

**Exhibit B**

**TABLE OF UNPUBLISHED AUTHORITIES PURSUANT TO SC LBR 9013-2**

1. *In re BI-LO, LLC*, No. 09-02140-hb (Bankr. D.S.C. Apr. 3, 2009) (Interim Order).
2. *In re Daufuskie Island Props., LLC*, No. 09-0389-jw (Bankr. D.S.C. Feb. 17, 2009) (Interim Order).

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

Case No. 09-02140 (HB) (Joint Administration)

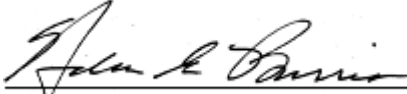
**INTERIM ORDER (A) APPROVING SENIOR SECURED SUPERPRIORITY  
POSTPETITION FINANCING, (B) AUTHORIZING USE OF CASH COLLATERAL,  
(C) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE  
EXPENSE STATUS, (D) GRANTING ADEQUATE PROTECTION,  
(E) MODIFYING AUTOMATIC STAY AND (F) SCHEDULING A FINAL HEARING**

The relief set forth on the following pages, for a total of 55 pages including this page, is hereby **ORDERED**.

**FILED BY THE COURT  
04/03/2009**



Entered: 04/03/2009

  
US Bankruptcy Court Judge  
District of South Carolina

**INTERIM ORDER APPROVING POSTPETITION FINANCING,  
AUTHORIZING USE OF CASH COLLATERAL, GRANTING LIENS,  
GRANTING ADEQUATE PROTECTION, MODIFYING AUTOMATIC STAY  
AND SCHEDULING A FINAL HEARING**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

<b>In re:</b>	§	<b>Case No. 09- 02140 (HB)</b>
	§	
<b>BI-LO, LLC et al.,</b>	§	<b>Chapter 11</b>
	§	
<b>Debtors.<sup>1</sup></b>	§	<b>(Joint Administration)</b>
	§	

**INTERIM ORDER (A) APPROVING SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING, (B) AUTHORIZING USE OF CASH COLLATERAL, (C) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (D) GRANTING ADEQUATE PROTECTION, (E) MODIFYING AUTOMATIC STAY AND (F) SCHEDULING A FINAL HEARING**

THIS MATTER having come before the Court upon the motion (the “DIP Motion”) of BI-LO, LLC (“BI-LO” or the “Borrower”), ARP Ballentine LLC (“Ballentine”), ARP Chickamauga LLC (“Chickamauga”), ARP Hartsville LLC (“Hartsville”), ARP James Island LLC (“James Island”), ARP Moonville LLC (“Moonville”), ARP Morganton LLC (“Morganton”), ARP Winston Salem LLC (“Winston Salem”), BI-LO Holding, LLC (“Holdings”) and BG Cards, LLC (“BG Cards,” and, together with Ballentine, Chickamauga, Harstville, James Island, Moonville, Morganton, Winston Salem, and Holdings, the “Guarantors”), each a debtor and debtor in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, with any successor case, the “Cases”), pursuant to §§ 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the

<sup>1</sup> The Debtors and the last four digits of their respective tax identification numbers are: BI-LO, LLC (0130); BI-LO Holding, LLC (5011); BG Cards, LLC (4159); ARP Ballentine LLC (6936); ARP James Island LLC (9163); ARP Moonville LLC

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Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 4001-4 of the Local Rules for the United States Bankruptcy Court for the District of South Carolina seeking entry of an interim order (this “Interim Order”) *inter alia*:

(i) authorizing the Borrower to obtain \$40 million of secured, superpriority postpetition financing (the “DIP Facility”) from General Electric Capital Corporation (“GECC”) both as agent (the “DIP Agent”) and a lender, GE Capital Markets, Inc., as sole lead arranger and sole bookrunner, and a syndicate of banks, financial institutions or other institutional investors (including GECC individually) arranged by GECC (collectively, the “DIP Lenders”), on an interim basis through the date of the Final Hearing (as defined below) (the “Interim Period”), and up to \$125 million under the DIP Facility upon entry of a Final Order, pursuant to the terms and conditions of that certain Senior Secured Superpriority Debtor in Possession Credit Agreement (the “DIP Credit Agreement” and attached as Exhibit A to the DIP Motion)<sup>2</sup> by and among the Borrower, Holdings, the DIP Agent, GECC and the other lenders party thereto from time to time (collectively, the “DIP Lenders”);

(ii) authorizing the Debtors to execute and deliver the DIP Credit Agreement and other related loan documents, (collectively, the “DIP Documents”) and to perform other acts in connection with the DIP Documents;

(iii) authorizing the Guarantors to guarantee the obligations under this Interim Order, the DIP Credit Agreement and the other DIP Documents;

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(0930); ARP Chickamauga LLC (9515); ARP Morganton LLC (4010); ARP Hartsville LLC (7906); and ARP Winston Salem LLC (2540).

<sup>2</sup> Capitalized terms used and not defined herein shall have the meanings ascribed in the DIP Credit Agreement.

(iv) granting to the DIP Agent, the DIP Lenders and the holders of Cash Management Obligations allowed superpriority administrative expense claims for the DIP Facility and all obligations owing thereunder and under the DIP Documents (collectively, and including all “Obligations” as described in the DIP Credit Agreement, the “DIP Obligations”), subject to the priorities set forth below;

(v) granting to the DIP Agent, for the benefit of itself, the DIP Lenders and the holders of Cash Management Obligations 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 § 363(a) of the Bankruptcy Code, “Cash Collateral”), which liens shall be subject to the priorities set forth below;

(vi) authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under each of the DIP Documents as they become due, including, letter of credit fees (including issuance and other related charges), commitment fees, unused facility fees, closing fees, servicing fees, audit fees, structuring fees, administrative agent’s fees, the fees and disbursements of the DIP Agent’s and DIP Lenders’ attorneys, advisers, accountants, and other consultants, all to the extent provided by and in accordance with the terms of the DIP Documents and this Interim Order;

(vii) authorizing the Debtors’ use of the Cash Collateral of the Prepetition ABL Agent (as defined herein) and of the Prepetition Term Agent (as defined herein);

(viii) providing adequate protection to the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Lenders (as defined herein) for any diminution in value of their interests in the Prepetition Collateral (as defined herein), including the Cash Collateral;

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(ix) providing adequate protection to the Prepetition Term Agent (as defined herein), for the benefit of itself and the Prepetition Term Lenders (as defined herein) for any diminution in value of their interests in the Prepetition Collateral, including Cash Collateral;

(x) vacating and modifying the automatic stay imposed by § 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Documents and this Interim Order;

(xi) scheduling a final hearing (the “Final Hearing”) to consider the relief requested in the DIP Motion and approving the form of notice with respect to the Final Hearing; and

(xii) waiving the ten (10) day stay provisions of Federal Rule of Bankruptcy Procedure 6004(h).

