

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

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In re)
) Chapter 11
Eastman Kodak Company, <i>et al.</i> , ¹)
) Case No. 12-10202 (ALG)
Debtors.)
) Jointly Administered
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INTERIM ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364 AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c)

Upon the motion (the “**Motion**”), dated January 19, 2012, of Eastman Kodak Company (the “**Borrower**”) and its affiliated debtors, each as debtor and debtor-in-possession (collectively, the “**Debtors**”), in the above-captioned cases (the “**Cases**”) pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), and rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Local Bankruptcy Rules for the Southern District of New York, including rule 4001-2 (the “**SDNY Local Rules**”), seeking, among other things:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors’ corporate headquarters is: 343 State Street, Rochester, NY 14650.



(1) authorization for the Borrower to obtain post-petition financing up to the aggregate principal amount of \$925,000,000 (the “**U.S. Debtor Borrowings**”), in connection with which Kodak Canada, Inc. (“**Kodak Canada**”), a non-Debtor affiliate of the Borrower shall be permitted to obtain additional financing (which additional financing will be guaranteed by the Debtors) up to the aggregate principal amount of \$25,000,000 (the “**Canadian Borrowings**,” and together with the U.S. Debtor Borrowings, the “**Financing**”), and for all of the other Debtors and, with respect to the obligations of Kodak Canada only, the Canadian Subsidiary Guarantors and the Borrower (as defined in the DIP Credit Agreement (as defined below)) (together, the “**Guarantors**”) to guaranty the obligations of the Borrower and Kodak Canada (as applicable) in connection with the Financing, up to the aggregate principal amount of \$950,000,000 (the actual available principal amount at any time being subject to those conditions set forth in the DIP Documents (as defined below)), from Citicorp North America, Inc. (“**CNAI**”), acting as Agent and Collateral Agent (in such capacities, the “**DIP Agent**”), for itself and a syndicate of financial institutions (together with CNAI and including the fronting and issuing banks for the letters of credit, the “**DIP Lenders**”) to be arranged by Citigroup Global Markets Inc. (the “**Lead Arranger**”);

(2) authorization for the Debtors to execute and enter into the DIP Documents and to perform such other and further acts as may be required in connection with the DIP Documents;

(3) authorization for the Debtors to immediately use proceeds of the Financing to, simultaneously with the initial draw under the Financing, refinance the Pre-Petition First Lien Debt (as defined below) (other than certain letters of credit and Existing Secured Agreements (as defined in the DIP Credit Agreement) that shall remain outstanding (the **“Continuing Pre-Petition First Lien Obligations”**)) including interest through the date of repayment;

(4) authorizing, until the infeasible, as applicable (i) repayment of the Pre-Petition First Lien Debt or (ii) satisfaction, termination or expiration of all Non-Assumed First Lien Pre-Petition Obligations, the granting of adequate protection, including with respect to the Non-Assumed Pre-Petition First Lien Obligations (as defined below), until the refinancing thereof as hereinafter provided, the granting of adequate protection to the lenders (the **“Pre-Petition First Lien Secured Lenders”**) under or in connection with that certain Second Amended and Restated Credit Agreement, dated as of April 26, 2011 (as heretofore amended, supplemented or otherwise modified, the **“Pre-Petition First Lien Credit Agreement”**), among the Borrower, Kodak Canada, the other subsidiaries of the Borrower party thereto, the lenders listed therein, the letter of credit issuing banks named therein (the **“Issuing Banks”**), and Bank of America, N.A. (**“BoFA”**), as administrative agent for the Pre-Petition First Lien Secured Lenders (in such capacity, the **“Pre-Petition First Lien Agent”**) and that certain Second Amended and Restated US

Security Agreement, dated as of April 26, 2011, among the Borrower, the Subsidiaries of the Borrower party thereto, and BofA and Citicorp USA, Inc., each as Co-Collateral Agent thereunder (the “**Pre-Petition First Lien Co-Collateral Agents**”) (as heretofore amended, supplemented or otherwise modified, the “**US Security Agreement**” and, collectively with the Pre-Petition First Lien Credit Agreement, and the mortgages (if any) and all other documentation executed in connection therewith, (including, for the avoidance of doubt, any “Secured Agreements” as defined in the Pre-Petition First Lien Credit Agreement), the “**First Lien Existing Agreements**”);

(5) the granting of adequate protection to the holders (the “**Pre-Petition Second Lien Noteholders**” and together with the Pre-Petition First Lien Secured Lenders, the “**Pre-Petition Secured Creditors**”) of the Borrower’s (i) 10.625% Senior Secured Notes due March 15, 2019 issued under or in connection with that certain Indenture dated as of March 15, 2011 and (ii) the Borrower’s 9.75% Senior Secured Notes due March 1, 2018 issued under or in connection with that certain Indenture dated as of March 15, 2011 (together, the “**Pre-Petition Second Lien Indentures**”, and with and all other documentation executed in connection therewith, the “**Second Lien Existing Agreements**” and together with the First Lien Existing Agreements, the “**Existing Documents**”), each among the Borrower, each of the guarantors party thereto and the Bank of New York Mellon, as trustee (in such capacity under the Pre-Petition Second Lien

Indentures, the “**Pre-Petition Second Lien Notes Trustee**”), whose liens and security interests shall be junior to the DIP Liens and the Adequate Protection Liens (each as defined below);

(6) authorization for the Debtors to use Cash Collateral (as defined below) and all other collateral in which any of the Pre-Petition Secured Creditors have an interest, and the granting of adequate protection to any of the Pre-Petition Secured Creditors with respect to, *inter alia*, such use of their Cash Collateral and all use and diminution in the value of the Pre-Petition Collateral (as defined below);

(7) approval of certain stipulations by the Debtors with respect to the First Lien Existing Agreements and the liens and security interests arising therefrom;

(8) the granting of superpriority claims to the DIP Lenders payable from, and having recourse to, all pre-petition and post-petition property of the Debtors’ estates and all proceeds thereof (including any Avoidance Proceeds (as defined below)), subject to the Carve Out (as defined below);

(9) subject only to and effective upon entry of a final order granting such relief and such other relief as provided herein and in such final order (the “**Final Order**”), the limitation of the Debtors’ right to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code;

