361, 363(e) and 364(d) of the Bankruptcy Code, as adequate protection of the interests

of the Prepetition Revolving Administrative Agent and Prepetition Revolving Lenders in the Prepetition Collateral ~~against~~to the extent of any Diminution in Value of such interests in the Prepetition Collateral on account of, among other things, the granting of the DIP Liens, the Debtor's use of Cash Collateral, the use, sale or lease of any other Prepetition Collateral, market value decline of collateral, the priming of the Prepetition Liens and the imposition of the automatic stay, the Debtor hereby grants on a final basis to the Prepetition Revolving Administrative Agent, for the benefit of itself and the Prepetition Revolving Lenders, continuing valid, binding, enforceable and perfected postpetition security interests in and liens on the DIP Collateral (the "Prepetition Revolving Lenders' Adequate Protection Liens") to the extent of any Diminution in Value until such time as the Prepetition Obligations owed by the Borrower under the Prepetition Revolving Credit Facility are indefeasibly paid in full.

(b) Prepetition Term Lenders' Adequate Protection Liens. Pursuant to Sections 361, 363(e) and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Term Loan Administrative Agent and Prepetition Term Loan Lenders in the Prepetition Collateral ~~against~~to the extent of any Diminution in Value of such interests in the Prepetition Collateral on account of, among other things, the granting of the DIP Liens, the Debtor's use of Cash Collateral, the use, sale or lease of any other Prepetition Collateral, market value decline of collateral, the priming of the Prepetition Liens and the imposition of the automatic stay, the Debtor hereby grants on a final basis to the Prepetition Term Loan Administrative Agent, for the benefit of itself and the Prepetition Term Loan Lenders, continuing valid, binding, enforceable and perfected postpetition security interests in and liens on the DIP Collateral (the "Prepetition Term Lenders' Adequate Protection Liens") to the extent of any

Diminution in Value until such time as the Prepetition Obligations owed by the Borrower under the Prepetition Term Loan Facility are indefeasibly paid in full.

(c) Priority of Adequate Protection Liens.

(i) Until such time as the Prepetition Obligations owed by the Borrower under the Prepetition Facilities are indefeasibly paid in full, the Prepetition Revolving Lenders' Adequate Protection Liens and the Prepetition Term Lenders' Adequate Protection Liens shall be junior only to: (A) Permitted Senior Prior Liens; (B) the Carve Out; (C) to the extent permitted by the Intercreditor Agreement, the DIP Liens; (D) the Prepetition Liens of the Prepetition Term Loan Lenders on the Term Loan Priority Collateral; and (E) the Prepetition Liens of the Prepetition Revolving Lenders on the Revolving Credit Loan Priority Collateral. Except as provided herein, the Prepetition Revolving Lenders' Adequate Protection Liens and the Prepetition Term Lenders' Adequate Protection Lien shall be senior to all other security interests in, liens on, or claims against any of the DIP Collateral until such time as the Prepetition Obligations owed by the Borrower under the Prepetition Facilities are indefeasibly paid in full. The Prepetition Revolving Lenders' Adequate Protection Liens, granted to the Prepetition Revolving Lenders and Prepetition Revolving Administrative Agent pursuant to paragraph 11(a) of this InterimFinal Order, in Revolving Credit Priority Collateral, shall be senior and prior to the Prepetition Term Lenders' Adequate Protection Liens granted in paragraph 11(b) of this InterimFinal Order to the Prepetition Term Lenders and Prepetition Term Loan Administrative Agent in the Revolving Credit Priority Collateral, to the extent and in the manner contemplated by the Intercreditor Agreement. The Prepetition Term Lenders' Adequate Protection Liens, granted in paragraph 11(b) of this InterimFinal Order to the Prepetition Term Lenders and

Prepetition Term Loan Administrative Agent, in Term Loan Priority Collateral, shall be senior and prior to the Prepetition Revolving Lenders' Adequate Protection Liens granted in paragraph 11(a) of this ~~Interim~~Final Order to the Prepetition Revolving Lenders and Prepetition Revolving Administrative Agent in the Term Loan Priority Collateral to the extent and in the manner contemplated by the Intercreditor Agreement.

(ii) Except as provided herein, the Prepetition Revolving Lenders' Adequate Protection Liens and the Prepetition Term Lenders' Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted or created in the Case, and shall be valid and enforceable against any trustee appointed in the Case, or upon the dismissal of the Case until such time as the Prepetition Obligations owed by the Borrower under the Prepetition Facilities are indefeasibly paid in full. The Prepetition Revolving Lenders' Adequate Protection Liens and the Prepetition Term Lenders' Adequate Protection Liens shall not be subject to Sections 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to Section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition Liens, the Prepetition Revolving Lenders' Adequate Protection Liens or the Prepetition Term Lenders' Adequate Protection Liens.

12. Adequate Protection Payments and Protections. As further adequate protection for the Prepetition Revolving Administrative Agent and the Prepetition Revolving Lenders, prior to ~~payment of the Prepetition Revolving Loan Debt or in the event that the~~ the indefeasible repayment of the Prepetition Revolving Loan Debt ~~is not approved in the Final Order~~, the Debtor is authorized and directed on a final basis to provide adequate protection in the form of: (i) the

payment of reasonable fees and expenses of the Prepetition Revolving Administrative Agent and the Prepetition Revolving Lenders, (ii) ongoing payment of the reasonable fees, costs and expenses, including, without limitation, legal and other professionals' fees and expenses, whether incurred before or after the Petition Date, of the Prepetition Revolving Administrative Agent and the Prepetition Revolving Lenders, as required under the Prepetition Revolving Credit Documents, (iii) ~~the payment of interest at the respective contractual rates (including the additional contractual default rates) set forth in the Prepetition Revolving Credit Agreement after an acceleration of the secured obligations thereunder; and (iv and (iii))~~ continued maintenance and insurance of the Prepetition Collateral and the DIP Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Revolving Credit Documents, the DIP Documents and this ~~Interim~~Final Order. The payment of adequate protection pursuant to this ~~Interim~~Final Order is subject to the rights of the Statutory Committee and other parties in interest other than the Debtor to assert that the aforementioned payments should be allocated to a reduction of principal amounts owed pursuant to Section 506(b) of the Bankruptcy Code.