The Court having considered the DIP Motion, the Affidavit of Brian P. Carney in support of the chapter 11 petitions and first day motions, the exhibits attached thereto, the DIP Documents, and the evidence submitted and the statements of counsel made at the interim hearings held on March 27, 2009 and April 3, 2009 (the “Interim Hearing”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and all objections, if any, to the interim relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and is essential for

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the continued operation of the Debtors' businesses; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

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

A. **Petition Date.** On March 23, 2009 (the "Petition Date"), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of South Carolina (the "Court") commencing these Cases.

B. **Debtors in Possession.** The Debtors are continuing in the management and operation of their business and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

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

D. **Debtors' Stipulations.** After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 32 herein, the Debtors admit, stipulate, acknowledge, agree and shall be immediately bound by the following (collectively, paragraphs D(i) through D(viii) below are referred to herein as the "Debtors' Stipulations"):

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(i) *Prepetition ABL Facility:* Pursuant to that certain Credit Agreement, dated as of March 26, 2007 (the “Prepetition ABL Credit Agreement” and, together with all other loan and security documents related to the Prepetition ABL Credit Agreement, the “Prepetition ABL Credit Documents”), among Holdings, Borrower, GE Business Financial Services, Inc. (f/k/a Merrill Lynch Capital, a division of Merrill Lynch Business Financial Services, Inc.), as Administrative Agent, sole lead arranger and sole bookrunner (the “Prepetition ABL Agent”), and the lenders that are parties thereto from time to time (collectively, together with the Prepetition ABL Agent, the “Prepetition ABL Lenders”), the Prepetition ABL Lenders provided revolving credit and letter of credit facilities to the Borrower and provided other financial accommodations to or for the benefit of the Debtors (collectively, the “Prepetition ABL Facility”). The Prepetition ABL Facility will terminate on March 26, 2009.

(ii) *Prepetition ABL Credit Obligations:* The Prepetition ABL Facility provided the Borrower with up to \$100,000,000 in aggregate maximum principal amount of revolving commitments, including swingline loan commitments and a sublimit for letters of credit of \$30,000,000. As of the Petition Date, the outstanding principal amount of all revolving loans under the Prepetition ABL Credit Agreement was not less than \$35,975,000.00, and the face amount of issued and outstanding letters of credit thereunder was not less than \$29,649,584.00 (collectively, together with any amounts paid, incurred or accrued prior to the Petition Date in accordance with the Prepetition ABL Credit Documents, principal, accrued and unpaid interest, any fees, expenses, and disbursements (including, without limitation, attorneys’ fees, related expenses and disbursements), reimbursement obligations, indemnification obligations and other charges of whatever nature, whether or not contingent, whenever arising,

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due or owing in respect thereof to the extent and as provided for in the Prepetition ABL Credit Documents, including all “Obligations” as described in the Prepetition ABL Credit Agreement, the “Prepetition ABL Credit Obligations”). Each of the Guarantors unconditionally guaranteed the Prepetition ABL Credit Obligations.

(iii) *Prepetition Term Facility*: Pursuant to that certain Credit Agreement, dated as of March 26, 2007 (the “Prepetition Term Credit Agreement” and, together with all other loan and security documents related to the Prepetition Term Credit Agreement, the “Prepetition Term Credit Documents,” and, together with the Prepetition ABL Credit Documents, the “Prepetition Credit Documents”), among Holdings, Borrower, Merrill Lynch Capital Corporation, as the original Administrative Agent, Merrill Lynch, Pierce, Fenner & Smith Incorporated, as sole lead arranger and sole bookrunner, The Bank of New York Mellon, as successor Administrative Agent (the “Prepetition Term Agent”), and the lenders that are parties thereto from time to time (collectively, together with the Prepetition Term Agent, the “Prepetition Term Lenders”), the Prepetition Term Lenders or their assignors provided a term loan to the Borrower (collectively, the “Prepetition Term Facility”). The Prepetition Term Facility matured on March 26, 2009.

(iv) *Prepetition Term Credit Obligations*: The Prepetition Term Facility provided the Borrower with \$260,000,000 in aggregate term loans. As of the Petition Date, the outstanding principal amount of all loans under the Prepetition Term Credit Agreement was not less than \$260,000,000 (collectively, together with any amounts paid, incurred or accrued prior to the Petition Date in accordance with the Prepetition Term Credit Documents, principal, accrued and unpaid interest, any allowable fees, expenses, and disbursements (including, without

limitation, attorneys' fees, related expenses and disbursements), reimbursement obligations, indemnification obligations and other charges of whatever nature, whether or not contingent, whenever arising, due or owing in respect thereof to the extent and as provided for in the Prepetition Term Credit Documents, including all "Obligations" as described in the Prepetition Term Credit Agreement, the "Prepetition Term Credit Obligations"). Each of the Guarantors guaranteed the Prepetition Term Credit Obligations.

(v) *Prepetition Liens and Prepetition Collateral.* As more fully set forth in the Prepetition Credit Documents, prior to the Petition Date, each of the Debtors granted security interests in and liens on, among other things, substantially all of their personal property, whether now existing or hereafter arising, and certain leasehold interests in real estate including the proceeds and products of, accessions to, substitutions and replacements for, and rents and profits of all such assets (collectively, the "Prepetition Collateral," it being understood that notwithstanding anything in the Prepetition ABL Credit Agreement or the Prepetition Term Credit Agreement to the contrary, such term "Prepetition Collateral" shall only include real property interests to the extent they were mortgaged or properly perfected prepetition) to: (a) the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Lenders (collectively the "Prepetition ABL Liens"); and (b) the Prepetition Term Agent, for the benefit of itself and the Prepetition Term Lenders (collectively the "Prepetition Term Liens").

(vi) *Intercreditor Agreement; Priority of Prepetition ABL Liens and Prepetition Term Liens.* The Prepetition ABL Agent and Prepetition Term Agent are parties to that certain Intercreditor Agreement dated as of March 26, 2007 (the "Intercreditor Agreement")<sup>3</sup>

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<sup>3</sup> Each of the Debtors acknowledged and agreed to the terms of the Intercreditor Agreement.

regarding the respective rights, interests, and priority of the Prepetition ABL Agent and Prepetition Term Agent with respect to the Prepetition Collateral. Pursuant to the Intercreditor Agreement, among other things, (a) any Lien in respect of all or any portion of the ABL Priority Collateral (as defined in the Intercreditor Agreement) now or hereafter held by or on behalf of the Prepetition Term Agent or any Prepetition Term Lender that secures all or any portion of the Term Obligations (as defined in the Intercreditor Agreement) shall in all respects be junior and subordinate to all Liens granted to the Prepetition ABL Agent and the Prepetition ABL Lenders in the ABL Priority Collateral to secure all or any of the ABL Obligations (as defined in the Intercreditor Agreement); (b) any Lien in respect of all or any portion of the ABL Priority Collateral now or hereafter held by or on behalf of the Prepetition ABL Agent or any Prepetition ABL Lender that secures all or any portion of the ABL Obligations shall in all respects be senior and prior to all Liens granted to the Prepetition Term Agent or any Prepetition Term Lender in the ABL Priority Collateral to secure all or any portion of the Term Obligations; (c) any Lien in respect of all or any portion of the Term Priority Collateral (as defined in the Intercreditor Agreement, except that any of the Real Estate Interests (as defined herein) included in the Term Priority Collateral which were not either mortgaged or properly perfected prior to the Petition Date shall not be considered "Term Priority Collateral" for purposes of this Order) now or hereafter held by or on behalf of the Prepetition ABL Agent or any Prepetition ABL Lender that secures all or any portion of the ABL Obligations shall in all respects be junior and subordinate to all Liens granted to the Prepetition Term Agent and the Prepetition Term Lenders in the Term Priority Collateral to secure all or any portion of the Term Obligations; and (d) any Lien in respect of all or any portion of the Term Priority Collateral now or hereafter held by or on behalf