(10) pursuant to Bankruptcy Rule 4001, that an interim hearing (the “**Interim Hearing**”) on the Motion be held before this Court to consider entry of the proposed interim order annexed to the Motion (a) authorizing the Borrower, on an interim basis, to forthwith borrow or obtain letters of credit from the DIP Lenders under the DIP Documents up to an aggregate principal or face amount not to exceed \$400,000,000 under the Term Facility (as defined in the DIP Credit Agreement) and \$225,000,000 under the Revolving Credit Facility (as defined in the DIP Credit Agreement), with up to an additional \$25,000,000 under the Revolving Credit Facility to be made available for borrowing by Kodak Canada (each such borrowing subject to any limitations under the DIP Documents) to (i) refinance the borrowings and other extensions of credit under the Pre-Petition First Lien Credit Agreement (other than the Continuing Pre-Petition First Lien Obligations) simultaneously with the initial borrowing under the Financing, (ii) with respect to the Continuing Pre-Petition First Lien Obligations, deem certain letters of credit under the Pre-Petition First Lien Credit Agreement to be issued pursuant to, and secured under, the DIP Credit Agreement and backstop certain outstanding obligations under the Pre-Petition First Lien Credit Agreement through the issuance of letters of credit, providing of cash collateral or making of other arrangements satisfactory to the holders thereof with respect to the obligations under certain Existing Secured Agreements that remain outstanding (including, with respect to any DIP Lender, having such

obligations designated as “Obligations” under the DIP Credit Agreement and secured by the Collateral (as defined below)) (such obligations deemed issued pursuant to or designated as “Obligations” under the DIP Credit Agreement, the “**Assumed Pre-Petition First Lien Obligations**” and such other obligations, the “**Non-Assumed Pre-Petition First Lien Obligations**”), and (iii) provide working capital to the Debtors and their subsidiaries (including payment of fees and expenses in connections with the transactions contemplated by the DIP Credit Agreement), (b) authorizing the Debtors’ use of Cash Collateral and all other collateral, and (c) granting the adequate protection described herein; and

(11) that this Court schedule a final hearing (the “**Final Hearing**”) to be held within 30 days of the entry of this Interim Order (the “**Interim Order**”) to consider entry of a final order (the “**Final Order**”) authorizing the balance of the borrowings and letter of credit issuances under the DIP Documents on a final basis, as set forth in the Motion and the DIP Documents filed with this Court.

Due and appropriate notice of the Motion, the relief requested therein and the Interim Hearing having been served by the Debtors on: (a) the United States Trustee; (b) the entities listed on the Consolidated List of Creditors Holding the 50 Largest Unsecured Claims; (c) the agent under the Pre-Petition First Lien Credit Agreement; (d) the indenture trustee for the prepetition 9.2% Senior Notes due June 1, 2021; (e) the indenture trustee for the prepetition 10.625% Senior Secured Notes due March 15, 2019; (f) the indenture trustee for the prepetition 9.95% Senior Notes due July 1, 2018; (g) the

indenture trustee for the prepetition 9.75% Senior Secured Notes due March 1, 2018; (h) the indenture trustee for the prepetition 7.00% Convertible Senior Notes due April 1, 2017; (i) the United States Attorney for the Southern District of New York; (j) the Internal Revenue Service; (k) the DIP Agent; (l) the Environmental Protection Agency; (m) the Pension Benefit Guaranty Corporation; and (n) counsel to the Trustees of the Kodak Pension Plan.

The Interim Hearing having been held by this Court on January 19, 2012.

Upon the record made by the Debtors at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction.* This Court has core jurisdiction over the Cases, this Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue appears to be proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* Notice of the Motion, the relief requested therein and the Interim Hearing was served by the Debtors on each of their fifty (50) largest unsecured creditors, the DIP Lenders, the DIP Agent, the Pre-Petition First Lien Agent, the Pre-Petition Second Lien Notes Trustee and the Office of the United States Trustee for the Southern District of New York. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing. Under the circumstances, the notice given by the Debtors of the Motion and the Interim Hearing (i) was, in the Debtors' belief, the best available under the circumstances, (ii) constitutes due and sufficient notice thereof and (iii) complies with Bankruptcy Rules 4001(b) and (c). No further notice of the relief sought at the Interim Hearing is necessary or required.

3. *Debtors' Stipulations.* Without prejudice to the rights of any other party (but subject to the limitations thereon contained in paragraphs 18 and 19 below), the Debtors admit, stipulate and agree that:

(a) (i) as of the filing of the Debtors' chapter 11 petitions (the "**Petition Date**"), the Borrower was indebted and liable to the Pre-Petition First Lien Secured Lenders, without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately \$100,000,000 in respect of loans made, in the aggregate principal amount of approximately \$96,000,000 in respect of letters of credit issued, and in the maximum secured amount of approximately \$34,000,000 in respect of Existing Secured Agreements, in each case, by the Pre-Petition First Lien Secured Lenders pursuant to, and in accordance with the terms of, the First Lien Existing Agreements, plus, in each case, interest thereon and fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the First Lien Existing Agreements), charges and other obligations incurred in connection therewith as provided in the First Lien Existing Agreements (collectively, the "**Pre-Petition First Lien Debt**"), (ii) the Pre-Petition First Lien Debt constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (iii) no portion of the Pre-Petition First Lien Debt is subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (iv) the Debtors do not have any claims, counterclaims, causes of action, defenses or setoff rights, whether arising under the Bankruptcy Code or otherwise, against the Pre-Petition First Lien Secured Lenders,

the Pre-Petition First Lien Agent and their respective affiliates, agents, officers, directors, employees and attorneys; and

(b) the liens and security interests granted to the Pre-Petition First Lien Agent pursuant to and in connection with the First Lien Existing Agreements (including, without limitation, all security agreements, pledge agreements, mortgages, deeds of trust and other security documents executed by any of the Debtors in favor of the Pre-Petition First Lien Agent, for its benefit and for the benefit of the Pre-Petition First Lien Secured Lenders) in connection with the First Lien Existing Agreements, (i) are valid, binding, perfected, enforceable, first-priority liens and security interests in the personal and real property described in the First Lien Existing Agreements (the “**Pre-Petition First Lien Collateral**”), (ii) are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law, and (iii) are senior to the Pre-Petition Second Lien Notes Trustee’s liens;

(c) the aggregate value of the Pre-Petition First Lien Collateral substantially exceeds the aggregate amount of the Pre-Petition First Lien Debt; and

(d) a portion of the Debtors’ initial borrowings under the DIP Credit Agreement will be used to (i) refinance the Pre-Petition First Lien Debt (other than Continuing Pre-Petition First Lien Obligations) owing to the Pre-Petition First Lien Secured Lenders, and (ii) with respect to certain of the Continuing Pre-Petition First Lien Obligations, deposit cash collateral, issue back-to-back letters of credit or make other arrangements satisfactory to the holders or issuers of the Non-Assumed Pre-Petition First Lien Obligations, in each case in accordance with the terms and conditions set forth in this Interim Order, subject to the terms and conditions contained herein (including,

without limitation, the priming liens granted hereunder and the Carve Out), any and all pre-petition or post-petition liens and security interests (including, without limitation, any adequate protection replacement liens at any time granted to the Pre-Petition First Lien Secured Lenders by this Court) that the Pre-Petition First Lien Secured Lenders have or may have in the Pre-Petition First Lien Collateral or any other assets and properties of the Debtors and their estates shall (i) unless otherwise ordered by the Court, continue to secure the unpaid portion of any Pre-Petition First Lien Debt (including, without limitation, any Pre-Petition First Lien Debt subsequently reinstated after the repayment thereof because such payment (or any portion thereof) is required to be returned or repaid to the Debtors or the DIP Lenders and the liens securing the Pre-Petition First Lien Debt shall have not been avoided) and (ii) except with respect to any additional cash collateral posted or letters of credit provided, be junior and subordinate in all respects to the DIP Lenders' liens on and security interests in the Collateral (including, without limitation, the DIP Liens) granted under this Interim Order and the DIP Documents (such junior liens and security interests of the Pre-Petition First Lien Secured Lenders are hereinafter referred to as the "**Contingent Adequate Protection Liens**"), and any such reinstated Pre-Petition First Lien Debt described in clause (i) of this sentence is hereinafter referred to as the "**Contingent Pre-Petition First Lien Debt**").

