

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

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In re:	:
	:
CHIYODA AMERICA INC.,	: Case No. 09-15059 (AJG)
	: Chapter 11 Case
Debtor.	:
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**INTERIM ORDER PURSUANT TO BANKRUPTCY CODE  
SECTIONS 105, 361, 362, 363 AND 364 (I) AUTHORIZING SECURED  
POST-PETITION FINANCING ON A SUPERPRIORITY BASIS; (II) APPROVING  
AGREEMENTS RELATED TO THE FOREGOING; (III) MODIFYING  
AUTOMATIC STAY; (IV) GRANTING RELATED RELIEF;  
AND (V) SCHEDULING A FINAL HEARING**

Upon the motion (the "Motion") dated August 19, 2009 of Chiyoda America Inc., as borrower (the "DIP Borrower"), debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case (the "Case"), pursuant to sections 105, 361, 362, 364(c)(1), 364(c)(2), 362(c)(3) and 364(d) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the "Bankruptcy Code") and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the Southern District of New York, seeking entry of an interim order (the "Interim Order"), *inter alia*:

- (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 Debtor In Possession Loan Agreement (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "DIP Loan Agreement") by and among the DIP Borrower and the DIP Lender (as defined herein), substantially in the form of Exhibit A annexed to the Motion;

(ii) authorizing the Debtor to perform under the DIP Loan Agreement and the other related loan documents (collectively with the DIP Loan Agreement, the “DIP Facility Documents”), and to perform such other acts as may be necessary or desirable in connection with the DIP Facility Documents;

(iii) granting the DIP Facility and all obligations owing thereunder and under the DIP Facility Documents to the DIP Lender (collectively, and including all “Obligations” as described in the DIP Loan Agreement, the “DIP Obligations”) allowed superpriority administrative expense claims in the Case and any Successor Case (as defined herein), which superpriority claims shall (a) be subject only to the Carve-Out Expenses (as defined herein) and Specified Permitted Liens (as defined herein) and (b) otherwise be accorded superpriority status in the Case and any Successor Case having priority over any and all other administrative expenses in the Case or any Successor Case;

(iv) granting to the DIP Lender automatically 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, senior in priority to the Prepetition Liens (as defined herein) and all other security interests and liens, except that the DIP Lender’s security interests and liens shall be junior to the Carve-Out Expenses and Specified Permitted Liens (each as defined herein);

(v) authorizing and directing the Debtor to pay the principal, interest, fees, expenses and other amounts payable under the DIP Facility Documents as such become due, including, without limitation, reasonable fees and disbursements of the DIP Lender’s attorneys, advisers, accountants, and other consultants, all to the extent provided in and in accordance with the DIP Loan Agreement and other DIP Facility Documents;

(vi) providing adequate protection for any diminution in value of the Prepetition Collateral (as defined herein) in favor of the Prepetition Lender to the extent of the outstanding prepetition indebtedness owed to the Prepetition Lender; and

(vii) 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 Facility Documents and this Interim Order.

The Court having considered the Motion, the Declaration of Hiroshi Mizumoto in Pursuant to Local Bankruptcy Rule 1007-2, the DIP Facility and the DIP Facility Documents, the evidence submitted or proffered at the interim hearing on the Motion held on August 25, 2009 (the “Interim Hearing”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), and 9014; and the Interim Hearing to consider the interim relief requested in the Motion having been held and concluded; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and based on all pleadings filed with this Court, all proceedings held before the Court, the record made at the Interim Hearing, and the evidence adduced in connection therewith; and after due deliberation and consideration and good and sufficient cause appearing therefor:

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

A. *Petition Date:* On August 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 Southern District of New York commencing this Case (the “Court”).

B. *Debtor In Possession:* The Debtor is continuing in the management and operation

of its business and properties as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Case.

C. *Jurisdiction and Venue:* This Court has jurisdiction over these proceedings, and over the property affected hereby, pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in and pursuant to 28 U.S.C. § 157(b)(2). Venue for the Case and for proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. *Creditors' Committee:* As of the date hereof, no official creditors' committee has been formed.

E. *Debtor's Acknowledgements, Agreements and Stipulations:* After consultation with its attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 31 below, the Debtor admits, stipulates, acknowledges and agrees that (clauses (i)-(vi) of this paragraph E being collectively referred to herein as the "Debtor's Stipulations"):

(i) *June 2007 Financing:* Pursuant to that certain Loan Agreement dated as of June 29, 2007 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "June 2007 Loan Agreement") and together with all other loan and security documents executed in connection therewith, the "June 2007 Credit Documents"), among Cosmopolitan Graphics Corporation (now known as Chiyoda America Inc.), as borrower (the "Prepetition Borrower") and Chiyoda Gravure Corporation as lender (the "Prepetition Lender"), the Prepetition Lender provided credit to the Prepetition Borrower and provided other financial accommodations to or for the benefit of the Prepetition Borrower (collectively, the "June 2007 Financing"). The June

2007 Financing provided the Prepetition Borrower with 216,374,841 Yen (approximately \$2.2 million) in aggregate principal amount of financing.

(ii) *Prepetition Liens:* To secure the Prepetition Borrower's obligations under and pursuant to the June 2007 Credit Documents, the Prepetition Borrower granted the Prepetition Lender security interests and liens (the "Prepetition Liens" (as further defined below)) in and on (a) all of its personal property, wherever located, then owned or thereafter acquired or arising, and the proceeds, products, rents and profits of all of the foregoing (the "Personal Property Collateral"), and (b) the real property owned by the Debtor commonly known as 378 Thousand Oaks Boulevard, Morgantown, Pennsylvania, and the fixtures thereon (the "Real Estate Collateral") (all of the foregoing collateral generally described in this paragraph E(ii), together with all of the proceeds, products, rents and profits, collectively the "Prepetition Collateral"). By the Security Agreement, dated as of June 29, 2007 (the "June 2007 Security Agreement"), executed by the Prepetition Borrower in favor of the Prepetition Lender in connection with June 2007 Financing, the Prepetition Borrower granted the Prepetition Lender a first priority security interest in all of its personal property and assets to secure the prompt and complete payment, performance and observance when due of all indebtedness or liabilities of whatever kind, nature and description, then existing or thereafter arising, then due or to become due, of the Prepetition Borrower to the Prepetition Lender, whether direct or indirect, primary or secondary, secured or unsecured, absolute or contingent, joint or several, arising out of or relating to the June 2007 Loan Agreement or any other agreement, document, or instrument between or among the Prepetition Borrower and the Prepetition Lender. Other than expressly set forth in the following

sentence, the Prepetition Liens are perfected and senior in priority to all security interests in and liens on the Prepetition Collateral, subordinated only to the Specified Permitted Liens. The Prepetition Liens on the Real Estate Collateral are junior in priority to those certain liens relating to the real estate tax claims in the total amount of \$237,812.69 of the Bureau of Berks County Pennsylvania (the “Real Estate Tax Claims”) and senior in priority to the \$23,000 claim of the Commonwealth of Pennsylvania, Department of Labor and Industry (the “Labor Department Claim”).