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of the Prepetition Term Agent or any Prepetition Term Lender that secures all or any portion of the Term Obligations shall in all respects be senior and prior to all Liens granted to the Prepetition ABL Agent or any Prepetition ABL Lender in the Term Priority Collateral to secure all or any portion of the ABL Obligations.

(vii) *Validity, Perfection and Priority of Prepetition ABL Liens and Prepetition ABL Credit Obligations.* Subject to the provisions of paragraph 32 of this Interim Order, each of the Debtors acknowledges and agrees that: (a) as of the Petition Date, the Prepetition ABL Liens on the Prepetition Collateral described in the Prepetition ABL Credit Documents were valid, binding, enforceable, non-avoidable and properly perfected; (b) as of the Petition Date, the Prepetition ABL Liens were senior in priority over any and all other liens on the ABL Priority Collateral, subject only to valid, properly perfected and non-avoidable Permitted Liens (as defined in the Prepetition ABL Credit Agreement) existing as of the Petition Date;<sup>4</sup> (c) as of the Petition Date, the Prepetition ABL Liens were senior in priority over any and all other liens on the Term Priority Collateral, subject only to (i) the interests of the Prepetition Term Agent and Prepetition Term Lenders in the Term Priority Collateral as and to the extent set forth in the Intercreditor Agreement and (ii) valid, properly perfected and non-avoidable Permitted Liens (as defined in the Prepetition ABL Credit Agreement) existing as of the Petition Date; (d) the Prepetition ABL Credit Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors; (e) no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition ABL Liens or Prepetition ABL

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<sup>4</sup> Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Liens are valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited, to the Debtors, the Prepetition ABL Agent, the Prepetition ABL Lenders, the DIP Agent, the DIP Lenders, and any

Credit Obligations exist, and no portion of the Prepetition ABL Liens or Prepetition ABL Credit Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (whether equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (f) the Debtors and their estates have no claims, objections, challenges, causes of actions, and/or choses in action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code, against the Prepetition ABL Agent or Prepetition ABL Lenders or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to their loans under the Prepetition ABL Credit Documents to the Debtors.

(viii) *Cash Collateral.* Each Debtor represents that all of the Debtors' cash, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes the Cash Collateral of the Prepetition ABL Agent, Prepetition ABL Lenders, the Prepetition Term Agent and the Prepetition Term Lenders.

E. **Findings Regarding the Postpetition Financing.**

(i) *Need for Postpetition Financing and Use of Cash Collateral.* The DIP Facility is superior to the Debtors' other alternatives available at the time of entry of this Order, if any, including the use of Cash Collateral alone. The Debtors' need to obtain credit pursuant to the DIP Facility and to use Cash Collateral is immediate and critical in order to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to maintain business relationships with their vendors, suppliers and

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Creditors' Committee to challenge the validity, priority, enforceability, seniority, availability, perfection or extent of any

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customers, to pay their employees, to make utility deposits and to otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, their creditors and equity holders, and the possibility for a successful reorganization of the Debtors. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses, maintain their properties in the ordinary course of business or conduct a reorganization of the Debtors' businesses without the DIP Facility and use of Cash Collateral.

(ii) *No Credit Available on More Favorable Terms.* The Debtors are unable to obtain financing from sources other than the DIP Lenders at the time of entry of this Order on terms more favorable than the DIP Facility. The Debtors have been unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain credit: (a) having priority over administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; or (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Agent, for the benefit of itself and the DIP Lenders, (i) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth in paragraph 7 hereof, (ii) superpriority claims with the priorities set forth in paragraph 8, and (iii) the other protections set forth in this Interim Order.

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such Permitted Liens and/or security interests.

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(iii) *Use of Proceeds of the DIP Facility.* As a condition to the entry into the DIP Credit Agreement, the extension of credit under the DIP Facility and the agreement for the use of Cash Collateral, the DIP Agent and DIP Lenders require, and the Debtors have agreed, that proceeds of the DIP Facility shall be used in a manner consistent with the terms and conditions of the DIP Documents and in accordance with and to the extent set forth in the budget attached hereto as **Schedule 1** (as the same may be modified from time to time in accordance with the DIP Credit Agreement and this Order, the “**Budget**”), subject to such variances as permitted by the DIP Documents and this Interim Order, solely for (a) working capital, letters of credit, and other general corporate purposes, (b) payment of the Prepetition ABL Credit Obligations, (c) permitted payment of costs of administration of the Cases, and (c) payment or refinancing of such prepetition expenses as have been or hereafter are consented to by the DIP Agent, in its reasonable discretion, and are approved by the Court.

(iv) *Application of Proceeds of Collateral.* As a condition to the entry into the DIP Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral and other Prepetition Collateral, each Debtor has agreed that as of and commencing on the date of the entry of the Interim Order, the Debtors shall apply Cash Collateral and the proceeds of DIP Collateral as set forth in paragraph 20 below. Payment of the Prepetition ABL Credit Obligations in accordance with this Interim Order is necessary as the DIP Agent and DIP Lenders will not otherwise consent to providing the DIP Facility and extending credit to the Debtors thereunder, and the Prepetition ABL Agent and Prepetition ABL Lenders will not otherwise consent to the use of their Cash Collateral and Prepetition Collateral or the subordination of the Prepetition ABL Liens to the DIP Liens or the Carve Out (as defined

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herein). Such payment will not prejudice the Debtors or their estates, because payment of such amounts is subject to the rights of parties in interest under paragraph 32 herein.

F. **Adequate Protection.** Each of the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Lenders, and the Prepetition Term Agent, for the benefit of itself and the Prepetition Term Lenders, is entitled to receive adequate protection on account of its interests in the Prepetition Collateral pursuant to sections 361, 362, and 363 of the Bankruptcy Code to the extent of any diminution in the value of their interests in the Prepetition Collateral (including Cash Collateral) resulting from the subordination to the Carve Out and to the DIP Liens (each as defined herein), the Debtors' use, sale or lease of such Prepetition Collateral, and the imposition of the automatic stay (collectively, and to the extent of any such diminution in value, the "Diminution in Value"). Pursuant to sections 361, 363, and 507(b) of the Bankruptcy Code, as adequate protection, the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Lenders, and the Prepetition Term Agent, for the benefit of the Prepetition Term Lenders,<sup>5</sup> will receive the adequate protection as more fully set forth in paragraphs 12, 13 and 14 herein.