4. *Findings Regarding the Financing.*

- (a) Good cause has been shown for the entry of this Interim Order.
- (b) The Debtors have an immediate need to obtain the Financing and use Cash Collateral in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers

and customers, to make payroll, to make capital expenditures, to repay the Pre-Petition First Lien Debt (other than Continuing Pre-Petition First Lien Obligations), to (i) deem the Assumed Pre-Petition First Lien Obligations to be issued pursuant to, and secured under, the DIP Credit Agreement or designated as “Obligations” under the DIP Credit Agreement and secured by the Collateral, as the case may be, (ii) deposit cash collateral, issue back-to-back letters of credit or make other arrangements satisfactory to the holders or issuers of the Non-Assumed Pre-Petition First Lien Obligations, and, subject to the terms and conditions contained herein, and (iii) satisfy other working capital and operational needs. The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, incurrence of new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

(c) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents, and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtors (i) granting to the DIP Agent and the DIP Lenders, subject to the Carve Out as provided for herein, the DIP Liens and the Superpriority Claims (each as defined below) under the terms and conditions set forth in this Interim Order and in the DIP Documents and (ii) repaying the Pre-Petition First Lien Debt in full (other than the Continuing Pre-Petition First Lien Obligations) upon entry of this Interim Order, such repayment being a requirement by the DIP Agent for the Financing.

(d) The terms of the Financing and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The Financing has been negotiated in good faith and at arm's length among the Debtors, the DIP Agent and the DIP Lenders, and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the Financing and the DIP Documents, including without limitation, (i) all loans made to, and all letters of credit issued for the account of, the Debtors pursuant to the Debtor-in-Possession Credit Agreement substantially in the form attached as Exhibit A to the Motion (the "**DIP Credit Agreement**"), and (ii) any "Obligations" (as defined in the DIP Credit Agreement) of the Debtors, including, but not limited to, credit extended in respect of overdrafts and related liabilities and other depository, treasury, and cash management services and other clearing services provided by CNAI, any DIP Lender or any of their respective affiliates and any hedging obligations of the Debtors permitted under the DIP Credit Agreement in each case owing to CNAI, any DIP Lender or any of their respective affiliates, in accordance with the terms of the DIP Documents (all of the foregoing in clauses (i) and (ii) collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Agent and the DIP Lenders and their affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Agent and the DIP Lenders (and the successors and assigns of each) shall be entitled to the full

protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and SDNY Local Rule 4001-2. Absent granting the relief set forth in this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the Financing and the use of Cash Collateral in accordance with this Interim Order and the DIP Documents are therefore in the best interests of the Debtors' estates.

5. *Authorization of the Financing, the DIP Documents and the Refinancing of the Pre-Petition First Lien Debt.*

(a) The Debtors are hereby authorized to enter into the DIP Documents. The Borrower is hereby authorized to borrow money and obtain letters of credit pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized to guaranty (i) such borrowings and the Borrower's obligations with respect to such letters of credit and (ii) the Canadian borrowings of Kodak Canada, up to an aggregate principal or face amount of \$650,000,000 (plus interest, fees and other expenses and amounts provided for in the DIP Documents), consisting of borrowings of up to an aggregate principal or face amount of \$400,000,000 under the Term Facility (as defined in the DIP Credit Agreement) and \$225,000,000 under the Revolving Credit Facility (as defined in the DIP Credit Agreement), with up to an additional \$25,000,000 under the Revolving Credit Facility to be made available for borrowing by Kodak Canada, in accordance with the terms of this Interim Order and the DIP Documents, which borrowings shall be used for all purposes permitted under the DIP Documents, including, without limitation, to

refinance the Pre-Petition First Lien Debt to the extent provided herein, to deposit cash collateral, issue back-to-back letters of credit or make other arrangements satisfactory to the holders or issuers of the Non-Assumed Pre-Petition First Lien Obligations, and, subject to the terms and conditions contained herein, to provide working capital for the Borrower and the Guarantors and to pay interest, fees and expenses in accordance with this Interim Order and the DIP Documents. In addition to such loans and obligations, the Debtors are authorized to incur overdrafts and related liabilities arising from treasury, depository and cash management services, including any automated clearing house fund transfers provided to or for the benefit of the Debtors by CNAI, any DIP Lender or any of their affiliates; *provided, however*, that nothing herein shall require CNAI or any other party to incur overdrafts or to provide any such services or functions to the Debtors. The Assumed Pre-Petition First Lien Obligations shall be deemed to be issued pursuant to, and secured under, the DIP Credit Agreement or designated as “Obligations” under the DIP Credit Agreement and secured by the Collateral, as the case may be.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees, that may be reasonably required or necessary for the Debtors’ performance of their obligations under the Financing, including, without limitation:

(i) the execution, delivery and performance of the Loan Documents (as defined in the DIP Credit Agreement) and any exhibits attached thereto, including, without limitation, the DIP Credit Agreement, the Security Agreements, the

Intercreditor Agreement (each as defined in the DIP Credit Agreement), all related documents and any mortgages contemplated thereby (collectively, and together with the letter agreements referred to in clause (iii) below, the “**DIP Documents**”);

(ii) the execution, delivery and performance of one or more amendments to or waivers of the requirements of the DIP Documents, including the DIP Credit Agreement for, among other things, the purpose of adding additional financial institutions as DIP Lenders, reallocating the commitments for the Financing among the DIP Lenders and the conversion of the Canadian Revolving Credit Facility (as defined in the DIP Credit Agreement) into commitments or loans under a facility that provides post-petition protections in the case of a bankruptcy filing or the commencement of a similar proceeding with respect to a Canadian Loan Party (as defined in the DIP Credit Agreement), in each case in such form as the Debtors, the DIP Agent and the DIP Lenders may agree (it being understood that no further approval of the Court shall be required for non-material amendments to the DIP Credit Agreement (and any fees paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder or increase the commitments, the rate of interest or the letter of credit fees payable thereunder and the Debtors shall provide notice of such non-material amendments to any official committee of unsecured creditors and to counsel to the ad hoc committee of Pre-Petition Second Lien Noteholders (the “**Second Lien Noteholder Committee**”). Notwithstanding any other provision hereof, without further approval of this Court, certain amendments to the DIP Documents may be made at any time on or prior to the 90th day after the Effective Date (as defined in the DIP Credit Agreement), if and to the extent the DIP Agent, Lead Arranger and/or any of their affiliates as may be

appropriate to consummate the transactions contemplated, after consultation with the Borrower, reasonably determines that such changes would be necessary in order to ensure a “Successful Syndication,” as contemplated by the separate letter agreements entered into in connection with the Financing;

(iii) the non-refundable payment to the DIP Agent, the Lead Arranger and/or the DIP Lenders, as the case may be, of the fees and any amounts due in respect of indemnification obligations referred to in the DIP Credit Agreement (and in the separate letter agreements between them in connection with the Financing) and reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained as provided for in the DIP Documents, without the need to file retention motions or fee applications (with copies of the invoices of such professionals being provided to the Creditors’ Committee and the United States Trustee); and

(iv) the performance of all other acts required under or in connection with the DIP Documents.