(iii) *Additional Prepetition Financing*: Subsequent to the June 2007 Loan Agreement, the Prepetition Lender agreed to make the additional loans and financial accommodations to the Prepetition Borrower (the “Additional Financing,” and together with the June 2007 Financing, the “Prepetition Financing”) including, but not limited to, the following:

(a) pursuant to that certain Loan Agreement dated May 12, 2008, financing in the aggregate principal amount of 50,000,000 Yen (approximately \$500,000);

(b) pursuant to that certain Loan Agreement dated November 20, 2008, financing in the aggregate principal amount of \$4,813,834.36;

(c) pursuant to that certain Loan Agreement dated January 14, 2009, financing in the aggregate principal amount of \$100,000; and

(d) pursuant to that certain Loan Agreement dated February 9, 2009, financing in the aggregate principal amount of \$500,000.<sup>1</sup>

Pursuant to the terms of the June 2007 Security Agreement, the Additional Financing is secured by security interests and liens in and on the Prepetition Collateral other than the

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<sup>1</sup> The Loan Agreements (as amended, supplemented, restated or otherwise modified prior to the Petition Date) listed in clauses (a) through (d) of this paragraph E(iii), together with the June 2007 Loan Agreement and any other documents evidencing Prepetition Financing, are hereinafter referred to as the “Prepetition Credit Agreements.” The Prepetition Credit Agreements together with all other loan and security documents executed in connection therewith are hereinafter referred to as the “Prepetition Credit Documents.”

Real Estate Collateral (such security interests and liens, together with the security interests and liens granted in connection with the June 2007 Financing, the “Prepetition Liens”).

(iv) *Prepetition Obligations*: As of the Petition Date, the outstanding principal amount of all loans under the Prepetition Financing was approximately \$17,223,632 (collectively, together with any amounts paid, incurred or accrued in accordance with the Prepetition Credit Documents, principal, accrued and unpaid interest, any fees, expenses, and disbursements (including, without limitation, attorneys’ fees, related expenses and disbursements), indemnification obligations and other charges of whatever nature, whether or not contingent, whenever arising, due or owing in respect thereof, the “Prepetition Obligations”).

(v) *Validity of Prepetition Liens, Claims and Obligations*: After consultation with its attorneys and financial advisors, but subject to the provisions of paragraph 31 hereof, the Debtor stipulates, acknowledges and agrees that: (a) the Prepetition Liens are valid, binding, enforceable and perfected liens, with priority over any and all other liens (except that the Prepetition Liens on the Real Estate Collateral are junior in priority to those certain liens in connection with the Real Estate Tax Claims), and are not subject to any challenge or defense, including, without limitation, avoidance, recharacterization or subordination, pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (b) the Prepetition Obligations constitute legal, valid, binding, and nonavoidable obligations of the Debtor, enforceable in accordance with the terms of the Prepetition Credit Agreement and the Prepetition Credit Documents; (c) no offsets, challenges, defenses, claims or counterclaims of any kind or nature to any of the Prepetition

Obligations exist, and no portion of the Prepetition Obligations is subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (d) 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, and/or claims for equitable subordination, recharacterization or substantive consolidation, against the Prepetition Lender, and/or any of its respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees; (e) the Debtor has waived, discharged and released any right that it may have to challenge any of the Prepetition Obligations, and the security for those obligations and to assert any offsets, defenses, claims, objections, challenges, causes of action, choses of action and/or claims for equitable subordination, recharacterization or substantive consolidation against the Prepetition Lender and/or any of its affiliates, agents, attorneys, advisors, professionals, officers, directors and employees; and (f) any payments made on account of the Prepetition Obligations to or for the benefit of the Prepetition Lender prior to the Petition Date were on account of amounts in respect of which the Prepetition Lender was oversecured, were payments out of the Prepetition Lender's Prepetition Collateral, and such payments did not diminish any property otherwise available for distribution to unsecured creditors.

F. *Findings Regarding the Post-Petition Financing:*

(i) *Priming of the Prepetition Lien:* The priming of certain of the Prepetition Liens and all other liens 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 the Debtor to obtain the DIP Facility and to continue to operate its business to

the benefit of its estate and creditors. However, the Prepetition Lender is entitled to receive adequate protection as set forth in this Interim Order pursuant to sections 361, 363 and 364 of the Bankruptcy Code, for any diminution in the value of its interests in the Prepetition Collateral resulting from the Debtor's use, sale or lease of the Prepetition Collateral, the imposition of the automatic stay, the priming of certain of the Prepetition Liens, and the subordination to the Carve-Out Expenses (collectively, the "Diminution in Value").

(ii) *Need for Post-Petition Financing:* The Debtor's need for financing is critical. In the absence of the DIP Facility, the continued operation of the Debtor's business would not be possible, and serious and irreparable harm to the Debtor, its estate and its creditors would occur. The Debtor does not have sufficient available sources of working capital and financing to operate its business in the ordinary course of business or maintain its property in accordance with state and federal law without the DIP Facility. The Debtor's ability to maintain business relationships with its vendors, suppliers and customers, to pay its employees and otherwise finance its operations, are essential to the Debtor's continued viability.

(iii) *No Credit Available on More Favorable Terms:* Given its current financial condition, financing arrangements, and capital structure, the Debtor is unable to obtain financing from sources other than the DIP Lender on terms more favorable than the DIP Facility. The Debtor has been unable to obtain interim unsecured credit solely under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtor has also been unable to obtain credit: (a) having priority over that of administrative expenses of the kind specified in sections 503(b) and 507(a) and (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 Lender perfected first-priority security interests in and priming liens on, as provided herein, all of the Debtor's existing and after-acquired assets (except as otherwise provided) and the granting to the DIP Lender of superpriority claims and liens and the other protections set forth in this Interim Order.

G. *DIP Facility Documents*: The Debtor seeks authority to enter into the DIP Facility on the terms described herein and in the DIP Facility Documents to administer its Case and fund its operations. At the Final Hearing (as defined herein), the Debtor will seek final approval of the proposed postpetition financing arrangement and submit a proposed final order approving such postpetition financing arrangement.