13. Section 507(b) Reservation. Nothing herein shall impair or modify the application of Section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Administrative Agents or the Prepetition Lenders hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Case. Any such claims under Section 507(b) of the Bankruptcy Code shall be subject to the terms and conditions of the Intercreditor Agreement. ~~Notwithstanding the foregoing, the adequate protection liens and claims granted in this Order~~

~~shall not be payable from or have recourse to the Avoidance Actions or proceeds thereof unless approved by the Final Order.~~

**Provisions Common to DIP Financing
and Use of Cash Collateral Authorizations**

14. Amendments. The Debtor is hereby authorized, without further notice, motion, application to, order of, or hearing before, this Court, to enter into agreements with the DIP Administrative Agent providing for any non-material modifications to DIP Documents or of any other modifications to the DIP Documents necessary to conform the DIP Documents to this ~~Interim~~Final Order; *provided, however*, that notice of any modification or amendment to the DIP Documents shall be provided to counsel for ~~any~~the Statutory Committee, counsel to the U.S. Trustee, counsel to the DIP Administrative Agent, counsel to the Prepetition Administrative Agents, and any entity whose rights are affected by the modification, each of whom shall have ~~five~~ten (5~~10~~) business~~calendar~~ days from the date of such notice within which to object in writing to such modification or amendment to the extent that such modification or amendment is material. If ~~a~~the Statutory Committee, the U.S. Trustee or an affected entity timely objects to any material modification or amendment to the DIP Documents, then such modification or amendment shall only be permitted pursuant to order of this Court. All material modifications shall be filed with the Bankruptcy Court.

15. Budget.

(a) Generally. Attached hereto as Exhibit 1 is a 13-week budget (the "Initial Approved Budget") which reflects the Debtor's anticipated cumulative cash receipts and expenditures on a weekly basis and all necessary and required cumulative expenses which the Debtor expects to incur during each week of the Initial Approved Budget. The Initial Approved

Budget may be modified or supplemented from time to time by additional budgets (covering any time period covered by a prior budget or covering additional time periods) prepared by the Debtor and approved in writing pursuant to the applicable terms of the DIP Agreement by the DIP Administrative Agent (each such additional budget, a "Supplemental Approved Budget"), in each case without further notice, motion or application to, order of, or hearing before, this Court; *provided, however*, that the Debtor shall file copies of each Supplemental Approved Budget with the Court within ~~five~~two (52) business days of its approval by the DIP Administrative Agent. The ~~aggregate, without duplication, of all items in the Initial Approved Budget and together with~~ any Supplemental Approved Budgets shall constitute ~~an~~the "Approved Budget."

(b) Budget Covenants. The Debtor acknowledges and agrees that pursuant to the terms of the DIP Documents it is required, among other things, (x) to provide to the DIP Administrative Agent, so as actually to be received by 5:00 p.m. (New York time) on Friday of each week, weekly variance reports for the preceding weekly period and on a cumulative basis from the Petition Date to the report date, comparing actual cash receipts and disbursements to amounts projected in the Approved Budget, in substantially the same form and detail as delivered pursuant to the Prepetition Revolving Credit Agreement; (y) by 5:00 p.m. (New York time) on Friday of each week from the Closing Date until the DIP Termination Date, to deliver to the DIP Administrative Agent an updated, "rolling" 13-week budget which sets forth by line item updated projected receipts and disbursements for the Debtor during the period commencing from the end of the previous week through and including thirteen weeks thereafter; *provided* that the Debtor shall still be subject to and be governed by the terms of the Approved Budget then in effect and the DIP Administrative Agent and DIP Lenders shall, as applicable, have no

obligation to fund to such updated “rolling budget” or permit the use of Cash Collateral with respect thereto until the date on which such updated budget shall constitute an Approved Budget; and (z) by no later than five (5) business days prior to the end of the period covered by the then applicable Approved Budget, to deliver to the DIP Administrative Agent a Supplemental Approved Budget. The Debtor acknowledges and agrees that (i) the incurrence or payment by the Debtor of expenses (x) other than the itemized amounts set forth in the Approved Budget and (y) in excess of the variances permitted by Section 5.2 of the DIP Agreement, or (ii) other violation of the terms and condition of this sub-paragraph (b), shall constitute an Event of Default under and as defined in the DIP Agreement.

16. Modification of Automatic Stay. Subject to paragraph 22 below, the automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms, rights, benefits, privileges, remedies and provisions of this ~~Interim~~Final Order and the other DIP Documents in each case without further notice, motion or application to, order of, or hearing before this Court.

17. Perfection of DIP Liens and Adequate Protection Liens. This ~~Interim~~Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein including the DIP Liens, the Prepetition Revolving Lenders’ Adequate Protection Liens and the Prepetition Term Lenders’ Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP

Liens, the Prepetition Revolving Lenders' Adequate Protection Liens, the Prepetition Term Lenders' Adequate Protection Liens, or to entitle the DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agents or the Prepetition Lenders to the priorities granted herein. Notwithstanding the foregoing, the DIP Administrative Agent and the Prepetition Administrative Agents each are authorized to file, as it in its sole discretion deems necessary, such financing statements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens, the Prepetition Revolving Lenders' Adequate Protection Liens and the Prepetition Term Lenders' Adequate Protection Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens, the Prepetition Revolving Lenders' Adequate Protection Liens and/or the Prepetition Term Lenders' Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Administrative Agent and the Prepetition Administrative Agents all such financing statements, mortgages, notices and other documents as the DIP Administrative Agent or the Prepetition Administrative Agents may reasonably request. The DIP Administrative Agent and the Prepetition Administrative Agents, each in its discretion, may file a photocopy of this ~~Interim~~Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notice of lien or similar instrument.