(c) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with the terms of the DIP Documents and this Interim Order. No obligation, payment, transfer or grant of security under the DIP Documents or this Interim Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff, recoupment or counterclaim; *provided, however*, that, in the event that there is a

timely successful challenge, pursuant and subject to the limitations contained in paragraph 18 hereof, to the validity, enforceability, extent, perfection or priority of the Pre-Petition First Lien Debt, the Court shall have the power to unwind or otherwise modify, after notice and hearing, the repayment of the Pre-Petition First Lien Debt or a portion thereof (which might include the disgorgement or re-allocation of interest, fees, principal or other incremental consideration paid in respect of the Pre-Petition First Lien Debt or the avoidance of liens and/or guarantees with respect to one or more of the Debtors), as the Court shall determine.

6. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed claims against the Debtors (without the need to file any proof of claim) with priority over any and all administrative expenses, diminution claims (including all Adequate Protection Obligations and Junior Adequate Protection Obligations (as defined below)) and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject only to and effective upon entry of the Final Interim Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors and all proceeds thereof, subject only to the payment of the Carve Out to the extent specifically provided

for herein (collectively, the “**Superpriority Claims**”). The Superpriority Claims in respect of the DIP Obligations shall rank *pari passu* with each other; *provided however* that the DIP Liens securing the obligations under the Revolving Credit Facility and under the Secured Agreements (hereinafter as defined in the DIP Credit Agreement) shall have priority with respect to the Revolving Credit Facility Collateral over the DIP Liens securing the obligations under the Term Facility and the DIP Liens securing the obligations under the Term Facility shall have priority with respect to the Term Facility Collateral over the DIP Liens securing the obligations under the Revolving Credit Facility and under the Secured Agreements, as more fully described in the DIP Documents.

(b) For purposes hereof, the “**Carve Out**” means (i) all fees and interest required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to section 1930(a) of title 28 of the United States Code and section 3717 of title 31 of the United States Code, (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an amount not exceeding \$100,000 and (iii) any and all allowed and unpaid claims of any professional of the Debtors or the statutory committee of unsecured creditors appointed in these Cases (the “**Creditors’ Committee**”) whose retention is approved by the Bankruptcy Court during the Cases pursuant to sections 327 and 1103 of the Bankruptcy Code for unpaid fees and expenses (and the reimbursement of out-of-pocket expenses allowed by the Bankruptcy Court incurred by any members of the Creditors’ Committee (but excluding fees and expenses of third party professionals employed by such Creditors’ Committee members)) incurred, subject to the terms of this Interim Order and

the Final Order, (A) prior to the occurrence of an Event of Default (as defined in the DIP Credit Agreement) and (B) at any time after the occurrence and during the continuance of an Event of Default in an aggregate amount not exceeding \$10,000,000, *provided* that (x) the dollar limitation in this clause (iii) on fees and expenses shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the occurrence of an Event of Default in respect of which the Carve Out is invoked or by any fees, expenses, indemnities or other amounts paid to the DIP Agent or any DIP Lender or any of the foregoing's respective attorneys, advisors and agents, (y) nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (A) and (B) above and (z) cash or other amounts on deposit in the L/C Cash Deposit Account (as defined in the DIP Credit Agreement) shall not be subject to the Carve Out.

7. *DIP Liens.*

As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent of, or over, any Collateral, the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders and the other Secured Parties (as defined in the DIP Credit Agreement) (all property identified in clauses (a), (b) and (c) below being collectively referred to as the "**Collateral**"),² subject,

² Notwithstanding anything contained herein to the contrary, the Borrower and the Guarantors shall not be required to pledge to the DIP Agent in excess of 65% of the voting capital stock of its direct

only in the event of the occurrence and during the continuance of an Event of Default, to the payment of the Carve Out (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders and the other Secured Parties, pursuant to this Interim Order and the DIP Documents, the “**DIP Liens**”):

(a) First Lien on Cash Balances and Unencumbered Property.

Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all pre- and post-petition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date (or as a result of the refinancing of the Pre-Petition First Lien Debt) is not subject to valid, perfected and non-avoidable liens (collectively, “**Unencumbered Property**”), including without limitation, all cash and cash collateral of the Debtors (whether maintained with the DIP Agent or otherwise) and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including, without limitation, post-petition intercompany claims against the Debtors), contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, and the proceeds, product, offspring or profits of all the foregoing. Unencumbered Property shall exclude the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, “**Avoidance**

foreign subsidiaries or any of the capital stock or interests of indirect foreign subsidiaries (if, in the good faith judgment of the Borrower, adverse tax consequences would result to the Borrower).

Actions”), but subject only to and effective upon entry of the Final Order, shall include any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement or otherwise (“**Avoidance Proceeds**”).

(b) Liens Priming Pre-Petition Secured Creditors’ Liens. Subject to the refinancing of the Pre-Petition First Lien Debt and the treatment of Continuing Pre-Petition First Lien Obligations pursuant to Paragraph 12, pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and post-petition property of the Debtors (including, without limitation, cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries and the proceeds, product, offspring or profits of all the foregoing), whether now existing or hereafter acquired, that is subject to the existing liens presently held by any of the Pre-Petition Secured Creditors (including in respect of issued but undrawn letters of credit). Such security interests and liens shall be senior in all respects to the interests in such property of any of the Pre-Petition Secured Creditors arising from current and future liens of any of the Pre-Petition Secured Creditors (including, without limitation, adequate protection liens granted hereunder), but shall not be senior to any valid, perfected and unavoidable interests of other parties arising out of liens, if any, on such property existing immediately prior to the Petition Date, or to any valid, perfected and unavoidable interests in such property arising out of

liens to which the liens of any of the Pre-Petition Secured Creditors become subject subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all pre- and post-petition property of the Debtors (other than the property described in clauses (a) or (b) of this paragraph 7, as to which the liens and security interests in favor of the DIP Agent will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date, or to any valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (in each case, other than the Adequate Protection Liens and the Junior Adequate Protection Liens), which security interests and liens in favor of the DIP Agent are junior to such valid, perfected and unavoidable liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens, the Adequate Protection Liens and the Junior Adequate Protection Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors.

Notwithstanding anything to the contrary in the Motion, the DIP Documents or this Interim Order, for purposes of this Interim Order, in no event shall the Collateral include or the DIP Liens granted under this Interim Order attach to any lease, license, contract, or agreement or other property right (including any United States of America intent-to-use trademark or service mark application), to which any Debtor is a party or of any of such party's rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in: (x) the abandonment, invalidation, unenforceability or other impairment of any right, title or interest of any Debtor therein, or (y) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, agreement or other property right pursuant to any provision thereof, unless, in the case of each of clause (x) and (y), the applicable provision is rendered ineffective by the applicable law as determined by final order of this Court, upon due notice under the Bankruptcy Rules to the counter-party to such lease, license, contract, agreement or property right and upon a hearing (provided however that in all events the DIP Liens shall attach to all proceeds from all sales, transfers, dispositions or monetizations of any of the foregoing). Additionally, for the avoidance of doubt, the Collateral shall not include any assets that are not, or are subsequently determined not to have been, property of the estate at the time the security interest therein created by this Interim Order or the DIP Documents attached or purported to attach thereto.