H. *Sections 506(c) and 552(b)*: In light of (i) the DIP Lender's agreement to subordinate its liens and superpriority claims to the Carve-Out Expenses and Specified Permitted Liens; (ii) the Prepetition Lender's agreement to subordinate its adequate protection liens and superpriority claims to the Carve-Out Expenses and to certain DIP Liens as set forth in section 4.2 of the DIP Loan Agreement; and (iii) any agreement of the DIP Lender and the Prepetition Lender to allow to be paid under the DIP Facility, among other things, certain prepetition customer obligations, prepetition supplier obligations, prepetition wages, benefits and insurance premiums for the benefit of employees, and prepetition tax obligations as may be permitted by separate order of this Court, the DIP Lender and the Prepetition Lender are each entitled to (1) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code, and (2) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

I. *Good Faith of the DIP Lender:*

(i) The DIP Lender has indicated a willingness to continue to provide financing to the Debtor subject to (a) the entry of this Interim Order and a Final Order, (b) approval of the terms and conditions of the DIP Facility and the DIP Facility Documents, and (c) entry of findings by this Court that such financing is essential to the Debtor's estate, that the DIP Lender is a good faith financier, and that the DIP Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Facility 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 or amendment of this Interim Order or the Final Order or any other order.

(ii) The terms of this Interim Order and the DIP Facility Documents insofar as they relate to the Interim Financing (as defined herein) are fair and reasonable and reflect the Debtor's exercise of reasonable and prudent business judgment consistent with its fiduciary duties. The extensions of credit authorized herein are supported by reasonably equivalent value and fair consideration and have been negotiated in good faith and at arms' length among the Debtor, the DIP Lender and the Prepetition Lender. Any credit extended, loans made or funds advanced to the Debtor pursuant to the DIP Facility Documents shall be deemed to have been so extended, made, advanced or used in good faith by the DIP Lender as required by, and within the meaning of, section 364(e) of the Bankruptcy Code and shall have all of the benefits and protections of this Interim Order and the Final Order.

J. *Notice:* Under the circumstances, the notice of the Interim Hearing and the

emergency relief requested in the Motion, as has been provided by the Debtor to (i) the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”); (ii) each of Debtor’s twenty (20) largest unsecured creditors; (iii) the Securities and Exchange Commission; (iv) the Internal Revenue Service; (v) the Prepetition Lender; and (vi) the DIP Lender, is sufficient and complies with the requirements of sections 102(1) and 364(c) of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001(c).

Based upon the foregoing findings and conclusions, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor:

IT IS HEREBY ORDERED that:

1. *Interim Financing Approved.* The Interim Financing is authorized and approved, subject to the terms and conditions set forth in this Interim Order.

**DIP Financing Authorization**

2. *Authorization of the DIP Financing and the DIP Facility Documents.* The DIP Facility Documents are hereby approved for the Interim Financing, and the Debtor is expressly and immediately authorized, empowered and directed to perform the DIP Obligations hereunder and thereunder. The DIP Facility Documents evidence valid and binding obligations of the Debtor, which obligations shall be enforceable against the Debtor, its estate and its creditors in accordance with their terms. The Debtor is hereby authorized and directed to pay the principal, interest, fees, expenses and other amounts described in the DIP Facility Documents as such become due and without the need to obtain further Court approval. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by the DIP Facility Documents. All of the obligations described in the DIP Facility Documents shall

constitute valid and binding obligations of the Debtor that are enforceable against the Debtor and its estate in accordance with their terms.

3. *Duration and Amount.* Until the Termination Date (as defined herein), and subject to the terms and conditions of the DIP Facility Documents and this Interim Order, the Debtor is hereby authorized to request extensions of credit up to an aggregate outstanding principal amount of One Million, Six Hundred Seventy-Five Thousand dollars (\$1,675,000) at any one time outstanding (the “Interim Financing”). The amount of credit extended over each two week period shall be capped in accordance with the Updated Budget (defined below).

4. *DIP Obligations.* Upon entry of this Interim Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by the Debtor to the DIP Lender under any of the DIP Facility Documents or hereunder, including, without limitation, all principal, accrued interest, costs, fees, expenses and other amounts under the DIP Facility Documents and whether borrowed under the terms of this Interim Order or the Final Order. The DIP Obligations shall be due and payable, without notice or demand, and the authority to use Cash Collateral pursuant to this Interim Order shall automatically cease on the Termination Date.

5. *Postpetition Liens.* Upon entry of this Interim Order, the DIP Lender is hereby granted, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, continuing, valid, binding, enforceable, and automatically perfected postpetition security interests in and liens on (collectively, the “DIP Liens”) any and all of the assets of the Debtor or its estate, including, without limitation, (a) all Prepetition Collateral, including, without limitation, all Cash Collateral; (b) all unencumbered assets, proceeds of any and all lawsuits or causes of action (other than Avoidance Recoveries (defined below)), (c) all personal property of

the Debtor, whether tangible or intangible, including, without limitation, all accounts receivable, books and records, cash and cash equivalents, contract rights, inventory, deposit accounts, equipment, fixtures, intellectual property, goods, general intangibles, chattel paper, instruments, promissory notes, drafts and documents, investments, investment property, securities, commercial tort claims, instruments, letters of credit and rights under letters of credit, and life insurance policies, together with the products and proceeds thereof, and (d) all of the Debtor's interests in any real property, including, without limitation, the proceeds of any leasehold interest (all of the foregoing assets and property, whether now owned or hereafter acquired, wherever located (in the domestic United States or otherwise), and all of the products and proceeds thereof, collectively, the "DIP Collateral"). The DIP Collateral shall include any avoidance power claims or actions under section 549 of the Bankruptcy Code relating to post-petition transfers of DIP Collateral and any proceeds thereof, as well as the Debtor's rights under section 506(c) of the Bankruptcy Code and the proceeds thereof, but shall not include the claims or the proceeds of any other claims or actions under Chapter 5 of the Bankruptcy Code (the excluded Chapter 5 claims and recoveries being referred to herein as the "Avoidance Recoveries").