18. Proceeds of Subsequent Financing. If the Debtor, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed in the Case, shall obtain

credit or incur debt pursuant to Bankruptcy Code Sections 364(b), 364(c) or 364(d) or in violation of the DIP Documents at any time prior to the indefeasible repayment in full in cash of all DIP Obligations and Prepetition Obligations, the cancellation, backing or cash collateralization of letters of credit pursuant to the terms of the DIP Documents, and the termination or the DIP Administrative Agent's and DIP Lenders' obligation to extend credit under the DIP Facility, and such facilities are secured by any DIP Collateral, then, unless otherwise agreed by the DIP Administrative Agent in writing in its sole discretion (i) all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Administrative Agent to be applied pursuant to section 2.12 of the DIP Agreement; and (ii) after payment in full of all obligations evidenced by the DIP Documents, all the cash proceeds derived from such credit or debt shall immediately be turned over to the Prepetition Administrative Agents to be applied pursuant to section 2.12 of the Prepetition Credit Agreements, in each case consistent with the Intercreditor Agreement.

19. Maintenance of DIP Collateral. Until the indefeasible payment in full in cash of all DIP Obligations and all Prepetition Obligations, the cancellation, backing, or cash collateralization of letters of credit pursuant to the terms of the DIP Documents, and the termination of the DIP Administrative Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtor shall: (a) insure the DIP Collateral as required under the DIP Facility and the Prepetition Facilities; and (b) maintain the cash management system in effect as of the Petition Date, as modified by any order that may be entered by the Court which has first been agreed to by the DIP Administrative Agent or as otherwise required by the DIP Documents.

20. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business without the prior written consent of the DIP Administrative Agent and DIP Lenders (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Administrative Agent or DIP Lenders, or from any order of this Court), except as otherwise provided for in the DIP Documents or otherwise ordered by the Court.

21. DIP Termination Date. On the DIP Termination Date (a) all DIP Obligations shall be immediately due and payable, and all commitments to extend credit under the DIP Facility will terminate, and all letters of credit outstanding shall be cash collateralized, backed or cancelled pursuant to the terms of the DIP Documents; and (b) all authority to use Cash Collateral shall cease. For purposes of this ~~Interim~~Final Order, the “DIP Termination Date” shall mean the Termination Date, as defined in the DIP Agreement.

22. Rights and Remedies Upon Event of Default. Subject to the terms of the DIP Documents and this Final Order, immediately upon the occurrence and during the continuation of an Event of Default (as defined in the DIP Documents), (i) the DIP Administrative Agent may, and at the request of the DIP Lenders shall, declare (1) all DIP Obligations owing under the DIP Documents to be immediately due and payable; (2) the termination, reduction or restriction of any commitment to extend credit to the Debtor to the extent any such commitment remains; and (3) the termination of the DIP Agreement and any other DIP Document as to any future liability or obligation of the DIP Administrative Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations; (ii) the DIP Administrative Agent may revoke the Debtor’s right, if any, under this ~~Interim~~Final Order and/or the other DIP Documents

to use Cash Collateral; (iii) the DIP Administrative Agent may invoke the right to charge interest at the default rate under the DIP Documents; and (iv) the DIP Administrative Agent may collect and apply proceeds of the DIP Collateral pursuant to section 2.12(c) of the DIP Agreement. The DIP Administrative Agent shall provide five (5) business days' prior notice (the "Remedies Notice Period") of its intent to exercise remedies (other than those set forth above in this paragraph) under this ~~Interim~~Final Order and the DIP Documents to (i) the Debtor and its counsel; (ii) counsel to ~~any~~the Statutory Committee; (iii) counsel to the Prepetition Administrative Agents; and (iv) the U.S. Trustee. Unless the Court determines during the Remedies Notice Period that an Event of Default has not occurred and/or is not continuing, the automatic stay, as to all of the DIP Lenders and the Prepetition Revolving Lenders shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP Administrative Agent and, with the consent of the DIP Administrative Agent, both the Prepetition Revolving Administrative Agent and the Prepetition Term Administrative Agent, shall be permitted to exercise all rights and remedies set forth herein, in the DIP Agreement, the DIP Documents, ~~the Prepetition Revolving Credit Agreement and the Prepetition Revolving Credit Documents;~~ and as otherwise available at law without further order of or application or motion to the Court, and without restriction or restraint by any stay under Sections 362 or 105 of the Bankruptcy Code, or otherwise, except as provided in the Intercreditor Agreement; provided, however, that if (i) the DIP Administrative Agent does not consent to the automatic termination of the automatic stay with respect to the Prepetition Term Loan Lenders or Prepetition Term Loan Agent set forth above or (ii) the Bankruptcy Court does not enter an order lifting the automatic stay to permit

any of the Prepetition Term Loan Lenders or the Prepetition Term Loan Agent to exercise all rights and remedies against the Term Loan Priority Collateral, then the Standstill Period (as defined in the Intercreditor Agreement) shall be tolled, and shall not begin to run until the earlier to occur of (i) delivery of written notice from the DIP Agent to the Prepetition Term Loan Agent consenting to automatic termination of the automatic stay contemplated herein, and (ii) entry by the Bankruptcy Court of a final, non-appealable order lifting the automatic stay so that the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders can pursue all of their rights and remedies against the Term Loan Priority Collateral.