8. *Protection of DIP Lenders' Rights.*

(a) So long as there are any borrowings or letters of credit or other amounts (other than contingent indemnity obligations as to which no claim has been asserted when all other amounts have been indefeasibly paid in full and no letters of

credit are outstanding) outstanding, or the DIP Lenders have any Commitment (as defined in the DIP Credit Agreement) under the DIP Credit Agreement, the Pre-Petition First Lien Agent, the Pre-Petition First Lien Secured Lenders, the Pre-Petition Second Lien Notes Trustee and the Pre-Petition Second Lien Noteholders shall (i) have no right to and take no action to foreclose upon or recover in connection with the liens granted thereto pursuant to the Existing Documents, the Existing Intercreditor Agreement or this Interim Order, or otherwise seek to exercise or exercise any enforcement rights or remedies against any Collateral or in connection with the Contingent Pre-Petition First Lien Debt, the Adequate Protection Liens or the Junior Adequate Protection Liens, (ii) be deemed to have consented to any release of Collateral authorized under the DIP Documents, (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the Collateral unless, solely as to this clause (iii), the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Interim Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date and (iv) deliver or cause to be delivered, at the Debtors' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of the Collateral subject to any sale or disposition. After repayment in full of the Pre-Petition First Lien Debt (other than the Continuing Pre-Petition First Lien Obligations) and the deemed issuance of certain letters of credit under the DIP Credit Agreement and the cash collateralization or making of other arrangements

satisfactory to the holders thereof with respect to the obligations under certain Existing Secured Agreements (including, with respect to any DIP Lender, having such obligations secured by the Collateral), the Debtors are authorized to file any termination statements, releases or other documents necessary to effectuate and/or evidence the release and termination of the Pre-Petition First Lien Agent's liens on or security interests in any portion of the Pre-Petition First Lien Collateral.

(b) The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise, (i) upon the occurrence of an Event of Default and the giving of seven days' prior written notice (which shall run concurrently with any notice provided under the DIP Documents) to the Debtors (with a copy to each committee appointed under section 1102 of the Bankruptcy Code, the United States Trustee and counsel for the Second Lien Noteholder Committee), all rights and remedies under the DIP Documents. In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and the Debtors and the Pre-Petition First Lien Secured Lenders hereby waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights and remedies of the DIP Agent or the DIP Lenders set forth in this Interim Order or the DIP Documents. Subject to entry of the Final Order, in no event shall the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent, the Pre-Petition First Lien Secured Lenders, the Pre-Petition Second Lien Notes

Trustee or the Pre-Petition Second Lien Noteholders be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

(c) No rights, protections or remedies of the DIP Agent or the DIP Lenders granted by the provisions of this Interim Order or the DIP Documents shall be limited, modified or impaired in any way by (i) any actual or purported withdrawal of the consent of any party to the Debtors’ authority to use Cash Collateral, (ii) any actual or purported termination of the Debtors’ authority to use Cash Collateral or (iii) the terms of this Interim Order or any other order or stipulation related to the Debtors’ use of Cash Collateral or the provision of adequate protection to any party.

9. *Limitation on Charging Expenses Against Collateral.* Subject only to and effective upon entry of the Final Order, except to the extent of the Carve Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent or the Pre-Petition First Lien Agent, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent or the Pre-Petition First Lien Secured Lenders.

10. *The Cash Collateral.* The Pre-Petition Collateral includes cash collateral within the meaning of section 363(a) of the Bankruptcy Code. To the extent that any funds were on deposit with any Pre-Petition First Lien Secured Lender as of the Petition Date, including, without limitation, all funds deposited in, or credited to, an account of

any Debtor with any Pre-Petition First Lien Secured Lender immediately prior to the filing of the Debtors' bankruptcy petitions (the "**Petition Time**") (regardless of whether, as of the Petition Time, such funds had been collected or made available for withdrawal by any such Debtor), then such funds (the "**Deposited Funds**") appear to be subject to rights of setoff. By virtue of such setoff rights, the Deposited Funds are subject to a lien in favor of such Pre-Petition First Lien Secured Lender pursuant to sections 506(a) and 553 of the Bankruptcy Code. The Pre-Petition First Lien Secured Lenders are obligated, to the extent provided in the applicable First Lien Existing Agreements, to share the benefit of such liens and setoff rights with the other Pre-Petition First Lien Secured Lenders pursuant to and in accordance with to the relevant First Lien Existing Agreements. Any proceeds of the Pre-Petition Collateral (including the Deposited Funds or any other funds on deposit at the Pre-Petition First Lien Secured Lenders or at any other institution as of the Petition Date) are cash collateral of the Pre-Petition Secured Creditors within the meaning of section 363(a) of the Bankruptcy Code. The Deposited Funds, together with such other cash collateral of any of the Pre-Petition Secured Creditors within the meaning of section 363(a) of the Bankruptcy Code (including, without limitation, all proceeds of Pre-Petition First Lien Collateral) are collectively referred to herein as "**Cash Collateral.**"

11. *Use of Cash Collateral.* The Debtors are hereby authorized, subject to the terms and conditions of the DIP Documents and this Interim Order, to use all Cash Collateral of any of the Pre-Petition Secured Creditors and each of the Pre-Petition Secured Creditors are directed promptly to turn over to the Debtors all Cash Collateral

received or held by them; *provided* that the applicable Pre-Petition Secured Creditors are granted adequate protection as hereinafter set forth.

12. *Refinancing of the Pre-Petition First Lien Debt.* Following the entry of this Interim Order and as part of the initial borrowing under the Financing, the Debtors shall use a portion of the proceeds from the Financing in accordance with the DIP Documents and this Interim Order to (a) refinance in full (other than the Continuing Pre-Petition First Lien Obligations) the Pre-Petition First Lien Debt then outstanding, upon which repayment, the existing liens on the Pre-Petition First Lien Collateral shall be released and terminated, and (b) deposit cash collateral, issue back-to-back letters of credit or make other arrangements satisfactory to the holders or issuers of the Non-Assumed Pre-Petition First Lien Obligations, in each case in accordance with the terms and conditions set forth in this Interim Order. The Assumed Pre-Petition First Lien Obligations shall be deemed to be issued pursuant to, and secured under, the DIP Credit Agreement or designated as “Obligations” under the DIP Credit Agreement and secured by the Collateral, as the case may be.