6. *Priority of DIP Liens.* The DIP Liens shall be subordinate only to the Carve-Out Expenses and the following "Specified Permitted Liens":

(i) purchase money mortgages or other purchase money Liens (as defined in the DIP Loan Agreement) (including, without limitation, finance leases) upon any fixed or capital assets in existence on the Petition Date or Liens (including, without limitation, finance leases) on any such assets existing at the time of acquisition of such assets, whether or not assumed, so long as (w) any such Lien does not extend to or cover any other asset of the Debtor, (x) such Lien secured only the obligation to pay the purchase price of such asset (or the obligation under such finance lease) and (y) the principal amount secured by each such Lien does not exceed the unpaid purchase price for such asset;

(ii) carriers' warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business and in existence on the Petition Date in the maximum amount of \$100,000;

- (iii) pledges of deposits to secure obligations under workmen's compensation laws or similar legislation as of the Petition Date;
- (iv) deposits to secure public or statutory obligations of the Debtor as of the Petition Date;
- (v) deposits to secure surety or customs in the ordinary course of business;
- (vi) zoning restrictions, licenses, easements, rights-of-way, restrictions on the use of real property or minor irregularities in title thereto and other similar charges or encumbrances not interfering with the ordinary conduct of the business of the Debtor and not impairing the value of the affected property;
- (vii) liens for the Real Estate Tax Claims;
- (viii) CGC's Prepetition Lien on the Real Estate Collateral; and
- (ix) liens for the Labor Department Claim.<sup>2</sup>

The DIP Liens shall otherwise be senior in priority to all other security interests in, liens on, or claims against, any of the DIP Collateral. The DIP Liens shall not otherwise be made subject to or *pari passu* with any lien or security interest and shall be valid and enforceable against as to extent and priority notwithstanding the appointment of any trustee in the Case, upon the conversion of the Case to a case under chapter 7 of the Bankruptcy Code (any "Successor Case"), and/or upon the dismissal of the Case or any Successor Case. The DIP Liens (which, for the avoidance of any doubt, do not include Avoidance Recoveries) shall not be subject to sections 506(c), 510, 549, 550, or 551 of the Bankruptcy Code.

7. *Superpriority Claims.* Upon entry of this Interim Order, the DIP Lender is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority

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<sup>2</sup> Other than the Specified Permitted Liens, the Debtor is not aware of any security interests or liens that are or would be senior in priority to the DIP Liens. Nothing herein shall constitute a finding or ruling by this Bankruptcy Court that any such Specified Permitted Lien is valid, senior, perfected or non-avoidable, except as otherwise provided by this Interim Order with respect to CGC's Prepetition Lien on the Real Estate Collateral. Moreover, nothing shall prejudice the rights of any party in interest, including, but not limited to, the Debtor, the DIP Lender, the Prepetition Lender, and any Statutory Committee (as defined herein) to challenge the validity, priority, perfection or extent of any Specified Permitted Lien and/or security interests, express as otherwise expressly stated in this Interim Order.

administrative expense claim in the Case and any Successor Case (collectively, the “DIP Superpriority Claim”) for all loans and any other indebtedness or obligations, contingent or absolute, at any time owing by the Debtor to the DIP Lender under any of the DIP Facility Documents or hereunder, including, without limitation, all principal, accrued interest, fees, costs, and other amounts under the DIP Facility Documents, (a) with priority over any and all administrative expense claims and unsecured claims against the Debtor or its estate in the Case or any Successor 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, 503(a), 503(b), 506(c), 507(a), 507(b), 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 estates, and any successor trustee or other estate representative to the extent permitted by law. The DIP Superpriority Claim shall have priority over the Adequate Protection Superpriority Claims (as defined herein), and shall be subject only to the Carve-Out Expenses and Specified Permitted Liens.

8. *Protection of DIP Lender and Other Rights.* The DIP Lender shall have no obligation to make any extension of credit pursuant to the DIP Facility Documents unless all of the conditions precedent to the making of such extension of credit under the DIP Facility Documents are satisfied. From and after the Petition Date, the Debtor shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Loan Agreement and the other DIP Facility Documents and in compliance with the budget (the “Budget”), as it may be updated in accordance with this Interim Order and the DIP Loan

Agreement.

**Adequate Protection**

9. *Adequate Protection Liens.* Pursuant to sections 361, 363(e) and 364(d) of the Bankruptcy Code, as adequate protection for the interests of the Prepetition Lender in the Prepetition Collateral on account of any Diminution in Value of the Prepetition Collateral from the Petition Date, the Debtor hereby grants continuing, valid, binding, enforceable and perfected postpetition security interests in and liens on the DIP Collateral (the “Adequate Protection Liens”).

10. *Priority of Adequate Protection Liens.* The Adequate Protection Liens shall be subordinate only to the DIP Liens, the Carve-Out Expenses and the Specified Permitted Liens, but otherwise shall be first, prior, senior, perfected and superior to any other security interest in, lien on, or claim against, any of the DIP Collateral. Except as provided herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest in the Case or any Successor Case, and shall be valid and enforceable against any trustee appointed the Case, in a superseding proceeding, any Successor Case, or upon the dismissal of the Case or any Successor Case. The Adequate Protection Liens (which, for the avoidance of any doubt, do not include Avoidance Recoveries) shall not be subject to sections 506(c), 510, 549, 550, or 551 of the Bankruptcy Code.

11. *Adequate Protection Superpriority Claims.* As further adequate protection for the interests of the Prepetition Lender on account of Diminution in Value of the Prepetition Collateral, the Prepetition Lender is hereby granted a superpriority claim (the “Prepetition Facility Superpriority Claim”) with priority over all administrative expense claims and unsecured claims against the Debtor or its estate, now existing or hereafter arising, of any kind or nature

whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code (collectively, the “Adequate Protection Superpriority Claims”). The Prepetition Facility Superpriority Claim shall be subordinate only to the DIP Superpriority Claim and the Carve-Out Expenses.

### **Additional Provisions Regarding DIP Financing**

12. *Amendments to DIP Facility.* The Debtor, with the express written consent of the DIP Lender and the Prepetition Lender, may enter into any non-material amendments, consents, waivers or modifications to the DIP Facility Documents, without the need for further notice or hearing or any order of this Court; *provided, however,* that the Debtor shall provide counsel to any Statutory Committee appointed and the U.S. Trustee five (5) business days advance notice (which may be provided through electronic mail) of the Debtor’s intent to enter into any material amendments, consents or waivers or modifications of the DIP Facility Documents; *provided, however,* that this does not prejudice the right of the Debtor and the DIP Lender to seek an emergency hearing.

13. *Budget.* The Debtor shall provide the DIP Lender, counsel to any Statutory Committee and the U.S. Trustee with an updated budget every two weeks in a format substantially similar to the form and substance to the budget attached hereto as Exhibit 1 (an “Updated Budget”) and otherwise reasonably acceptable to and approved by the DIP Lender. The Debtor may use DIP Proceeds and Cash Collateral solely in accordance with the Budget and any Updated Budget with a variance of 5% permitted on a line-item basis (and amounts not used during one week may be utilized in a future week on a line-item basis), or otherwise as

previously consented to in writing by the DIP Lender. The Updated Budgets shall compare the Debtor's actual financial performance to that set forth in the previous Updated Budget.