23. Good Faith Under Section 364(e) of the Bankruptcy Code: No Modification or Stay of this InterimFinal Order. The DIP Administrative Agent, DIP Lenders, Prepetition Revolving Administrative Agent and the Prepetition Revolving Lenders have acted in good faith in connection with this InterimFinal Order and their reliance on this InterimFinal Order is in good faith. Based on the findings set forth in this InterimFinal Order and the record made during the Interim Hearing and the Final Hearing, and in accordance with Section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this InterimFinal Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Administrative Agent, the DIP Lenders, the Prepetition Revolving Administrative Agent and the Prepetition Revolving Lenders are entitled to the protections provided in Section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunderunder this Final Order, or lien, claim or priority authorized or created hereby. Any liens or claims granted to the DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agents or the

Prepetition Lenders hereunder arising prior to the effective date of any such modification, amendment or vacatur of this ~~Interim~~Final Order shall be governed in all respects by the original provisions of this ~~Interim~~Final Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

(a) DIP and Other Expenses. The Debtor is authorized to pay all reasonable out-of-pocket expenses of the DIP Administrative Agent and the DIP Lenders in connection with the DIP Facility, as provided in the DIP Documents, whether or not the transactions contemplated hereby are consummated, including, without limitation, legal, accounting, collateral examination, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, ~~and indemnification and reimbursement of fees and expenses.~~ Nothing herein shall be construed to be a determination that the existence or amount of any success fees are reasonable. Payment of all such fees and expenses shall not be subject to allowance by the Court. Professionals for the DIP Administrative Agent, the DIP Lenders, the Prepetition Revolving Administrative Agent and the Prepetition Revolving Lenders shall not be required to comply with the U.S. Trustee fee guidelines, however any time that such professionals seek payment of fees and expenses from the Debtor, each professional shall provide copies of its fee and expense statements to the U.S. Trustee and counsel for the Statutory Committee contemporaneously with the delivery of such fee and expense statements to the Debtor.⁴ The U.S. Trustee or ~~any~~the Statutory Committee may object to the reasonableness of the fees, costs and expenses included in any professional fee invoice submitted hereunder; *provided* that, any such objection shall be forever waived and barred unless (i) it is filed with this Court and served on counsel for the party seeking reimbursement no later than ten (10) days after the objecting

⁴ Such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine.

party's receipt of the applicable professional fee invoice; and (ii) it describes with particularity the items or categories of fees, costs and expenses that are the subject of the objection and provides the specific basis for the objection to each such item or category of fees, costs and expenses, *provided further, however*, that the Debtor shall promptly pay all amounts that are not the subject of any objection. Any hearing on an objection to payment of any fees, costs and expenses of the DIP Administrative Agent, any DIP Lenders, the Prepetition Revolving Administrative Agent, and any Prepetition Revolving Lenders set forth in a professional fee invoice shall be limited to the reasonableness or necessity of the particular items or categories of the fees, costs and expenses which are the subject of such objection.

24. Indemnification. The Debtor shall indemnify and hold harmless the DIP Administrative Agent, the DIP Lenders, each issuer of Letters of Credit and their respective shareholders, directors, agents, officers, parent, subsidiaries and affiliates, successors and assigns, attorneys and professional advisors, in their respective capacities as such, from and against any and all damages, losses, ~~settlement payments,~~ obligations, liabilities, claims, actions or causes of action, whether groundless or otherwise, and reasonable costs and expenses (including, without limitation, reasonable attorneys fees) incurred, suffered, sustained or required to be paid by an indemnified party of every nature and character arising out of or related to the DIP Documents or the DIP Facility or the transactions contemplated thereby and by this ~~Interim~~Final Order, whether such indemnified party is a party thereto, as provided in and pursuant to the terms of the DIP Documents and as further described therein and herein, except to the extent resulting from such indemnified party's gross negligence or willful misconduct as finally determined by a final non-appealable order of a court of competent jurisdiction. The indemnity includes indemnification for the DIP Administrative Agent's and any DIP Lender's

exercise of discretionary rights granted under the DIP Facility. In all such litigation, or the preparation therefor, the DIP Administrative Agent and the DIP Lenders shall be entitled to select their own counsel and, in addition to the foregoing indemnity, the Debtor agrees to promptly pay the reasonable fees and expenses of such counsel.

25. Proofs of Claim. The DIP Administrative Agent, the DIP Lenders, the Prepetition ~~Revolving-Administrative Agent~~Agents and the Prepetition-~~Revolving~~ Lenders will not be required to file proofs of claim in the Case for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in the Case to the contrary, the Prepetition ~~Revolving-Administrative Agent~~Agents on behalf of ~~itself~~themselves and the Prepetition-~~Revolving~~ Lenders are hereby authorized and entitled, in their sole discretion, but not required, to file (and amend and/or supplement, as they see fit) a proof of claim and/or aggregate proofs of claim in the Case for any claim allowed herein. Any proof of claim filed by the Prepetition ~~Revolving-Administrative Agent~~Agents shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition ~~Revolving-Lender~~Lenders. Any order entered by the Court in relation to the establishment of a bar date in the Case shall not apply to the DIP Administrative Agent, the DIP Lenders, the Prepetition ~~Revolving-Administrative Agent~~Agents or the Prepetition-~~Revolving~~ Lenders.

26. Carve Out; Payment of Case Professionals.

(a) Carve Out. As used in this ~~Interim~~Final Order, the “Carve Out” means (i) statutory fees payable to the U.S. Trustee and Clerk of the Bankruptcy Court pursuant to 28 U.S.C. § 1930(a)(6); and (ii) after the occurrence of an Event of Default under the DIP Documents and on and after the date that written notice thereof is delivered by the DIP