13. *Adequate Protection of Pre-Petition First Lien Secured Lenders.* Until the infeasible, as applicable (i) repayment of the Pre-Petition First Lien Debt or (ii) satisfaction, termination or expiration of all Non-Assumed Pre-Petition First Lien Obligations, and the conclusion of the Challenge Period, the Pre-Petition First Lien Secured Lenders are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in the Pre-Petition First Lien Collateral, including the Cash Collateral, for and equal in amount to any diminution in the value of the Pre-Petition First Lien Secured Lenders’ interest in the Pre-Petition First

Lien Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and any other Pre-Petition First Lien Collateral, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Pre-Petition First Lien Agent and the Pre-Petition First Lien Secured Lenders are hereby granted the following (collectively, the “**Adequate Protection Obligations**”):

(a) Adequate Protection Liens. The Pre-Petition First Lien Agent (for itself and for the benefit of the Pre-Petition First Lien Secured Lenders) is hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of such diminution, (1) a replacement security interest in and lien upon all the Collateral, subject and subordinate only to (i) the security interests and liens granted to the DIP Agent for the benefit of the DIP Lenders in this Interim Order and pursuant to the DIP Documents and any liens on the Collateral to which such liens so granted to the DIP Agent are junior and (ii) the Carve Out (such liens securing the Adequate Protection Obligations, together with the Contingent Adequate Protection Liens, the “**Adequate Protection Liens**”) and (2) the Contingent Adequate Protection Liens to secure any Contingent Pre-Petition First Lien Debt, any Non-Assumed Pre-Petition First Lien Obligation and any interest, fees and expenses to which the Pre-Petition First Lien Agent, the Pre-Petition First Lien Secured Lenders or the Issuing Banks shall be due pursuant to subparagraph (c).

(b) Section 507(b) Claim. The Pre-Petition First Lien Agent and the Pre-Petition First Lien Secured Lenders are hereby granted, subject to the Carve Out, a

superpriority claim, including on account of any indemnity claims under the First Lien Existing Agreements, as provided for in section 507(b) of the Bankruptcy Code (a “**507(b) Claim**”), immediately junior to the claims under section 364(c)(1) of the Bankruptcy Code held by the DIP Agent and the DIP Lenders; *provided, however*, that the Pre-Petition First Lien Agent and the Pre-Petition First Lien Secured Lenders shall not receive or retain any payments, property or other amounts in respect of the superpriority claims under section 507(b) of the Bankruptcy Code granted hereunder or under the First Lien Existing Agreements unless and until the DIP Obligations have indefeasibly been paid in cash in full.

(c) Interest, Fees and Expenses. The Pre-Petition First Lien Agent shall receive from the Debtors (i) immediate cash payment of all accrued and unpaid interest on the Pre-Petition First Lien Debt and letter of credit fees at the default rates provided for in the First Lien Existing Agreements, and all other accrued and unpaid fees and disbursements (including, but not limited to, fees owed to the Pre-Petition First Lien Agent) owing to the Pre-Petition First Lien Agent under the First Lien Existing Agreements and incurred prior to the Petition Date, (ii) current cash payments of all fees and expenses payable to the Pre-Petition First Lien Agent under the First Lien Existing Agreements, including, but not limited to, the reasonable fees and disbursements of counsel promptly upon receipt of invoices therefor and (iii) in accordance with the terms of the First Lien Existing Agreements, all accrued but unpaid interest and fees on any outstanding Pre-Petition First Lien Debt and letters of credit and other fees at the non-default contract rate applicable on the Petition Date (including LIBOR pricing options available in accordance with the First Lien Existing Agreements) under the First Lien

Existing Agreements; *provided* that the Issuing Banks shall be entitled to the “Letter of Credit Fees” as set forth in Section 2.04(b)(i) of the Pre-Petition First Lien Credit Agreement at the Applicable Margin for Eurodollar Rate Advances plus Default Interest (each term as defined the Pre-Petition First Lien Credit Agreement); *provided further* that, without prejudice to the rights of any other party to contest such assertion, the Pre-Petition First Lien Secured Lenders reserve their rights to assert claims for the payment of additional interest calculated at any other applicable rate of interest (including, without limitation, default rates), or on any other basis, provided for in the First Lien Existing Agreements, and for the payment of any other amounts provided for in the First Lien Existing Agreements.

14. *Adequate Protection of the Pre-Petition Second Lien Noteholders.* The Pre-Petition Second Lien Noteholders are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, but subject to the limitations set forth in the Existing Intercreditor Agreement, to adequate protection of their interest in the collateral securing the Debtors obligations pursuant to the Pre-Petition Second Lien Indentures (such collateral, the “**Pre-Petition Second Lien Collateral**,” (together with the Pre-Petition First Lien Collateral, the “**Pre-Petition Collateral**”) and such obligations the “**Pre-Petition Second Lien Obligations**”), including any Cash Collateral, for and equal in amount to any diminution in the value of the Pre-Petition Second Lien Noteholders’ interest in the Pre-Petition Second Lien Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of any Cash Collateral and any other Pre-Petition Second Lien Collateral, the priming of the Pre-Petition Second Lien Notes Trustee’s security interests and liens in the Pre-

Petition Second Lien Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and this Interim Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Pre-Petition Second Lien Notes Trustee and the Pre-Petition Second Lien Noteholders are hereby granted the following (collectively, the “**Junior Adequate Protection Obligations**”):

(a) Junior Adequate Protection Liens. The Pre-Petition Second Lien Notes Trustee (for itself and for the benefit of the Pre-Petition Second Lien Noteholders) is hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of such diminution, a replacement security interest in and lien upon all the Collateral, subject and subordinate only to (i) the security interests and liens granted to the DIP Agent for the benefit of the DIP Lenders in this Interim Order and pursuant to the DIP Documents and any liens on the Collateral to which such liens so granted to the DIP Agent are junior, (ii) the interests and liens granted to the Pre-Petition First Lien Agent for the benefit of the Pre-Petition First Lien Secured Lenders pursuant to the First Lien Existing Agreements and this Interim Order, and (iii) the Carve Out (such liens securing the Junior Adequate Protection Obligations, together with the Contingent Adequate Protection Liens, the “**Junior Adequate Protection Liens**”).

(b) Section 507(b) Claim. The Pre-Petition Second Lien Notes Trustee and the Pre-Petition Second Lien Noteholders are hereby granted, subject to the Carve Out, a Section 507(b) Claim, immediately junior to the claims under

section 364(c)(1) of the Bankruptcy Code held by the DIP Agent and the DIP Lenders and the claims of the Pre-Petition First Lien Agent and the Pre-Petition First Lien Secured Lenders; *provided, however*, that the Pre-Petition Second Lien Notes Trustee and the Pre-Petition Second Lien Noteholders shall not receive or retain any payments, property or other amounts in respect of the superpriority claims under section 507(b) of the Bankruptcy Code granted hereunder or under the First Lien Existing Agreements unless and until the DIP Obligations and the Pre-Petition First Lien Obligations (as defined below) have indefeasibly been paid in cash in full.

15. *Sufficiency of Adequate Protection.* Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that for purposes of this Interim Order the adequate protection provided herein is reasonable and sufficient to protect the interests of the Pre-Petition First Lien Secured Lenders and Pre-Petition Second Lien Noteholders. Except as expressly provided herein, nothing contained in this Interim Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to the Pre-Petition First Lien Agent, any Pre-Petition First Lien Secured Lender, the DIP Agent or any DIP Lender including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion).

16. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) Subject to the provisions of paragraph 8(a) above, the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent and the Pre-Petition First Lien Secured Lenders are hereby authorized, but not required, to file or record financing statements, patent filings, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over assets, or take any other action, in each case, in order to validate and perfect the liens and security interests granted to it hereunder. Whether or not the DIP Agent on behalf of the DIP Lenders or the Pre-Petition First Lien Agent on behalf of the Pre-Petition First Lien Secured Lenders, shall, in their sole discretion, choose to file such financing statements, patent filings, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to it hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of this Interim Order. Upon the request of the DIP Agent, each of the Pre-Petition First Lien Agent, the Pre-Petition First Lien Secured Lenders, the Pre-Petition Second Lien Notes Trustee and the Pre-Petition Second Lien Noteholders, without any further consent of any party, are authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve and enforce the DIP Liens.

(b) A certified copy of this Interim Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all

filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording.

17. *Preservation of Rights Granted Under This Interim Order.*

(a) No claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Agent and the DIP Lenders, to the Pre-Petition First Lien Agent and the Pre-Petition First Lien Secured Lenders, or to the Pre-Petition Second Lien Notes Trustee and the Pre-Petition Second Lien Noteholders, respectively, shall be granted or allowed while any portion of the Pre-Petition First Lien Debt, the Pre-Petition Second Lien Obligations, the Financing (or any refinancing thereof) or the Commitments thereunder or the DIP Obligations, the Adequate Protection Obligations or the Junior Adequate Protection Obligations remain outstanding, and the DIP Liens, the Adequate Protection Liens and the Junior Adequate Protection Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise, as to each, other than the Carve Out.

(b) Unless all DIP Obligations shall have been indefeasibly paid in full (and, with respect to outstanding letters of credit issued pursuant to the DIP Credit Agreement and any Secured Agreements, cash collateralized or otherwise provided for to the satisfaction of the holders of such obligations) and the Pre-Petition First Lien Debt and the Adequate Protection Obligations due to Pre-Petition First Lien Secured Lenders shall have been paid in full, the Debtors shall not seek, and it shall constitute an Event of Default and terminate the right of the Debtors to use Cash Collateral if any of the Debtors

seek, or if there is entered, (i) any modifications or extensions of this Interim Order without the prior written consent of the DIP Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Agent, (ii) an order converting or dismissing any of the Cases; (iii) an order appointing a chapter 11 trustee in any of the Cases; or (iv) an order appointing an examiner with enlarged powers in any of the Cases. If an order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (i) the Superpriority Claims, priming liens, security interests and replacement security interests granted to the DIP Agent and the DIP Lenders and, as applicable, the Pre-Petition First Lien Agent, the Pre-Petition First Lien Secured Lenders, the Pre-Petition Second Lien Notes Trustee and the Pre-Petition Second Lien Noteholders pursuant to this Interim Order shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations, the Adequate Protection Obligations and the Junior Adequate Protection Obligations shall have been paid and satisfied in full (and that such Superpriority Claims, priming liens and replacement security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (i) above.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity of any DIP Obligations, the Pre-Petition First Lien Obligations, the Pre-Petition Second Lien Obligations, the Adequate Protection Obligations or the

Junior Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent, the Pre-Petition First Lien Agent or the Pre-Petition Second Lien Notes Trustee as applicable, of the effective date of such reversal, modification, vacation or stay or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Credit Agreement with respect to any DIP Obligations, Pre-Petition First Lien Debt, Pre-Petition Second Lien Obligations, the Adequate Protection Obligations and the Junior Adequate Protection Obligations. Notwithstanding any such reversal, modification, vacation or stay or any use of Cash Collateral, or DIP Obligations, Adequate Protection Obligations or Junior Adequate Protection Obligations incurred by the Debtors to the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent, the Pre-Petition First Lien Secured Lenders, the Pre-Petition Second Lien Notes Trustee or the Pre-Petition Second Lien Noteholders, prior to the actual receipt of written notice by the DIP Agent and the Pre-Petition First Lien Agent, as applicable, of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent and the Pre-Petition First Lien Secured Lenders shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code (including, without limitation, in respect of any payments received in connection with the refinancing of the Pre-Petition First Lien Debt), this Interim Order and pursuant to the DIP Documents with respect to all uses of Cash Collateral and proceeds of the Financing, DIP Obligations and Adequate Protection Obligations.

(d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, all other rights and remedies of the DIP Agent and the DIP Lenders, and the Adequate Protection Liens granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission, (ii) the entry of an order approving the sale of any Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the Loan Documents (as defined in the DIP Credit Agreement)) or (iii) the entry of an order confirming a plan of reorganization in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims, all other rights and remedies of the DIP Agent and the DIP Lenders, and the Adequate Protection Liens granted by the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full.

18. *Effect of Stipulations on Third Parties.* The stipulations and admissions contained in this Interim Order, including, without limitation, in paragraph 3 of this Interim Order, shall be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) in all circumstances. The stipulations and admissions contained in this Interim

Order, including, without limitation, in paragraph 3 of this Interim Order, shall be binding upon all other parties in interest, including, without limitation, any statutory or nonstatutory committees appointed or formed in these Cases (including the Creditors' Committee), and any other person or entity acting on behalf of the Debtors' estates, unless (a) a party in interest has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in paragraph 19) by the earlier of (i) the date that is 60 days after entry of the Final Order and (ii) if such a challenge or claim is brought, the date of a final judgment on such challenge or claim or, in each case, such later date (x) as has been agreed to, in writing, by the Pre-Petition First Lien Agent in its sole discretion or (y) as has been ordered by the Court (the "**Challenge Period**"), (i) challenging the validity, enforceability, priority or extent of the Pre-Petition First Lien Debt or the Pre-Petition First Lien Agent's or the Pre-Petition First Lien Secured Lenders' liens on the Pre-Petition First Lien Collateral or (ii) otherwise asserting or prosecuting any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, "**Claims and Defenses**") against the Pre-Petition First Lien Agent or any of the Pre-Petition First Lien Secured Lenders or their affiliates, representatives, attorneys or advisors in connection with matters related to the First Lien Existing Agreements, the Pre-Petition First Lien Debt, the Pre-Petition First Lien Collateral, and (b) there is a final order in favor of the plaintiff sustaining any such challenge or claim in any such timely filed adversary proceeding or contested matter; *provided* that, (i) as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date and (ii) any challenge or claim shall set forth with

specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be forever deemed waived, released and barred. If no such adversary proceeding or contested matter is timely filed, (w) to the extent not heretofore repaid, the Pre-Petition First Lien Debt and all related obligations of the Debtors (the “**Pre-Petition First Lien Obligations**”) shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, subordination, recharacterization, defense or avoidance, for all purposes in the Cases and any subsequent chapter 7 cases, (x) the Pre-Petition First Lien Agent’s liens and the Pre-Petition First Lien Secured Lenders’ liens on the Pre-Petition First Lien Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected, not subject to recharacterization, subordination or avoidance, (y) the Pre-Petition First Lien Obligations, the Pre-Petition First Lien Agent’s and the Pre-Petition First Lien Secured Lenders’ liens on the Pre-Petition First Lien Collateral and the Pre-Petition First Lien Agent and the Pre-Petition First Lien Secured Lenders shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors’ estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 or 11 trustee appointed or elected for any of the Debtors) and (z) the repayment of the Pre-Petition First Lien Debt shall be irrevocable and shall not be subject to restitution, disgorgement or any other challenge under any circumstances, including, without limitation, pursuant to any Claims and Defenses (as defined below). If any such adversary proceeding or contested matter is timely filed, the stipulations and admissions contained in paragraph 3 of this Interim Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any statutory or

nonstatutory committees appointed or formed in these Cases (including the Creditors' Committee) and on any other person or entity, except to the extent that such findings and admissions were expressly challenged in such adversary proceeding or contested matter. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including any statutory or nonstatutory committees appointed or formed in these Cases (including the Creditors' Committee), standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, Claims and Defenses with respect to the First Lien Existing Agreements or the Pre-Petition First Lien Obligations.