G. **Sections 506(c) and 552(b).** In light of (i) the DIP Agent's and DIP Lenders' agreement to subordinate their liens and superpriority claims to the Carve Out (as defined herein); and (ii) the Prepetition ABL Agent's and Prepetition ABL Lenders' agreement to subordinate their liens and superpriority claims to the Carve Out, DIP Liens and DIP Superpriority Claim and to permit the use of their Cash Collateral for payments made in

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<sup>5</sup> Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Liens are valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited, to the Debtors, the Prepetition ABL Agent, the Prepetition ABL Lenders, the DIP Agent, the DIP Lenders, and any



accordance with the Budget and this Interim Order, each of the DIP Agent, DIP Lenders, Prepetition ABL Agent and Prepetition ABL Lenders are entitled to (a) a waiver of any “equities of the case” claims under section 552(b) of the Bankruptcy Code; and (b) subject to entry of a Final Order (as defined herein), a waiver of the provisions of section 506(c) of the Bankruptcy Code.

**H. Good Faith of the DIP Agent and the DIP Lenders.**

(i) *Willingness to Provide Financing.* The DIP Lenders each have indicated a willingness to provide financing to the Debtors subject to the entry of this Interim Order and the Final Order and execution of the DIP Documents by the Debtors.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e).* The terms and conditions of the DIP Facility and the DIP Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the current circumstances in order to obtain postpetition financing at the outset of these cases, reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms’ length among the Debtors, DIP Agent, DIP Lenders, Prepetition ABL Agent and Prepetition ABL Lenders. Use of Cash Collateral and credit to be extended under the DIP Facility shall be deemed to have been so allowed, advanced, made, used or extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code, and the DIP Agent and DIP

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Creditors’ Committee to challenge the validity, priority, enforceability, seniority, availability, perfection or extent of any such Permitted Liens and/or security interests.

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Lenders are therefore entitled to the protection and benefits of section 364(e) of the Bankruptcy Code and this Interim Order.

I. **Final Hearing.** At the Final Hearing, the Debtors will seek final approval of the proposed postpetition financing arrangements and use of Cash Collateral arrangements pursuant to a proposed final order (the "**Final Order**"), which shall be in form and substance acceptable to the DIP Agent and the Prepetition ABL Agent, approving such postpetition financing arrangements and use of Cash Collateral arrangements, notice of which Final Hearing and Final Order will be provided in accordance with this Interim Order.

J. **Notice.** Notice of the Interim Hearing and the emergency relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including: (i) the U.S. Trustee; (ii) the Debtors' twenty largest unsecured creditors on a consolidated basis; (iii) counsel to the Prepetition ABL Agent for itself and for the Prepetition ABL Lenders; (iv) counsel to the Prepetition Term Agent for itself and for the Prepetition Term Lenders and (v) counsel to the DIP Agent for itself and for the DIP Lenders. The parties have made reasonable efforts to afford the best notice possible under the circumstances to permit the interim relief set forth in this Interim Order, and no other or further notice is or shall be required.

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

IT IS HEREBY ORDERED that:

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GRANTING ADEQUATE PROTECTION, MODIFYING AUTOMATIC STAY  
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1. Interim Financing Approved. The DIP Motion is granted on an interim basis as set forth herein, the Interim Financing (as defined herein) is authorized and approved, and the use of Cash Collateral on an interim basis is authorized, subject to the terms and conditions set forth in this Interim Order.

2. Objections Overruled. All objections to the Interim Financing<sup>6</sup>, if any, to the extent not withdrawn or resolved are hereby overruled.

### **DIP Facility Authorization**

3. Authorization of the DIP Financing and DIP Documents. The DIP Documents are approved on an interim basis. The Debtors are authorized to execute and deliver the DIP Documents (including the DIP Credit Agreement and those DIP Documents evidencing the Guarantors' guarantee of the DIP Obligations and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, and to deliver all documents which may be required for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens (as defined herein) described in and provided for by this Interim Order and the DIP Documents. The Debtors are hereby authorized and directed to pay the principal, interest, fees, expenses and other amounts described in the DIP Documents and all other documents comprising the DIP Facility as such become due and without need to obtain further Court approval, any closing fees (provided that the DIP closing fee shall be subject to further order), letter of credit fees (including issuance, fronting, and other related charges), unused facility fees, arrangement fees, commitment fees, servicing fees, audit fees, structuring fees, administrative agent's fees (including an annual administrative agency fee), the

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<sup>6</sup> Other than the Ahold objection, which is reserved as set forth in the record at the April 3, 2009 hearing.

other fees and disbursements of the DIP Agent and DIP Lenders (including, to the extent provided in the DIP Documents, the reasonable fees and expenses of the DIP Agent's and DIP Lenders' attorneys, advisers, accountants, and other consultants, collateral examination, monitoring and appraisal fees, financial advisory fees, indemnification, and any other reimbursement of fees and expenses, all of which fees and expenses shall constitute DIP Obligations), whether or not the transactions contemplated hereby are consummated, all to the extent provided in the DIP Documents.<sup>7</sup> 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 this Interim Order and the DIP Documents. Upon execution and delivery, the DIP Documents shall represent valid and binding obligations of the Debtors, enforceable against the Debtors and their estates in accordance with the terms of the DIP Documents.

4. Authorization to Borrow. Until the Revolving Termination Date (as defined in the DIP Credit Agreement), and subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Documents, DIP Facility, and this Interim Order, and in order to prevent immediate and irreparable harm to the Debtors' estates, the Borrower is hereby authorized to request extensions of credit during the Interim Period (in the form of loans and letters of credit) up to an aggregate principal amount of \$40 million at any one time outstanding,

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<sup>7</sup> The payment of fees and expenses for professionals for the DIP Agent and the DIP Lenders shall require approval of the Court. Professionals for the DIP Agent and the DIP Lenders shall not be required to comply with the U.S. Trustee fee guidelines; however, each professional shall provide a copy of its postpetition fee and expense statements to counsel for the Creditors' Committee and the U.S. Trustee contemporaneously with the delivery of such fee and expense statements to the Debtors. To the extent that the U.S. Trustee or Creditors' Committee has an objection to the reasonableness of the fees and expenses of any such professional, they shall be afforded 10 days after receipt of such fee and expense statement to raise an objection. If any objection is raised and cannot be resolved and/or withdrawn within 10 days after such objection has been raised (or such later time as may be agreed to by the parties), the Court shall adjudicate the matter and fashion an appropriate remedy.

inclusive of the outstanding Prepetition ABL Credit Obligations (other than obligations in respect of the letters of credit issued under the Prepetition ABL Credit Agreement and outstanding on the Petition Date), including a sublimit for letters of credit up to \$[N/A] under the DIP Facility (the “Interim Financing”), and, subject to entry of a Final Order, up to an aggregate principal amount of \$125 million at any one time outstanding, inclusive of the outstanding Prepetition ABL Credit Obligations, including a sublimit for letters of credit up to \$45 million under the DIP Facility.