Administrative Agent to counsel to the Debtor and counsel to the Statutory Committee declaring that the Carve Out Trigger Date has occurred (the "Carve Out Trigger Date"), the following fees and expenses, but only to the extent that there ~~are~~^{is} not sufficient, unencumbered ~~fund~~^{cash} in the Debtor's estate to pay such amounts at the time payment is permitted to be made: an amount (the "Case Professionals Carve Out") equal to the sum of (a) the finally allowed and unpaid professional fees and disbursements for any Case Professional (as defined below) incurred after the Carve Out Trigger Date in an aggregate amount not in excess of \$1,000,000 for all Case Professionals, plus (b) all unpaid professional fees and disbursements of such Case Professionals incurred prior to the Carve Out Trigger Date in each case to the extent such fees and expenses are ultimately allowed on a final basis by this Court under Sections 328, 330, or 331 of the Bankruptcy Code and any interim compensation procedures order, but solely to the extent that the same constitute Budgeted Professional Fees. "Budgeted Professional Fees" shall mean those fees and expenses incurred by Case Professionals in accordance with the professional fee schedule which is incorporated as part of the Approved Budget. "Case Professionals" shall mean any professional (other than an ordinary course professional) retained by the Debtor and ~~any~~^{the} Statutory Committee pursuant to a final order of the Court (which order has not been vacated or stayed, unless the stay has been vacated) under Sections 327, 328, 363 or 1103(a) of the Bankruptcy Code. To the extent that any payment to a Case Professional is subsequently disallowed and/or disgorged, the proceeds of any claim against the Case Professional for amounts so disallowed or disgorged shall constitute DIP Collateral and as such, shall be subject to the liens and claims granted hereunder.

(b) No Direct Obligation to Pay Professional Fee and Disbursements. None of the DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agents or the Prepetition Lenders shall be responsible for the direct payment or reimbursement of any fees or disbursements of any Case Professionals incurred in connection with the Case under any chapter of the Bankruptcy Code.

(c) Payment of Allowed Professional Fees Prior to the Carve Out Trigger Date. Prior to the Carve Out Trigger Date, the Debtor shall be permitted to pay Budgeted Professional Fees as the same may be due and payable, and such payments shall not reduce or be deemed to reduce the Carve Out.

(d) Payment of Carve Out After the Carve Out Trigger Date. Any infeasible payment or reimbursement made on or after the Carve Out Trigger Date in respect of any professional fees and disbursements to a Case Professional shall permanently reduce the Case Professionals Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out by the DIP Lenders shall be added to and made a part of the DIP Obligations and secured by the DIP Collateral and otherwise entitled to the protections granted under this ~~Interim~~Final Order, the DIP Documents, the Bankruptcy Code and applicable law.

27. Limitations on the DIP Facility, the DIP Collateral, the Cash Collateral and the Case Professionals Carve Out.

(a) The DIP Facility, the DIP Collateral, the Cash Collateral and the Case Professionals Carve Out may not be used in connection with: (i) preventing, hindering, or delaying any of the DIP Administrative Agent's, the DIP Lenders', the Prepetition Administrative Agents' or the Prepetition Lenders' enforcement or realization upon any of the

DIP Collateral once an Event of Default (as defined in the DIP Documents) has occurred (other than with respect to rights otherwise granted herein with respect to the Remedies Notice Period); (ii) using or seeking to use Cash Collateral or, except to the extent permitted by the terms of the DIP Documents, selling or otherwise disposing of DIP Collateral, in each case without the consent of the DIP Administrative Agent and the DIP Lenders; (iii) except to the extent permitted by the terms of the DIP Documents, using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Administrative Agent and the DIP Lenders; or (iv) except to the extent permitted by the terms of the DIP Documents, incurring Indebtedness (as defined in the DIP Agreement) without the prior consent of the DIP Administrative Agent and the DIP Lenders.

(b) The DIP Facility, the DIP Collateral, the Cash Collateral and the Case Professionals Carve Out may not be used in connection with: (i) objecting, challenging, litigating, opposing, marshaling or seeking to subordinate or recharacterize in any way any claims, liens, DIP Collateral (including Cash Collateral), or Prepetition Collateral held by or on behalf of any of the DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agents or the Prepetition Lenders; (ii) asserting, commencing or prosecuting any claims or causes of action, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code, against any of the DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agents or the Prepetition Lenders, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees, in each case with respect to this Order, the DIP Documents or Prepetition Credit Documents or the transactions contemplated therein or thereby; or (iii) prosecuting an objection to, or contesting or opposing in any manner,

or raising any defenses to, the validity, extent, amount, perfection, priority, character or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Obligations or the Prepetition Liens, or any other rights or interests of any of the DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agents or the Prepetition Lenders; *provided, however,* that the Case Professionals Carve Out and such collateral proceeds and loans under the DIP Documents may be used for allowed fees and expenses, in an amount not to exceed ~~\$50,000~~100,000 in the aggregate, incurred solely by ~~the~~ Statutory Committee, ~~if appointed,~~ in investigating (but not objecting to, challenging, litigating, opposing, or seeking to subordinate or recharacterize) the validity, enforceability, perfection, priority, character or extent of the Prepetition Liens during the Challenge Period (as defined herein).

(c) The Carve-Out shall be applied 50% to the Revolving Credit Priority Collateral and 50% to the Term Loan Priority Collateral (whether such collateral existed before or after the Petition Date) (Such allocation shall be referred to as the “Carve Out Allocation”).

Notwithstanding anything in this Order to the contrary, the liens and claims (whether super-priority, for adequate protection, prepetition or otherwise) of, granted to, or held by, any of the DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agents or the Prepetition Lenders with respect to the Debtor shall be subject to the payment of the Carve Out, subject only to the Carve Out Allocation.

28. Payment of Compensation. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Case Professionals or shall affect the right of the DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agents or the Prepetition Lenders to object to the allowance and payment of such fees and expenses.