19. *Limitation on Use of Financing Proceeds and Collateral.*

Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings, letters of credit, Cash Collateral, Collateral or the Carve Out may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the First Lien Existing Agreements, or the liens or claims granted under this Interim Order, the DIP Documents or the First Lien Existing Agreements, (b) investigate, assert any Claims and Defenses or causes of action against the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent, the Pre-Petition First Lien Secured Lenders, or their respective agents, affiliates, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Agent's assertion, enforcement or realization on the Cash Collateral or the Collateral in accordance with the DIP Documents or this Interim Order, (d) seek to modify any of the rights granted to the DIP Agent or the DIP Lenders hereunder or under the DIP Documents, in each of the foregoing cases without such applicable parties' prior written

consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an order of this Court and (ii) in accordance with the DIP Credit Agreement and the “Budget” (as referred to in the DIP Credit Agreement) as approved by the DIP Agent in its sole discretion. Notwithstanding the foregoing, any party may investigate claims and issues with respect to the Existing Documents and, subject to any applicable law with respect to standing, commence and prosecute any related proceedings as a representative of the Debtors’ estates; *provided* that, in the case of the Creditors’ Committee at an aggregate expense for such investigation and prosecution that shall not exceed \$60,000.

20. *Priorities Among Pre-Petition Secured Creditors.* Notwithstanding anything to the contrary herein or in any other order of this Court, in determining the relative priorities and rights of the Pre-Petition Secured Creditors (including, without limitation, the relative priorities and rights of the Pre-Petition Secured Creditors with respect to the Adequate Protection Obligations granted hereunder), such priorities and rights shall continue to be governed by the Existing Documents, including, without limitation, the Existing Intercreditor Agreement.

21. *Duties of the Pre-Petition First Lien Co-Collateral Agents.* Following the repayment in full of all Pre-Petition First Lien Obligations (other than with respect the Continuing Pre-Petition First Lien Obligations to be backstopped or otherwise provided for as more fully described in this Interim Order or the DIP Documents), each Pre-Petition First Lien Co-Collateral Agent, as applicable, shall promptly turn over and distribute any proceeds recovered or received or any other payments or receipts obtained on account of the Pre-Petition First Lien Collateral, first, to the DIP Agent for the benefit

of the DIP Lenders in accordance with the DIP Credit Agreement, and second, subsequent to indefeasible payment in full of all DIP Obligations and all Pre-Petition First Lien Obligations, for the benefit of the Pre-Petition Second Lien Noteholders under the Second Lien Existing Agreements.

22. *Authority to Enter Into Derivatives Contracts with DIP Lenders or their Affiliates.* Pursuant to sections 105, 363 and 364 of the Bankruptcy Code, the Debtors are authorized, but not directed, to (i) continue performance under existing Derivative Contracts³ with any DIP Lender and to enter into, perform under (including providing, posting or returning any collateral or credit support), roll over, adjust, modify, settle, terminate, and engage in similar transactions, with respect to pre-petition or post-petition Derivative Contracts and (ii) the Debtors are authorized, but not directed, to perform or satisfy any prepetition obligations under or with respect to Derivative Contracts with any DIP Lender, including paying any amounts owed thereunder or with respect thereto or returning any collateral or credit support, in each case, without further order of the Court.

23. *Interim Order Governs.* In the event of any inconsistency between the provisions of this Interim Order and the DIP Documents, the provisions of this Interim Order shall govern.

24. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Agent, the DIP

³ “Derivative Contracts” shall include, among other things, forward contracts, futures contracts, interest rate locks, swap contracts, options contracts, or combinations of the foregoing, and all similar transactions.

Lenders, the Pre-Petition First Lien Agent, the Pre-Petition First Lien Secured Lenders, the Pre-Petition Second Lien Notes Trustee, the Pre-Petition Second Lien Noteholders, any statutory or nonstatutory committees appointed or formed in these Cases (including the Creditors' Committee), and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent, the Pre-Petition First Lien Secured Lenders, the Pre-Petition Second Lien Notes Trustee, the Pre-Petition Second Lien Noteholders and the Debtors and their respective successors and assigns; *provided, however*, that the DIP Agent and the DIP Lenders shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan under the DIP Credit Agreement or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Agent and the DIP Lenders do not appear to be in control of the operations of or participating in the management of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

25. *Final Hearing.* The Final Hearing is scheduled for February 15, 2012 at 11:00 a.m., prevailing Eastern time, before this Court.

26. *Notice.* The Debtors shall promptly mail copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including without limitation,

notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under section 506(c) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court and to any statutory committee after the same has been appointed (including the Creditors' Committee), or such statutory committee's counsel, if the same shall have been appointed, and counsel to the Second Lien Noteholder Committee. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections, which objections shall be served upon (a) Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004 (Attention: Andrew G. Dietderich (dietdericha@sullcrom.com) and Michael H. Torkin (torkinm@sullcrom.com), attorneys for the Debtors, (b) Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York 10022 (Attention: Fredric Sosnick (fsosnick@shearman.com) and Susan A. Fennessey (sfennessey@shearman.com)), attorneys for Bank of America, N.A. as Pre-Petition First Lien Agent, (c) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attention: Marshall S. Huebner, Esq. (marshall.huebner@davispolk.com) and Brian S. Resnick, Esq. (brian.resnick@davispolk.com)), attorneys for CNAI, as DIP Agent, (d) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036 (Attention: Michael S. Stamer (mstamer@akingump.com), David H. Botter (dbotter@akingump.com) and Abid Qureshi (aqureshi@akingump.com)), attorneys for the Second Lien Noteholder Committee, and (e) the Office of the United States Trustee for the Southern District of New York, and shall be filed with the Clerk of the United States Bankruptcy Court, Southern District of New York, in each case to allow actual

receipt by the foregoing no later than February 8, 2012 at 4:00 p.m., prevailing Eastern time. The Debtors shall file a proposed Final Order on or prior to February 3, 2012, without prejudice to their right to file a revised proposed Final Order prior to the Final Hearing or to request further amendments to the proposed Final Order at the Final Hearing.

Dated: New York, New York
January 20, 2012

/s/Allan L. Gropper
UNITED STATES BANKRUPTCY JUDGE