14. *Automatic Stay.* The automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby modified to permit: (a) the Debtor to grant the DIP Liens and the DIP Superpriority Claims, and to perform such acts as the DIP Lender may request in its sole discretion to assure the perfection and priority of the DIP Liens; (b) the Debtor to grant the Prepetition Adequate Protection Liens and the Prepetition Facility Superpriority Claims, and to perform such acts as the Prepetition Lender may request to assure the perfection and priority of the Prepetition Adequate Protection Liens; (c) the Debtor to incur all liabilities and obligations to the DIP Lender and the Prepetition Lender under the DIP Facility, DIP Facility Documents and this Interim Order; (d) the Debtor to pay to the DIP Lender and the Prepetition Lender and for the DIP Lender and the Prepetition Lender to receive and apply amounts referred to, required under, in accordance with and subject to this Interim Order, and (e) the implementation of the terms of this Interim Order.

15. *Perfection of DIP Liens and Adequate Protection Liens.* This Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice of lien, or other instrument or document, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) which may otherwise be required under the law, rule or regulation of any jurisdiction to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Lender and the Prepetition Lender to the priorities granted herein. No execution, filing, recordation, or delivery of any financing

statement, mortgage, notice of lien, or other instrument or document shall be necessary or required in order to create or perfect the DIP Liens and the Adequate Protection Liens. Notwithstanding the foregoing, the DIP Lender and the Prepetition Lender may and are authorized to file or record financing statements, mortgages, notices of lien, or other instruments or documents to evidence the DIP Liens and the Adequate Protection Liens. The Debtor is authorized and directed to execute and deliver promptly upon demand to the DIP Lender and the Prepetition Lender all such financing statements, mortgages, notices and other instruments or documents as the DIP Lender or the Prepetition Lender may reasonably request. If the DIP Lender or the Prepetition Lender, each in its sole discretion, shall choose to file such financing statements, mortgages, notices of lien or other instruments or documents, or otherwise confirm perfection of such liens, all such documents shall be deemed to have been filed or recorded as of the Petition Date. The DIP Lender or the Prepetition Lender, each in its discretion, may file a photocopy of this Interim 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, mortgages, notices of lien, or other instruments or documents.

16. *Proceeds of Subsequent Financing.* If the Debtor, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed in this Case or any Successor Case, shall obtain credit or incur debt pursuant to Bankruptcy Code section 364(b), 364(c), or 364(d) in violation of the DIP Facility documents at any time prior to the indefeasible payment in full of all DIP Obligations and Prepetition Obligations, the satisfaction of the DIP Superpriority Claims, and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to the Debtor and the Debtor's estate, then, subject to the Carve-Out Expenses, all of the cash proceeds derived from

such credit or debt shall: (a) immediately be turned over first to the DIP Lender in reduction of the DIP Obligations; and (b) thereafter, after such DIP Obligations have been fully and indefeasibly paid, to the Prepetition Lender to satisfy Prepetition Obligations as “proceeds of Collateral,” pursuant to the provisions of the Prepetition Credit Documents.

17. *Maintenance of Collateral.* Until the indefeasible payment in full of all DIP Obligations and all Prepetition Obligations, the satisfaction of the DIP Superpriority Claims, and the termination of the DIP Lender’s obligation to extend credit under the DIP Facility, the Debtor shall: (a) insure the DIP Collateral, as required under the DIP Facility; 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 Lender and the Prepetition Lender, or as otherwise required by the DIP Facility Documents.

18. *Disposition of DIP Collateral.* The Debtor shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral without the prior written consent of the DIP Lender and the Prepetition Lender, each in their sole discretion (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Lender or the Prepetition Lender, or an order of this Court), except as otherwise provided for in the DIP Facility Documents and this Interim Order.

19. *Termination Date.*

(i) All (a) DIP Obligations shall be immediately due and payable, and the DIP Lender’s Commitment (as defined in the DIP Loan Agreement) will terminate, and (b) except as provided in paragraph 19(i) below, authority to use the Cash Collateral shall cease on the date (the “Termination Date”) that is the earliest to occur of:

(a) the Maturity Date (as defined in the DIP Loan Agreement);

- (b) the occurrence and continuation of an Event of Default (as defined in the DIP Loan Agreement) after termination of the Remedies Notice Period;
- (c) the effective date of any plan for the Debtor confirmed pursuant to Bankruptcy Code section 1129 that provides for indefeasible payment in full of:
  - (i) all DIP Obligations owing under the DIP Facility Documents and (ii) all Prepetition Obligations owing under the Prepetition Credit Documents;
- (d) the date of consummation of a sale of substantially all of the Debtor's assets under section 363 of the Bankruptcy Code;
- (e) the dismissal of the Case or any Successor Case, or the conversion of the Case into a case under chapter 7 of the Bankruptcy Code;
- (f) the appointment of a trustee or examiner with enlarged powers relating to the operation of the business of the Debtor in the Case, or any application, consent or acquiescence by the Debtor to any such appointment without the prior written consent of the DIP Lender (which consent may be withheld in its sole discretion);
- (g) entry of an order or judgment by this Court or any other court in the Case: (i) modifying, limiting, subordinating or avoiding the priority of the DIP Obligations, the obligations created in this Interim Order, or the Prepetition Obligations, or the perfection priority or validity of the DIP Liens, Adequate Protection Liens or Prepetition Liens; or (ii) imposing, surcharging or assessing against the DIP Lender, Prepetition Lender, their respective claims, the DIP Collateral, or the Prepetition Collateral any costs or expenses, whether pursuant to section 506(c) of the Bankruptcy Code or otherwise; and

(h) the stay, reversal, vacatur, amendment or other modification of this Interim Order without the prior written consent of the DIP Lender and the Prepetition Lender.

(i) After the occurrence of an Event of Default (as defined in the DIP Loan Agreement) and during the Remedies Notice Period (as defined herein), the Debtor may use Cash Collateral in accordance with the terms and provisions of the Budget: (i) to pay the Carve-Out Expenses as set forth herein; and (ii) to the extent they become due and payable during the Remedies Notice Period, solely to meet payroll up to an aggregate amount set forth in the Budget, and any other expenses as agreed to by the DIP Lender. Unless the Court determines during the Remedies Notice Period that an Event of Default has not occurred, the Debtor shall have no further authorization under this Interim Order to use Cash Collateral, or right to seek to use Cash Collateral over the objection of the DIP Lender. Nothing in this Interim 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 Order and the DIP Facility Documents, and in accordance with the Budget.

20. *Payment Upon Termination Date.* All DIP Obligations shall be due and payable, without notice or demand, on the Termination Date.