5. DIP Obligations. The DIP Documents and this Interim Order shall constitute and evidence the DIP Obligations, which DIP Obligations shall be valid, binding and enforceable against the Debtors, their estates and any successors thereto, including without limitation, any trustee or other estate representative appointed or elected in the Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of the Cases, or in any other proceedings superseding or related to any of the foregoing (each a “Successor Case”). Upon entry of this Interim Order, the DIP Obligations will include all loans, letter of credit reimbursement obligations, Cash Management Obligations and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any Debtor to the DIP Agent, DIP Lenders or to any holders of Cash Management Obligations under the DIP Documents or this Interim Order, including, without limitation, all principal, accrued interest, costs, fees, expenses and other amounts owed pursuant to the DIP Documents.

6. DIP Liens and DIP Collateral. Effective immediately upon the execution of this Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code: the DIP Agent is hereby granted, for the benefit of itself, the DIP Lenders and the holders

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of Cash Management Obligations continuing, valid, binding, enforceable, non-avoidable and automatically and properly perfected postpetition security interests in and liens on (the “DIP Liens”) any and all personal property, real property and other assets of each Debtor, tangible and intangible, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Debtor, whether owned or consigned by or to, or leased from or to such Debtor (to the full extent of such Debtor’s interest therein), and regardless of where located, including, without limitation, the following (collectively, the “DIP Collateral”)<sup>8</sup>: (i) all Accounts (including, without limitation, all credit card accounts receivable); (ii) all Chattel Paper; (iii) all Documents; (iv) all General Intangibles (including, without limitation, all payment intangibles, all Intellectual Property and all Software); (v) all Goods (including, without limitation, Inventory, Pharmacy Scripts, Equipment and Fixtures); (vi) all Instruments; (vii) all Investment Property; (viii) all Deposit Accounts, including all Blocked Accounts, Concentration Accounts, Disbursement Accounts, and all other bank accounts and all deposits therein; (ix) all money, cash or cash equivalents; (x) all Supporting Obligations and Letter-of-Credit Rights; (xi) all Commercial Tort Claims; (xii) all books, records, and information relating to any of the foregoing and/or to the operation of such Debtor’s business, and all rights of access to such books, records and information, and all property in which such books, records, and information are stored, recorded and maintained; (xiii) all owned real estate and leaseholds (only as specifically allowed by the terms of the applicable lease)<sup>9</sup>; (xiv) all proceeds of leases and leaseholds interests (collectively, with all owned real estate and leaseholds, the “Real Estate Interests”); (xv) rights under section

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<sup>8</sup> All defined terms in the description and priority of DIP Collateral shall have the meanings ascribed thereto in the DIP Documents. All terms not specifically defined in the DIP Documents shall have the meanings ascribed to such terms in Article 8 or 9 of the Uniform Commercial Code.

506(c) of the Bankruptcy Code and the proceeds thereof resulting from section 506(c) charges against parties other than the Prepetition ABL Agent, Prepetition ABL Lenders, DIP Agent or DIP Lenders; (xvi) any residual amounts of any retainers held by professionals retained by the Borrower, Guarantors or Debtors; (xvii) any residual amounts in any account established and maintained to hold any deposits to provide utility providers with adequate assurance of future performance (the "Utility Escrow Account") after satisfaction of any payments to utility providers; (xviii) all Prepetition Collateral; and (xix) to the extent not otherwise included, all Proceeds, tort claims, insurance claims and other rights to payments not otherwise included in the foregoing and proceeds and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing. Notwithstanding the foregoing, the DIP Collateral expressly excludes any avoidance actions under chapter 5 of the Bankruptcy Code and proceeds thereon. Notwithstanding the foregoing, DIP Obligations shall be satisfied from proceeds of DIP Collateral constituting Real Estate Interests in an amount not to exceed the amount that the greatest amount of DIP Obligations outstanding at any point in time exceeds the amount of the Prepetition ABL Credit Obligations that were outstanding on the Petition Date.<sup>10</sup> The Prepetition ABL Liens shall continue, shall inure to the benefit of the DIP Agent and DIP Lenders, shall secure the DIP Obligations, and shall be included in the definition of "DIP Liens."

7. DIP Lien Priority. Notwithstanding anything to the contrary in the Intercreditor Agreement, the DIP Liens securing the DIP Obligations shall be junior only to (a) the Carve Out,

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<sup>9</sup> Subject to the stipulation made on the record on April 3, 2009 with respect to Ahold.

<sup>10</sup> For the sake of clarity, if the amount of the Prepetition ABL Credit Obligations outstanding on the Petition Date was \$65 million, and if the DIP Obligations at one point peak at \$80 million, but are subsequently paid down to \$50 million, the DIP Agent and DIP Lenders would have a right to up to the \$15 million of proceeds from the Real Estate Interests, representing the difference between \$80 million and \$65 million.

(b) the valid, properly perfected and non-avoidable Permitted Liens existing as of the Petition Date, and (c) solely with respect to the DIP Liens in the Term Priority Collateral,<sup>11</sup> the Liens of the Prepetition Term Agent, and shall otherwise be senior in priority and superior to all other security interests, mortgages, collateral interests, liens or claims on or to any of the DIP Collateral (including any Liens of the Prepetition Term Agent or any Prepetition Term Lender in any Term Priority Collateral in which the Prepetition Term Agent did not have a valid, properly perfected and non-avoidable Lien as of the Petition Date). Other than as set forth herein, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Case. The DIP Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Case, upon the conversion of any Case to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any Case or Successor Case. The DIP Liens shall not be subject to sections 506(c), 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any estate pursuant to section 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the DIP Liens.

8. DIP Superpriority Claim. Upon entry of this Interim Order, the DIP Agent, the DIP Lenders and the holders of Cash Management Obligations are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Cases and any Successor Case (collectively, the “DIP Superpriority Claim”) for all DIP Obligations; provided, however, that the DIP Superpriority Claim shall not apply to avoidance

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<sup>11</sup> Nothing herein shall constitute a finding or ruling by this Court that the Prepetition Term Agent or any Prepetition Term Lender has a valid, senior, enforceable, prior, perfected or non-avoidable security interest in any Term Priority Collateral. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtors, the Prepetition



actions. The DIP Superpriority Claim shall be subordinate only to the Carve Out, and shall otherwise have priority over any and all administrative expenses and unsecured claims against the Debtors or their estates in the Cases and 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, 365, 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, and shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law.

9. No Obligation to Extend Credit. None of the DIP Agent or DIP Lenders shall have any obligation to make any loan or advance, or to issue any letters of credit, under the DIP Documents, unless all of the conditions precedent to the making of such extension of credit or the issuance of such letter of credit under the applicable DIP Documents and this Interim Order have been satisfied in full or waived in writing by the DIP Agent.

10. Use of DIP Facility Proceeds. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facility only for the purposes specifically set forth in this Interim Order, the DIP Documents and in compliance with the Budget, a copy of which is attached hereto as Exhibit 1.