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

(a) Nothing in this ~~Interim~~Final Order or the DIP Documents shall prejudice the rights of ~~at~~the Statutory Committee and any other party in interest with requisite standing other than the Debtor, to seek to object to or to challenge the findings, the Debtor's Stipulations, or any other stipulations herein, including, but not limited to those in relation to: (a) the validity, ~~enforceability,~~enforceability, extent, priority, characterization or perfection of the mortgage, security interests, and liens of the Prepetition ~~Revolving—Administrative Agent~~Agents with respect to the Prepetition ~~Revolving—Collateral;~~ or (b) the validity, ~~enforceability,~~enforceability, allowability, priority, characterization, ~~fully-secured status or amount of the Prepetition Obligations-evidenced by the~~ Prepetition ~~Revolving—Credit Documents.~~ A party with standing, including the Statutory Committee, ~~if appointed,~~ must commence an adversary proceeding or contested matter, as required by the applicable Bankruptcy Rules, to challenge the findings, the Debtor's Stipulations, or any other stipulations herein, including, without limitation, to assert any claim against the Prepetition ~~Revolving—Administrative Agent~~Agents or the Prepetition ~~Revolving Lenders~~ in the nature of a setoff, counterclaim or defense to the Prepetition Obligations-evidenced by the ~~Prepetition—Revolving—Credit Documents,~~ or must file a motion seeking standing to pursue such challenge ~~within seventy-five (75) calendar days from the Petition Date,~~ except in respect of a Statutory Committee, ~~said challenge must be made within sixty (60) calendar days from the date of the first appointment of the Statutory Committee by the U.S. Trustee~~ on or before September 1, 2009 (the "Challenge Period").

(b) The Challenge Period may only be extended with the written consent of the Prepetition Revolving Administrative Agent and the Prepetition Revolving Lenders or by order of the Court.

(c) Except to the extent asserted in an adversary proceeding or contested matter, as required by the applicable Bankruptcy Rules, filed during the Challenge Period, upon the expiration of such applicable Challenge Period, to the extent not otherwise waived or barred: (A) any and all such challenges by any party (including, without limitation, ~~any~~the Statutory Committee, any Chapter 11 trustee, and/or any examiner appointed in the Case, and any Chapter 7 trustee and/or examiner appointed in the Case), shall be deemed to be forever waived and barred; (B) all of the Debtor's Stipulations, waivers, releases, affirmations and other stipulations as to the priority, enforceability, extent, and validity of the ~~Prepetition Revolving Administrative Agent's~~Agents' and ~~Prepetition Revolving Lenders'~~ claims, liens, and interests, of any nature, under the ~~Prepetition Revolving Credit Documents~~, or otherwise incorporated or set forth in this ~~Interim~~Final Order, shall be of full force and effect and forever binding upon the Debtor, the Debtor's bankruptcy estate and all creditors, interest holders, and other parties in interest in the Case; and (C) without further order of the Court, the ~~Prepetition Revolving Obligations~~ shall be allowed as fully secured claims within the meaning of Section 506 of the Bankruptcy Code. Upon a successful challenge brought pursuant to this paragraph, the Court may fashion any appropriate remedy.

(d) For purposes of paragraphs (a) through (c) above, any trustee appointed or elected in these cases shall, until expiration of the Challenge Period described above and thereafter for the duration of any litigation commenced during the Challenge Period by the filing

of a complaint described in subparagraphs (a) through (c) (whether commenced by such trustee or commenced by any other party in interest with standing on behalf of the debtors' estates), be deemed to be a party "other than the Debtor" and shall not, for purposes of such litigation, be bound by the acknowledgements, admissions and confirmations of the debtors in this Order.

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

31. Section 506(c) Claims. ~~Upon entry of the Final Order, to the extent such relief is granted, no~~No costs or expenses of administration which have been or may be incurred in the Case at any time shall be charged against the DIP Administrative Agent, DIP Lenders, ~~Prepetition Revolving Administrative Agent~~Agents, ~~Prepetition Revolving~~ Lenders or any of their respective claims, the interest of the DIP Administrative Agent, DIP Lenders, ~~Prepetition Revolving Administrative Agent~~Agents or ~~Prepetition Revolving~~ Lenders in the DIP Collateral or the ~~Revolving Credit Priority~~Prepetition Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent, as applicable, of the DIP Administrative Agent, DIP Lenders, ~~Prepetition Revolving Administrative Agent~~Agents or the ~~Revolving~~ Prepetition Lenders, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.

32. No Marshaling/Applications of Proceeds. The DIP Administrative Agent, DIP Lenders, the ~~Prepetition Revolving Administrative Agent~~Agents and the ~~Prepetition Revolving~~ Lenders shall not be subject to the equitable doctrine of "marshaling" or any other similar

doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as the case may be.

33. Section 552(b). The Prepetition Administrative Agents and the Prepetition Lenders 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 Prepetition Administrative Agents and the Prepetition Lenders with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral ~~upon entry of the Final Order, to the extent such relief is granted.~~

34. Discharge Waiver. The DIP Obligations and subject to Paragraph 29 hereof, the Prepetition Obligations evidenced by the Prepetition Revolving Credit Documents shall not be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of Section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash on or before the effective date of a confirmed plan of reorganization. The Debtor shall not propose or support any plan of reorganization or sale of all or substantially all of the Debtor’s assets or entry of any confirmation order or sale order that is not conditioned upon the indefeasible payment in full in cash, on or prior to the earlier to occur of the effective date of such plan of reorganization or sale and the DIP Termination Date, of all DIP Obligations and subject to Paragraph 29 hereof, Prepetition Obligations evidenced by the Prepetition Revolving Credit Documents and the cancellation, backing, or cash collateralization of all outstanding letters of credit pursuant to the terms of the DIP Documents unless the DIP Administrative Agent and Prepetition Revolving Administrative Agent have otherwise consented in writing to such plan or sale.

35. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this ~~Interim~~Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Administrative Agent's, DIP Lenders', ~~Prepetition Revolving Administrative Agent's~~Agents' or the ~~Prepetition Revolving~~ Lenders' right to seek any other or supplemental relief in respect of the Debtor; (b) any of the rights of any of the DIP Administrative Agent, DIP Lenders, ~~Prepetition Revolving Administrative Agent~~Agents and the ~~Prepetition Revolving~~ Lenders under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request a modification of the automatic stay of Section 362 of the Bankruptcy Code; (ii) request dismissal of the Case, conversion of the Case to a case under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers; or (iii) propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans; or (c) any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the DIP Administrative Agent, DIP Lenders, ~~Prepetition Revolving Administrative Agent~~Agents or the ~~Prepetition Revolving~~ Lenders; *provided, however*, that the exercise of the foregoing rights in subparagraphs (a), (b) and (c) shall be subject to the Intercreditor Agreement. Notwithstanding anything herein to the contrary, the entry of this ~~Interim~~Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtor's, the Statutory Committee's or any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this ~~Interim~~Final Order.

36. No Waiver by Failure to Seek Relief. The failure of the DIP Administrative Agent, DIP Lenders, ~~Prepetition Revolving Administrative Agent~~Agents or the ~~Prepetition~~

~~Revolving Lenders~~ to seek relief or otherwise exercise their rights and remedies under this ~~Interim~~Final Order, the DIP Documents, the Prepetition ~~Revolving~~ Credit Documents or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Administrative Agent, DIP Lenders, Prepetition ~~Revolving~~ Administrative ~~Agent~~Agents and the Prepetition ~~Revolving~~ Lenders.

37. Binding Effect of ~~Interim~~Final Order. Immediately upon execution by this Court, the terms and provisions of this ~~Interim~~Final Order shall become valid and binding upon and inure to the benefit of the Debtor, the DIP Administrative Agent, the DIP Lenders, the Prepetition ~~Revolving~~ Administrative ~~Agent~~Agents, the Prepetition ~~Revolving~~ Lenders, all other creditors of the Debtor, ~~any~~the Statutory Committee or any other committee, appointed in the Case, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Case or upon dismissal of the Case.

38. No Modification of ~~Interim~~Final Order. Until and unless the DIP Obligations and the Prepetition Obligations evidenced by the Prepetition Revolving Credit Documents have been indefeasibly paid in full in cash, and all letters of credit under the DIP Facility shall have been cancelled, backed, or cash collateralized in accordance with the terms of the DIP Documents (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility have been terminated, the Debtor irrevocably waives the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Administrative Agent and the Prepetition Revolving Administrative Agent, (i) any modification, stay, vacatur or amendment to this ~~Interim~~Final Order; or (ii) a priority claim for any

administrative expense or unsecured claim against the Debtor (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in Sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code) in the Case, equal or superior to the DIP Superpriority Claim, other than the Carve Out; (b) without the prior written consent of the DIP Administrative Agent and the Prepetition Revolving Administrative Agent, any order allowing use of Cash Collateral resulting from DIP Collateral or Prepetition Collateral; (c) without the prior written consent of the DIP Administrative Agent and the Prepetition Revolving Administrative Agent, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided in the DIP Documents; or (d) without the prior written consent of the Prepetition Revolving Administrative Agent, any lien on any of the DIP Collateral with priority equal or superior to the Prepetition Liens, Prepetition Revolving Lenders' Adequate Protection Liens, or the Prepetition Term Lenders' Adequate Protection Liens. The Debtor irrevocably waives any right to seek any amendment, modification or extension of this ~~Interim~~Final Order without the prior written consent, as provided in the foregoing, of the DIP Administrative Agent and the Prepetition Revolving Administrative Agent and no such consent shall be implied by any other action, inaction or acquiescence ~~of~~ of the DIP Administrative Agent or Prepetition Revolving Administrative Agent.

39. Continuing Effect of Intercreditor Agreement. The Debtor, the DIP Administrative Agent, DIP Lenders, the Prepetition Administrative Agents and the Prepetition Lenders each shall be bound by, and in all respects of the DIP Facility shall be governed by, and be subject to all the terms, provisions and restrictions of the Intercreditor Agreement, except as may be expressly modified by this ~~Interim~~Final Order.

40. Landlord Agreements: Access. ~~Subject to entry of a Final Order, all~~ All landlord agreements to which the Prepetition Administrative Agents are a party shall be deemed amended to include the DIP Administrative Agent as beneficiaries thereunder, and such agreements shall thereafter be additionally enforceable by the DIP Administrative Agent against, and binding upon, each landlord party thereto. ~~Subject to entry of a Final Order, any~~ Any title, landlord's lien, right of distraint or levy, security interest or other interest that any landlord or mortgagee may have in any DIP Collateral or Prepetition Collateral of the Debtor located on such leased premises, to the extent the same is not void under section 545 of the Bankruptcy Code, is hereby expressly subordinated to the liens of the DIP Lenders and the Prepetition Lenders.

41. Setoff and Recoupment. Notwithstanding anything to the contrary contained herein, but subject to the terms of the Intercreditor Agreement, nothing in this ~~Interim~~ Final Order shall limit or impair the nature, extent, validity and/or priority of rights, if any, of any party in interest in the Case under Bankruptcy Code sections 546(c), 545 and 553 and/or the equitable doctrine of recoupment.

42. Limits on Lender Liability. Nothing in this ~~Interim~~ Final Order or in any of the DIP Documents, the Prepetition Revolving Credit Documents or any other documents related to this transaction shall in any way be construed or interpreted to impose or, subject to Paragraph 29 hereof, allow the imposition upon the DIP Administrative Agent, the DIP Lenders, the ~~Prepetition Revolving Administrative Agent~~ Agents or the ~~Prepetition Revolving Lenders~~ of any liability for any claims arising from any and all activities by the Debtor in the operation of its business in connection with the Debtor's ~~post-petition~~ postpetition restructuring efforts.

43. InterimFinal Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Documents, the Intercreditor Agreement, the Interim Order and this InterimFinal Order, the provisions of this InterimFinal Order shall govern and control.