21. *Rights and Remedies Upon Event of Default.* Immediately upon the occurrence of an Event of Default, the DIP Lender may: (a) declare all DIP Obligations owing under the DIP Loan Agreement to be immediately due and payable; (b) terminate, reduce or restrict any

Commitment to extend credit to the Debtor under the DIP Facility to the extent any such Commitment remains outstanding; (c) terminate the DIP Loan Agreement and any other DIP Facility Document as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Liens or the DIP Obligations; and (d) terminate, reduce or restrict the ability of the Debtor to use any Cash Collateral. Any automatic stay otherwise applicable to the DIP Lender and the Prepetition Lender is hereby modified so that within five (5) business days of receiving notice of an Event of Default (the “Remedies Notice Period”), which notice shall be given by facsimile to counsel for the Debtor, counsel for any official committee(s) of unsecured creditors appointed in this Case pursuant to section 1102 of the Bankruptcy Code (a “Statutory Committee”), and the U.S. Trustee, (i) the DIP Lender shall be entitled to exercise its rights and remedies in accordance with the DIP Facility Documents and this Interim Order and shall be permitted to satisfy the DIP Superpriority Claim and the DIP Liens, subject to the Carve-Out Expenses, and (ii) the Prepetition Lender shall be entitled to exercise its rights and remedies to satisfy the Prepetition Facility Superpriority Claim and the Adequate Protection Liens, subject to the Carve-Out Expenses. Upon expiration of the Remedies Notice Period, the DIP Lender and the Prepetition Lender shall be permitted to exercise all remedies set forth herein, in the DIP Loan Agreement, the DIP Facility Documents, the Prepetition Credit Agreements and the Prepetition 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, against the enforcement of the liens and security interests or any other rights and remedies granted to the DIP Lender and/or the Prepetition Lender pursuant to the DIP Loan Agreement, DIP Facility Documents, the Prepetition Credit Agreements, the Prepetition Credit Documents, or this Interim Order. Upon

expiration of the Remedies Notice Period, the DIP Lender may foreclose on all or any portion of the DIP Collateral, collect accounts receivables and apply the proceeds thereof (*first*, to fund the Carve-Out Expenses; *second*, to the DIP Obligations; and *third*, when such DIP Obligations have been fully and indefeasibly paid, to the Prepetition Obligations), occupy the Debtor's premises to complete inventories, fulfill orders and sell inventories, execute going out-of-business sales or otherwise exercise remedies permitted by applicable nonbankruptcy law. During the Remedies Notice Period, the Debtor and/or the Statutory Committee shall be entitled to seek an emergency hearing with the Court for the sole purpose of contesting whether an Event of Default has occurred.

22. *Good Faith under Section 364(e) of the Bankruptcy Code.* Based on the record made during the Interim Hearing, the DIP Lender and the Prepetition Lender have acted in good faith in connection with this Interim Order and their reliance on the provisions of this Interim Order is in good faith. Accordingly, if any provision of this Interim Order is hereafter modified, vacated, or stayed by subsequent order of this Court or any other court for any reason, the DIP Lender and the Prepetition Lender 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 hereunder, or lien, claim or priority authorized or created hereby. Any liens or claims granted to the DIP Lender and the Prepetition Lender hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

23. *Indemnification.* Subject to the entry of a Final Order, the Debtor shall indemnify

and hold harmless the DIP Lender and its shareholders, directors, agents, officers, subsidiaries and affiliates, successors and assigns, and professional advisors from and against any and all claims, actions and suits, whether groundless or otherwise, and from and against any and all liabilities, losses, damages and reasonable expenses of every nature and character arising out of the DIP Facility Documents, or related to the DIP Facility or the transactions contemplated thereby and by this Interim Order, except to the extent that such liabilities, losses, damages or expenses arise out of such person's gross negligence or willful misconduct as determined by a final non-appealable order of a court of competent jurisdiction. The indemnity includes indemnification for the DIP Lender's exercise of discretionary rights granted under the DIP Facility. In all such litigation, or the preparation therefor, the DIP Lender shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Debtor agrees to pay promptly the reasonable fees and expenses of such counsel. All requests for payment of indemnity pursuant to this paragraph 23 shall be made by means of an application (interim or final as the case may be) and shall be subject to review by the Court to ensure that payment of such indemnity is reasonable based upon the terms of this paragraph 23 and the circumstances in respect of which indemnity is sought.

24. *Proofs of Claim.* The DIP Lender and the Prepetition Lender will not be required to file proofs of claim in the Case or any Successor Case for any claim allowed herein. Any order entered by the Court in relation to the establishment of a bar date in the Case or any Successor Case shall not apply to the DIP Lender and the Prepetition Lender.

25. *Rights of Access and Information.* Without limiting the rights of access and information afforded the DIP Lender under the DIP Facility Documents or the Prepetition Lender under the Prepetition Credit Documents, the Debtor shall be, and hereby is, required to

afford representatives, agents and/or employees of the DIP Lender, in accordance with the DIP Facility Documents, and the Prepetition Lender, in accordance with the Prepetition Credit Documents, reasonable access to the Debtor's premises and its books and records, and shall cooperate, consult with, and provide such persons with such information as may be reasonably requested by the DIP Lender or the Prepetition Lender.

26. *Rights Preserved.* Except as otherwise expressly provided herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) DIP Lender's and the Prepetition Lender's rights to seek any other or supplemental relief in respect of the Debtor; (b) any of the rights of the DIP Lender, and/or the Prepetition Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of the DIP Lender and/or the Prepetition Lender to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of the Case or any Successor Case, conversion of any of the Case to a case under chapter 7 or other Successor Case, or appointment of a chapter 11 trustee or examiner with expanded powers, (iii) seek to 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 the DIP Lender or the Prepetition Lender.

27. *No Waiver for Failure to Seek Relief.* The DIP Lender's and the Prepetition Lender's failure to seek relief or otherwise exercise its or their rights and remedies under the Interim Order, the DIP Facility Documents, the Prepetition Credit Documents, documents related thereto, or applicable law, as the case may be, shall not constitute a waiver of any of the DIP Lender's or the Prepetition Lender's rights hereunder, thereunder or otherwise.