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ABL Agent, the Prepetition ABL Lenders, the DIP Agent, the DIP Lenders, and any Creditors' Committee to challenge the validity, priority, enforceability, seniority, availability, perfection or extent of any such alleged security interests.

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**Authorization to Use Cash Collateral  
and for Adequate Protection**

11. Authorization to Use Cash Collateral. For purposes of this Interim Order, all funds loaned to the Debtors pursuant to the Interim Financing, the Prepetition ABL Facility, or the Prepetition Term Facility shall be deemed to be Cash Collateral. Subject to the terms and conditions of this Interim Order, including the provisions of paragraph 22 below, the DIP Documents, and in accordance with the Budget, each Debtor is authorized to use Cash Collateral until the earlier to occur of the Termination Declaration Date or the Revolving Termination Date; provided, however, that during the Remedies Notice Period (as defined herein) the Debtors may use Cash Collateral in accordance with the terms and provisions of the Budget solely to meet payroll obligations and to pay other expenses critical to the preservation of the Debtors and their estates, all as agreed to by the DIP Agent in its sole discretion. Nothing in this Interim Order shall authorize the disposition of any assets of any Debtor or their estates outside of the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Interim Order, the DIP Facility, the DIP Documents, and in accordance with the Budget.

12. Adequate Protection Liens.

(a) *Adequate Protection Liens of Prepetition ABL Agent and Prepetition ABL Lenders.* Pursuant to section 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition ABL Agent and Prepetition ABL Lenders in the Prepetition Collateral against any Diminution in Value of such interests, each Debtor hereby grants to the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Lenders,

continuing valid, binding, enforceable, non-avoidable and automatically perfected postpetition security interests in and liens on the DIP Collateral (the “ABL Adequate Protection Liens”).

(b) *Priority of ABL Adequate Protection Liens.* The ABL Adequate Protection Liens shall be junior only to: (i) the Carve Out, (ii) the DIP Liens, (iii) the Prepetition ABL Liens, (iv) valid, properly perfected and non-avoidable Permitted Liens existing as of the Petition Date and (v) solely with respect to ABL Adequate Protection Liens in Term Priority Collateral, the Prepetition Term Liens and Term Adequate Protection Liens (as defined below) of the Prepetition Term Agent. The ABL Adequate Protection Liens shall otherwise be senior to all other security interests, mortgages, collateral interests, liens or claims on or to any of the DIP Collateral. Except as provided herein, the ABL Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases or any Successor Case, and shall be valid and enforceable against any trustee appointed in any Case or any Successor Case, or upon the dismissal of any Case or any Successor Case. The ABL Adequate Protection Liens shall not be subject to sections 506(c), 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estates pursuant to section 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the ABL Adequate Protection Liens.

(c) *Adequate Protection Liens of Prepetition Term Agent and Prepetition Term Lenders.* Pursuant to section 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Term Agent and Prepetition Term Lenders in the Prepetition Collateral against any Diminution in Value of such interests, each Debtor hereby grants to the Prepetition Term Agent, for the benefit of itself and the Prepetition Term Lenders,

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continuing valid, binding, enforceable, non-avoidable and automatically perfected postpetition security interests in and replacement liens on the DIP Collateral (the “Term Adequate Protection Liens,” and, together with the ABL Adequate Protection Liens, the “Adequate Protection Liens”). In addition, the foregoing Term Adequate Protection Liens shall not be limited in amount from and after the Petition Date.

(d) *Priority of Term Adequate Protection Liens.* The Term Adequate Protection Liens shall be junior only to: (i) the Carve Out, (ii) the DIP Liens, (iii) the Prepetition ABL Liens, (iv) the ABL Adequate Protection Liens, (v) the Prepetition Term Liens and (vi) valid, properly perfected and non-avoidable Permitted Liens existing as of the Petition Date; provided, however, that notwithstanding the foregoing, the Term Adequate Protection Liens on Term Priority Collateral shall be senior to the DIP Liens, the Prepetition ABL Liens and the ABL Adequate Protection Liens. The Term Adequate Protection Liens shall otherwise be senior to all other security interests, mortgages, collateral interests, liens or claims on or to any of the DIP Collateral. Except as provided herein, the Term Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases or any Successor Case, and shall be valid and enforceable against any trustee appointed in any Case or any Successor Case, or upon the dismissal of any Case or any Successor Case. The Term Adequate Protection Liens shall not be subject to sections 506(c), 510, 549, or 550 of the Bankruptcy Code.

13. Adequate Protection Superpriority Claims.

(a) *Adequate Protection Superpriority Claims.* As further adequate protection of the interests of the Prepetition ABL Agent and Prepetition ABL Lenders in the Prepetition

Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition ABL Agent and Prepetition ABL Lenders are each hereby granted as and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in the Cases and any Successor Case (the “Adequate Protection Superpriority Claims”).

(b) *Priority of Adequate Protection Superpriority Claims.* The Adequate Protection Superpriority Claims shall be junior only to the (i) Carve Out and (ii) DIP Superpriority Claim. Except as set forth herein, the Adequate Protection Superpriority Claims shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 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.

14. Adequate Protection Payments and Protections. As further adequate protection, each Debtor is authorized and directed to provide further adequate protection to the Prepetition ABL Agent and the Prepetition ABL Lenders, in the form of: (a) payments of interest on the Prepetition ABL Credit Obligations at the rate set forth in the Prepetition ABL Credit Agreement, and reasonable fees and other amounts due under the Prepetition ABL Credit Documents, at the times specified therein; (b) ongoing payment of the reasonable fees, costs and expenses, including, without limitation, legal and other professionals’ fees and expenses, as required under the Prepetition ABL Credit Documents; and (c) continued maintenance and insurance of the Prepetition Collateral and the DIP Collateral in amounts and for the risks, and

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by the entities, as required under the Prepetition ABL Credit Documents and the DIP Documents.

15. Section 507(b) Reservation. Nothing herein shall impair, limit or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition ABL Agent, Prepetition ABL Lenders, Prepetition Term Agent and/or Prepetition Term Lenders pursuant to this Interim Order is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases or any Successor Case.

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

16. Amendment of the DIP Documents. The DIP Documents may from time to time be amended, modified or supplemented by the parties thereto without notice or a hearing if: (a) the amendment, modification, or supplement is (i) in accordance with the DIP Documents, (ii) beneficial to the Debtors, and (iii) not prejudicial in any material respect to the rights of third parties; (b) a copy (which may be provided through electronic mail or facsimile) of the amendment, modification or supplement is provided to the attorneys for any official committee of unsecured creditors in these Cases appointed by the U.S. Trustee pursuant to section 1102 of the Bankruptcy Code (a "Creditors' Committee"), Jones Day and the McNair Firm, P.A., as co-counsel to the Prepetition Term Agent and/or Ad Hoc Committee of Term Lenders ("Counsel to the Ad Hoc Committee"), and the U.S. Trustee; and (c) the amendment, modification or supplement is filed with the Court; provided, however, that consent of any Creditors' Committee or the U.S. Trustee, and approval of the Court are not necessary to effectuate any such amendment, modification or supplement. Except as otherwise provided in this paragraph 16, no

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waiver, modification, or amendment of any of the provisions of any DIP Document shall be effective unless set forth in writing, signed on behalf of the Debtors and the DIP Agent and approved by the Court on notice; and provided, further, that such amendments, modifications or supplements shall be without prejudice to the right of any party in interest to be heard.