44. Survival. The provisions of this InterimFinal Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in the Case; (b) converting the Case to a case under Chapter 7 of the Bankruptcy Code; (c) to the extent permitted by applicable law, dismissing the Case; or (d) pursuant to which this Court abstains from hearing the Case. The terms and provisions of this InterimFinal Order, including the claims, liens, security interests and other protections granted to the DIP Administrative Agent, DIP Lenders, the Prepetition Administrative Agents or the Prepetition Lenders granted pursuant to this InterimFinal Order and/or the DIP Documents, notwithstanding the entry of any such order, shall continue in the Case or, to the extent permitted by applicable law following dismissal of the Case, and shall maintain their priority as provided by this InterimFinal Order until: (i) in respect of the DIP Facility, all the DIP Obligations, pursuant to the DIP Documents and this InterimFinal Order, have been indefeasibly paid in full in cash and all letters of credit under the DIP Facility shall have been cancelled or cash collateralized in accordance with the terms of the DIP Documents (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility are terminated, (ii) in respect of the Prepetition Revolving Credit Facility, all of the Adequate Protection Obligations owed to the Prepetition Revolving Administrative Agent and Prepetition Revolving Lenders provided for in this InterimFinal Order, have been indefeasibly paid in full in cash, and

(iii) in respect of the Prepetition Term Loan Facility, all of the Adequate Protection Obligations owed to the Prepetition Term Loan Administrative Agent and Prepetition Term Loan Lenders provided for in this ~~Interim~~Final Order, have been indefeasibly paid in full in cash. The terms and provisions concerning the indemnification of the DIP Administrative Agent and the DIP Lenders shall continue in the Case, following dismissal of the Case, following termination of the DIP Documents and/or the indefeasible repayment in full in cash of the DIP Obligations.

45. ~~Final Hearing.~~ The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for May 11, 2009 at 1:00 p.m. before the Honorable Brendan L. Shannon, United States Bankruptcy Judge, on the 6th floor, in Courtroom 1, at the United States Bankruptcy Court for the District of Delaware. On or before April 23, 2009, the Debtor shall serve, by United States mail, first class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the DIP Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; (c) counsel for the Statutory Committee, if appointed by such date; (d) the Securities and Exchange Commission; and (e) the Internal Revenue Service. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than on May 5, 2009 at 4:00 p.m. (Eastern Daylight Time); which objections shall be served so as to be received on or before such date by: (i) counsel to the Debtor, Paul N. Heath, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 and Keith A. Simon, Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022 4834; (ii) counsel to the Statutory Committee; (iii) counsel to the

~~DIP Administrative Agent, the DIP Lenders, the Prepetition Revolving Administrative Agent and Prepetition Revolving Lenders, attn: Sarah Robinson Borders, King & Spalding LLP, 1180 Peachtree Street, Atlanta, GA 30309, and attn: Stephen M. Miller, Morris James LLP, 500 Delaware Avenue, Ste. 1500, Wilmington, DE 19801 1494; and (iv); the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, attn: Mark S. Kenney.~~

~~45.~~ 46. *Nunc Pro Tunc* Effect of this InterimFinal Order. This ~~InterimFinal~~ Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution thereof.

~~46.~~ 47. *Retention of Jurisdiction*. The Court has and will retain jurisdiction to enforce this ~~InterimFinal~~ Order according to its terms.

~~47.~~ 48. *Other*. In the event that the DIP Obligations are indefeasibly paid in full in cash pursuant to the terms of a confirmed plan of reorganization or from the proceeds of a sale under section 363 of the Bankruptcy Code that includes Unencumbered Term Loan Assets (as defined by the Intercreditor Agreement), the proceeds of Unencumbered Term Loan Assets shall be deemed applied to the DIP Obligations prior to the proceeds of other DIP Collateral.

SO ORDERED by the Court this 21st day of April, 2009.

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

DIP Budget

RIDER A

~~Notwithstanding anything contained herein or in the DIP Documents to the contrary, the repayment of the Prepetition Revolving Obligations is hereby approved on an interim basis only. All parties' rights are reserved at the Final Hearing regarding whether such repayment should be approved on a final basis or whether alternative debtor in possession financing should be approved at such hearing (the "Alternative Proposal"). In the event that the Alternative Proposal is approved by this Court, then the repayment of the Prepetition Revolving Obligations, and any protections related thereto, will be unwound and all payments by the Debtor of interest and fees (other than the commitment fee) on such unwound amounts shall be repaid or otherwise deemed paid as adequate protection to the Prepetition Revolving Loan Lenders to the extent approved by order of this Court. All parties' rights on the payment of adequate protection are reserved, including, without limitation, regarding the application of cash collateral proceeds received after the Petition Date. All parties' rights regarding the propriety of the repayment of the Prepetition Revolving Obligations are reserved for the Final Hearing. The Incremental Revolving Credit Outstandings are entitled to and granted all the protections under this Order. Any Alternative Proposal shall repay the Incremental Revolving Credit Outstandings in full in cash. All parties' objections to the Alternative Proposal are reserved.~~

~~Until the entry of the Final Order and indefeasible payment in full in cash of the Prepetition Revolving Obligations, the "Guaranty and Security Agreement", the "Mortgages", and the "Control Agreements", each as defined in the Prepetition Revolving Credit Agreement, shall be deemed to secure the "Obligations" as defined in the DIP Agreement as well as the~~

~~Prepetition Revolving Obligations, and all such Collateral Documents and all rights and remedies of the Prepetition Revolving Administrative Agent thereunder shall remain in full force and effect and such rights and remedies may, subject to the provisions of this Order, be exercised by the DIP Administrative Agent (the DIP Administrative Agent succeeding to the Prepetition Revolving Credit Administrative Agent in its role as agent for perfection of any collateral within its possession or "control" for the benefit of the Collateral Agent under the Prepetition Term Loan Agreement (to the extent and as provided in section 3.4 of the Intercreditor Agreement, dated as of March 3, 2008, as amended, between the Prepetition Term Loan Administrative Agent and the Prepetition Revolving Credit Administrative Agent)).~~