28. *Carve-Out.*

(a) *Carve-Out Expenses.* As used in this Interim Order, the “Carve-Out Expenses” means, upon the occurrence of an Event of Default, and unless such default is waived by the DIP Lender in writing, the following expenses: (i) all statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6); (ii) all fees payable to the clerk of this Court; (iii) reasonable fees and expenses actually incurred on or after the Petition Date, and otherwise allowed and payable by order of the Court (which order has not been vacated, stayed or appealed) under sections 328, 330 and/or 331 of the Bankruptcy Code and any interim compensation procedures order by attorneys, accountants and other professionals retained by final order of the Court (which order has not been vacated, stayed or appealed) by the Debtor and the Statutory Committee under sections 327 or 1103(a) of the Bankruptcy Code (collectively, the “Allowed Professional Fees”) that are unpaid and outstanding as of the occurrence of an Event of Default; (iv) Allowed Professional Fees incurred subsequent to an Event of Default to the extent consistent with the Budget in an aggregate amount not to exceed \$30,000; and (v) the approved professional fees and expenses incurred by any court appointed Chapter 7 trustee up to an aggregate amount of \$25,000 (the “Professionals Carve-Out”). The Professionals Carve-Out shall exist at all times, but shall only be triggered and payable upon the occurrence of an Event of Default (unless such default is waived by the DIP Lender in writing) and shall be payable solely out of the Prepetition Collateral and the DIP Collateral and does not constitute a guarantee of payment by the DIP Lender or the Prepetition Lender.

(b) *Payment of Expenses of Professionals Prior to Event of Default.* Prior to the occurrence of an Event of Default, the Debtor shall be permitted to pay Allowed Professional Fees, statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6), and fees payable to the clerk of this Court that accrued prior to an Event of Default and in the ordinary

course of the Debtor's business in accordance with the Budget. The amounts paid shall not reduce the Professionals Carve-Out.

(c) *Payment of Carve-Out Expenses After Event of Default.* Any payment or reimbursement made on or after the occurrence of an Event of Default in respect of any Allowed Professional Fees (exclusive of the application of any retainers by such professionals) shall permanently reduce the Professionals Carve-Out on a dollar-for-dollar basis. The DIP Lender's obligation to fund or otherwise pay the Carve-Out Expenses 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 Order, the DIP Facility Documents, the Bankruptcy Code and applicable law.

(d) *Carve-Out Reserve.* At the sole discretion of the DIP Lender, the DIP Lender may, at any time and in any increment in accordance with the DIP Loan Agreement, establish a reserve against the availability or other credit accommodations under the DIP Facility that would otherwise be made available to the Debtor pursuant to the DIP Loan Agreement in respect of the Carve-Out Expenses.

29. *Limitations on the Professional Fees Carve-Out, DIP Collateral and DIP Facility.* No portion of the Professional Fees Carve-Out, DIP Collateral or proceeds under the DIP Facility may be used in connection with: (a) preventing, hindering, or delaying the DIP Lender's or the Prepetition Lender's enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred; (b) using or seeking to use Cash Collateral or selling or otherwise disposing of DIP Collateral without the consent of the DIP Lender; (c) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Lender; (d) incurring Indebtedness (as defined in the DIP Loan Agreement) without the prior

consent of the DIP Lender, except to the extent permitted under the DIP Loan Agreement;

(e) objecting or challenging in any way any claims, liens, DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral (including Cash Collateral), held by or on behalf of the DIP Lender or the Prepetition Lender, respectively; (f) asserting, commencing or prosecuting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the DIP Lender, the Prepetition Lender, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees;

(g) prosecuting an objection to, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Obligations, the Prepetition Liens, or any other rights or interests of the DIP Lender or the Prepetition Lender; or (h) taking any action that the DIP Lender determines in good faith (i) has or could have the effect of materially and adversely modifying or compromising the rights and remedies of the DIP Lender and/or the Prepetition Lender, (ii) is contrary, in a manner that is material and adverse to the DIP Lender and/or the Prepetition Lender, to any term or condition set forth in the DIP Facility Documents or this Interim Order, or (iii) results in the occurrence of an Event of Default.

30. *Allowance and Payment of Compensation.* Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of the Debtor, any Statutory Committee or of any other person or shall affect the right of the DIP Lender or the Prepetition Lender to object to the allowance and payment of such fees and expenses. So long as an Event of Default has not occurred, the Debtor shall be permitted to pay fees and expenses allowed and payable by final order (that has not been vacated, stayed or appealed) under section 330 or 331 of the Bankruptcy Code, as the same may be due and payable, and the same shall not reduce the

Carve-Out Expenses; *provided, however*, that no such fees and expenses shall be paid until entry of the Final Order.

31. *Reservation of Certain Third Party Rights and Bar of Challenges and Claims.*

Nothing in this Interim Order or the DIP Facility Documents shall prejudice the rights of any Statutory Committee and, solely if no Statutory Committee shall be appointed, any other party in interest other than the Debtor, to seek to object to or challenge the findings herein, including, but not limited to, those in relation to: (a) the validity, extent, perfection or priority of the mortgage, security interests and liens of the Prepetition Lender in and on the Prepetition Collateral, (b) the validity, allowability, amount, priority, status or size of the Prepetition Obligations, or (c) recharacterization, subordination, or substantive consolidation (each such objection or challenge, a “Challenge”). However, unless such a party, including the Statutory Committee, if appointed, commences, as appropriate, a contested matter or adversary proceeding raising such Challenge, including, without limitation, any claim against the Prepetition Lender in the nature of a setoff, counterclaim or defense to the Prepetition Obligations within the earliest of (i) with respect to a Statutory Committee, sixty (60) calendar days following the entry of the Final Order, (ii) with respect to other parties in interest, seventy five (75) calendar days following the date of entry of the Final Order; and (iii) with respect to all parties in interest, including the Statutory Committee, 5:00 p.m. on the date which is ten (10) full business days prior to the hearing on confirmation of a plan of reorganization) (the “Challenge Period”), then (A) all such challenges and objections shall be forever waived, released, barred and discharged for all purposes in connection with the Case and any Successor Case, and (B) the Prepetition Obligations shall be allowed as claims in full, and shall be allowed as secured claims within the meaning of section 506 of the Bankruptcy Code to the extent of the value of the Prepetition Liens on the Prepetition Collateral on the

Petition Date. Only those parties in interest (including, without limitation, the Statutory Committee) that have properly initiated an adversary proceeding or appropriate action challenging the Prepetition Obligations or the Prepetition Liens prior to the expiration of Challenge Period, as applicable, shall be permitted to participate in the prosecution of such proceeding or action, and all other parties in interest shall be deemed to be irrevocably bound in full to each and every one of the Debtor's Stipulations contained in paragraph E of this Interim Order without further action by any entity. The applicable Challenge Period shall not be extended without the written consent of the DIP Lender and the Prepetition Lender. Upon the expiration of such applicable Challenge Period, to the extent not otherwise waived or barred: (y) any and all objections or challenges (including, but not limited to, those under sections 502, 506, 544, 547, 548 and/or 552 of the Bankruptcy Code or otherwise), by any party (including, without limitation, any Statutory Committee, any chapter 11 or chapter 7 trustee, or examiner appointed in the Case or any Successor Case) to the validity, sufficiency, extent, perfection, priority, amount or refinancing of, or seeking the avoidance, recharacterization or subordination of, any of the Prepetition Liens, the Prepetition Obligations, and/or any payments thereon, or otherwise asserting claims against the Prepetition Lender, or any of its respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of or related to the Prepetition Credit Agreements, Prepetition Credit Documents or any related documents, shall be forever waived, released, barred and discharged; and (z) the Debtor's Stipulations set forth in paragraph E of this Interim Order shall thereafter be deemed to be binding on all parties in interest, including, without limitation, any Statutory Committee or any other court appointed committee, including, without limitation, any committee of equity holders.