17. Budget Maintenance. The Budget and any modification to, or amendment or update of, the Budget shall be in form and substance acceptable to and approved by the DIP Agent as provided in the DIP Credit Agreement. The Budget may be amended or modified in writing from time to time only with the written reasonable consent of the DIP Agent. The Debtors shall update the Budget from time to time in accordance with the DIP Credit Agreement and any such update shall be in form and substance reasonably acceptable to the DIP Agent. Contemporaneously with any such modification, amendment, update or replacement of the Budget, the Debtors shall send copies of such modification, amendment, update or replacement to counsel for the Creditors' Committee, Counsel to the Ad Hoc Committee, and to the U.S. Trustee.

18. Modification of Automatic Stay. The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claim, and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP Agent or the Prepetition ABL Agent or the Prepetition Term Agent each may request in its reasonable discretion to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agent, DIP Lenders, Prepetition ABL Agent,

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Prepetition ABL Lenders, Prepetition Term Agent and Prepetition Term Lenders under the DIP Documents, the DIP Facility and this Interim Order; (d) authorize the Debtors to pay, and the DIP Agent, DIP Lenders, Prepetition ABL Agent and Prepetition ABL Lenders, to retain and apply, payments made in accordance with the terms of this Interim Order, subject to the reservation of rights contained in paragraph 32 of this Interim Order and (e) authorize and permit the DIP Agent, DIP Lenders, Prepetition ABL Agent and the Prepetition ABL Lenders to exercise their remedies set forth herein, in the DIP Agreement, the DIP Documents, Prepetition ABL Credit Agreement and Prepetition ABL Credit Documents, as applicable, as set forth in this Interim Order, including as set forth in paragraph 25 hereof, and as otherwise available at law or in equity against the DIP Collateral and/or Prepetition Collateral.

19. 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, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Agent, the DIP Lenders, the Prepetition ABL Agent, the Prepetition ABL Lenders, the Prepetition Term Agent and the Prepetition Lenders to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Agent, the Prepetition ABL Agent, and Prepetition Term Agent is authorized to file, as it deems necessary or advisable, such financing statements, mortgages, notices and other instruments or documents to perfect in accordance with

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applicable non-bankruptcy law or to otherwise evidence the applicable DIP Liens and/or Adequate Protection Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create, evidence or perfect the DIP Liens and/or the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Agent and Prepetition ABL Agent and Prepetition Term Agent all such financing statements, mortgages, notices, instruments, and other documents as the DIP Agent Prepetition ABL Agent or Prepetition Term Agent may reasonably request to evidence the DIP Liens and/or Adequate Protection Liens. The DIP Agent, Prepetition ABL Agent and Prepetition Term Agent may file a copy of this Interim Order as a financing statement or notice 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, instrument, or similar document. In addition, all rights of the Prepetition ABL Agent with respect to any and all financing statements, mortgages, control agreements, deposit account control agreements, intercreditor agreements, credit card agreements or notification requirements, notices and other instruments or documents made or entered into on behalf of the Prepetition ABL Agent with respect to the DIP Collateral and Prepetition Collateral shall also inure to the DIP Agent.

20. Application of Proceeds of Collateral, Payments and Collections. As a condition to the entry into the DIP Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, each Debtor has agreed that proceeds of DIP Collateral, Prepetition Collateral, any amounts held on account of the DIP Collateral or Prepetition

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Collateral, and all payments and collections received by the Debtors shall be applied as follows: with respect to all proceeds other than proceeds of Term Priority Collateral: (i) *first*, to the payment of accrued and then-unpaid Court-approved obligations forming part of the Carve Out that are currently owed, to the extent not paid by Borrowers and after notice to the DIP Agent; (ii) *second*, to permanently reduce the Prepetition ABL Credit Obligations in accordance with the Prepetition ABL Credit Documents, subject to paragraph 32 herein, until indefeasibly paid in full in cash; (iii) *third*, to reduce the DIP Obligations then due and owing in accordance with the DIP Documents and this Interim Order until indefeasibly paid in full in cash (and following the occurrence of an Event of Default, (a) such reduced DIP Obligations shall include permanent reductions of the DIP Facility acceptable to the DIP Agent in its sole discretion and (b) such proceeds shall be used to cash collateralize, obtain back to back letters of credit for and/or cancel all outstanding letters of credit issued or deemed issued under the DIP Documents in accordance with the DIP Documents and this Interim Order), (iv) *fourth*, to any cash management obligations then due and payable to any DIP Lenders, (v) *fifth*, subsequent to the earlier to occur of the Termination Declaration Date and the Revolving Termination Date and to the extent not already funded, to fund the Indemnity Account; and (vi) *sixth*, to the estates. Notwithstanding any of the foregoing to the contrary, all proceeds of Term Priority Collateral shall be applied in accordance with the terms of the Intercreditor Agreement. Upon the closing of the DIP Facility, all Letters of Credit outstanding under the Prepetition ABL Credit Documents shall automatically and immediately be deemed to be Letters of Credit under the DIP Documents, and, subject to entry of the Final Order, all obligations outstanding under the Prepetition ABL Credit Documents shall automatically and immediately be deemed to be DIP Obligations, and all

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Prepetition ABL Credit Obligations shall be paid in full in cash from the DIP Facility proceeds. Following the Termination Declaration Date or the Revolving Termination Date, as the case may be, prior to application of proceeds in the immediately preceding sentence funds sufficient to fund the Carve Out shall first be wired to the Debtors. The Debtors shall hold these funds in an interest-bearing account in trust for the benefit of parties claiming under the Carve-Out, and upon satisfaction of all such claims any remaining funds shall be returned to the DIP Agent for application in accordance with this paragraph 20.

21. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in these Cases or any Successor Case, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) in violation of the DIP Documents at any time prior to the indefeasible repayment in full in cash of all DIP Obligations and Prepetition ABL Credit Obligations, the cancellation, backing or cash collateralization of letters of credit under the DIP Facility, and the termination of the DIP Agent's and DIP Lenders' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to any Debtor and such Debtor's estate, and such financing is secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied as set forth in paragraph 20 herein.

22. Maintenance of DIP Collateral and Cash Management System. Until the indefeasible payment in full in cash of all DIP Obligations, the cancellation, backing, or cash collateralization of letters of credit under the DIP Facility, and the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtors

shall: (a) insure the DIP Collateral as required under the DIP Facility; and (b) within 15 days after entry of this Interim Order, implement cash management procedures satisfactory to the DIP Agent, including, but not limited to, customary lockbox arrangements and blocked account agreements, with all funds deposited into any deposit account maintained by the Debtors to be swept on a daily basis into a blocked account maintained by, and subject to the sole and exclusive control of, the DIP Agent and applied in accordance with paragraph 20 herein. Further, during an Event of Default (as set forth herein) the DIP Agent, at its election, may cash collateralize letters of credit issued or deemed existing under the DIP Facility.