32. *No Third Party Rights.* Except as explicitly provided for herein, this Interim

Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

33. *Section 506(c) Claims.* Subject to the entry of the Final Order (notwithstanding any other provisions herein), no costs or expenses of administration that have been or may be incurred in the Case or any Successor Case at any time shall be charged against, and no person may seek to charge any costs or expenses of administration against, the DIP Lender, the Prepetition Lender, any of their respective claims, the DIP Collateral, the Prepetition Collateral, or any collateral subject to the Adequate Protection Liens, pursuant to sections 105, 506(c) or 522 of the Bankruptcy Code or otherwise, without the prior written consent, as applicable, of the DIP Lender and/or the Prepetition Lender each in their sole discretion. No such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender and/or the Prepetition Lender.

34. *No Marshaling.* The DIP Lender and the Prepetition Lender shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral, as the case may be.

35. *Equities of the Case Waiver.* Subject to the entry of the Final Order, the Prepetition Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code. No person may assert an “equities of the case” claim under section 552(b) of the Bankruptcy Code against the Prepetition Lender with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

36. *Discharge Waiver.* The Debtor expressly stipulates, and the Court finds and adjudicates that, the DIP Obligations and the Prepetition Obligations 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 the DIP Obligations and the Prepetition 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 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 Termination Date, of: (a) all of the DIP Obligations; and (b) all of the Prepetition Obligations.

37. *Binding Effect of Interim Order.* Notwithstanding the applicability of Bankruptcy Rule 6004(g), except as otherwise provided herein, immediately upon execution by this Court, the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtor, the DIP Lender, the Prepetition Lender, all other creditors of the Debtor, any Statutory Committee or any other court appointed committee, including, without limitation, any committee of equity holders, 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, any Successor Case, or upon dismissal of the Case or any Successor Case.

38. *No Modification of Interim Order.* Until and unless the DIP Obligations and the Prepetition Obligations have been indefeasibly paid in full in cash, 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, without the prior written consent of the DIP Lender and the Prepetition Lender: (a) any modification, stay, vacatur, amendment, extension or supplementation to this Interim Order; (b) any order allowing use of Cash Collateral of the DIP Lender; (c) 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 or any Successor Case, equal or superior to the DIP Superpriority Claim or the Adequate Protection Superpriority Claims, other than the Carve-Out Expenses; or (d) any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided in the DIP Facility Documents, or with priority equal or superior to the Adequate Protection Liens. No consent shall be implied by any other action, inaction or acquiescence of the DIP Lender and/or the Prepetition Lender.

39. *Interim Order Controls.* In the event of any inconsistency or conflict between the terms and conditions of any of the DIP Facility Documents with the terms and conditions of this Interim Order, the provisions of this Interim Order shall govern and control.

40. *Survival.* The terms and provisions of this Interim Order, and any actions taken pursuant hereto shall survive the entry of any order (a) confirming a plan of reorganization in this Case; (b) converting the Case into a case under chapter 7 of the Bankruptcy Code; (c) dismissing the Case or any Successor Case; or (d) pursuant to which this Court abstains from hearing the Case or any Successor Case. Notwithstanding the entry of any such order, the terms and provisions of this Interim Order, including the claims, liens, security interests, and other protections granted to the DIP Lender and the Prepetition Lender pursuant to this Interim Order and DIP Facility Documents, shall continue in the Case, in any Successor Case, or following dismissal of the Case or any Successor Case, and shall maintain their priority as provided herein until: (i) in respect of the DIP Facility, all the DIP Obligations, including, without limitation, the DIP Superpriority Claim, have been indefeasibly paid in full (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; and (ii) in respect of the Prepetition Facility, all of the Prepetition Obligations pursuant to the Prepetition Credit Documents and this Interim Order, including, without limitation, the Adequate Protection Superpriority Claims, have been indefeasibly paid in full. The terms and provisions concerning the indemnification of the DIP Lender shall continue in the Case, in any Successor Case, following dismissal of the Case or any Successor Case, following termination of the DIP Loan Agreement and DIP Facility Documents, and/or following the indefeasible repayment of the DIP Obligations.

41. *Notice of Final Hearing.* The Final Hearing is scheduled for **September 16, 2009 at 11:00 a.m.** in Courtroom 523 at the United States Bankruptcy Court for the Southern District of New York. On or before August 28, 2009, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "**Final Hearing Notice**"), together with copies of this Interim Order, the proposed final order approving the DIP Facility and the related relief in a form acceptable to the DIP Lender (the "**Final Order**"), and the related motion, on: (a) the parties that were provided notice of the Interim Hearing; (b) any party that has filed, prior to such date, a request for notices with this Court; (c) counsel to any Statutory Committee(s), if appointed. 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 5:00 p.m. on September 11, 2009**, which objections shall be served so that the same are received on or before such date and time by: (i) Blank Rome, LLP, The Chrysler Building, 405 Lexington Avenue, New York, New York 10174, Attention: Michael Z. Brownstein, and One Logan Square, 130 N. 18<sup>th</sup> Street, Philadelphia,

Pennsylvania 19103, Attention: Joel C. Shapiro; (ii) Bingham McCutchen LLP, One State Street, Hartford, Connecticut 06103, Attention: Kate K. Simon, (iii) the U.S. Trustee; and (iv) counsel to any Statutory Committee, if appointed.

42. *Nunc Pro Tunc Effect of this Interim Order.* This Interim 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.

43. *Retention of Jurisdiction.* The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

44. The following sentence in Section 7.5(b) of the DIP Loan Agreement is hereby deleted by consent of the parties: “The Lender shall not be liable for any acts of commission or omission, or for any error of judgment or mistake of fact or law, except for willful misconduct.”

45. At the Final Hearing on September 16, 2009, the Court shall consider the relief requested in Paragraphs 23 and 33 of this Interim Order.

New York, NY  
Dated: August 25, 2009

**s/Arthur J. Gonzalez**  
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UNITED STATES BANKRUPTCY JUDGE