23. Disposition of DIP Collateral; Rights of DIP Agent and DIP Lenders. Except to the extent permitted under the DIP Credit Agreement, no Debtor shall sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral outside of the ordinary course of business without the prior written consent of the DIP Agent (and no such consent shall be implied, from any other action, inaction or acquiescence). The DIP Agent, the Prepetition ABL Agent and the Prepetition ABL Lenders have the right to credit bid for any asset or assets of the Debtors offered at a sale, lease or other disposition of Prepetition Collateral or DIP Collateral outside the ordinary course of business (including any auction or other similar sales), and may, if the Prepetition ABL Agent or Prepetition ABL Lenders purchase such asset or assets, offset their secured claim against the purchase price of such asset or assets.

24. Postpetition Financing Termination. On the Revolving Termination Date, (a) all DIP Obligations shall be immediately due and payable, all commitments to extend credit under the DIP Facility will terminate, and all letters of credit outstanding shall be cash collateralized, backed or cancelled, and (b) all authority to use Cash Collateral shall cease, provided, however,

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that during the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral solely as set forth in paragraphs 11 and 20 herein.

(a) Events of Default. The following shall constitute an event of default under this Interim Order, unless waived in writing by the DIP Agent (the “Events of Default”): the occurrence of an “Event of Default” under the DIP Agreement as set forth therein.

25. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, (a) the DIP Agent may declare (i) all DIP Obligations to be immediately due and payable, (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains, and/or (iii) the termination of the DIP Agreement and any other DIP Document as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, and (b) the DIP Agent may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral, except as provided in paragraph 11 hereof during the Remedies Notice Period (any such declaration, shall be referred to herein as a “Termination Declaration”). The Termination Declaration shall be given by facsimile (or other electronic means) to counsel to the Debtors, counsel to the Prepetition ABL Agent, counsel to the Prepetition Term Agent, counsel to any Creditors’ Committee, Counsel to the Ad Hoc Committee, and the U.S. Trustee (the earliest date any such Termination Declaration is made shall be referred to herein as the “Termination Declaration Date”). The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the Termination Declaration Date, except as provided in paragraph 11 during the Remedies Notice Period. Any automatic stay otherwise applicable to any of the DIP

Agent, DIP Lenders, Prepetition ABL Agent or Prepetition ABL Lenders is hereby modified so that two (2) business days after the Termination Declaration Date (such two (2) business day period, the “Remedies Notice Period”), (A) the DIP Agent and the DIP Lenders shall be entitled to exercise all rights and remedies against the DIP Collateral other than the Term Priority Collateral (provided, however, that the DIP Agent and the DIP Lenders shall be entitled to exercise all rights and remedies against the Term Priority Collateral in the event that the Prepetition Term Agent or the Prepetition Term Lenders shall have been afforded relief from the automatic stay with respect to such Term Priority Collateral) in accordance with the DIP Documents and this Interim Order and shall be permitted to satisfy the DIP Obligations, DIP Superpriority Claim and DIP Liens, subject to paragraph 20 and the Carve Out; and (B) to the extent Prepetition ABL Credit Obligations remain outstanding, the Prepetition ABL Agent and the Prepetition ABL Lenders shall be entitled to exercise their rights and remedies against the DIP Collateral other than the Term Priority Collateral (provided, however, that the Prepetition ABL Agent and the Prepetition ABL Lenders shall be entitled to exercise all rights and remedies against the Term Priority Collateral in the event that the Prepetition Term Agent or the Prepetition Term Lenders shall have been afforded relief from the automatic stay with respect to such Term Priority Collateral) to satisfy the Prepetition ABL Credit Obligations, Adequate Protection Superpriority Claims and ABL Adequate Protection Liens, subject to paragraph 20 and the Carve Out. During the Remedies Notice Period, the Debtors and any Creditors’ 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, or to the extent of an applicable cure period (if any) such Event of Default was cured within the applicable cure period as provided under the

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DIP Documents. Unless the Court determines during the Remedies Notice Period that an Event of Default has not occurred, or to the extent of an applicable cure period (if any) was cured within the applicable cure period as provided under the DIP Documents, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order and the DIP Agent, DIP Lenders, Prepetition ABL Agent, and Prepetition ABL Lenders shall be permitted to exercise all remedies set forth herein, in the DIP Agreement, the DIP Documents, Prepetition ABL Credit Agreement and Prepetition ABL Credit Documents, as applicable, and as otherwise available at law or in equity against the DIP Collateral and/or Prepetition Collateral, 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 in the DIP Collateral and Prepetition Collateral, in each case, other than the Term Priority Collateral (provided, however, that the DIP Agent, the DIP Lenders, the Prepetition ABL Agent, and the Prepetition ABL Lenders shall be entitled to exercise all rights and remedies against the Term Priority Collateral in the event that the Prepetition Term Agent or the Prepetition Term Lenders shall have been afforded relief from the automatic stay with respect to such Term Priority Collateral), or any other rights and remedies granted to the DIP Agent and the DIP Lenders with respect thereto pursuant to the DIP Agreement, DIP Documents, or this Interim Order, and to utilize, at no cost or expense, any tradenames, trademarks, copyrights and other intellectual property of the Debtors to the extent deemed necessary or appropriate by the DIP Agent to sell, lease or otherwise dispose of Prepetition Collateral or DIP Collateral other than the Term Priority Collateral (provided, however, that the DIP Agent, the DIP Lenders, the Prepetition ABL Agent,

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and the Prepetition ABL Lenders shall be entitled to exercise all rights and remedies against the Term Priority Collateral in the event that the Prepetition Term Agent or the Prepetition Term Lenders shall have been afforded relief from the automatic stay with respect to such Term Priority Collateral). Any remedies taken affecting any leases or premises subject to any leases shall be in accordance with applicable federal and state law, the Bankruptcy Code (including, but not limited to, the nondebtor parties' rights thereunder), the governing leases, consent of the applicable landlord (if required), or as otherwise ordered by the Court.

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

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27. Indemnification.

(a) *DIP Agent and DIP Lenders.* The Debtors shall indemnify and hold harmless the DIP Agent and each DIP Lender and their respective shareholders, directors, agents, officers, subsidiaries and affiliates, successors and assigns, attorneys and professional advisors, in their respective capacities as such, from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of action, whether groundless or otherwise, and reasonable costs and expenses incurred, suffered, sustained or required to be paid by an indemnified party of every nature and character arising out of or related to the DIP Documents, or the DIP Facility or the transactions contemplated thereby and by this Interim Order, whether such indemnified party is party thereto, as provided in and pursuant to the terms of the DIP Documents and as further described therein and herein, except to the extent resulting from such indemnified party's gross negligence or willful misconduct or breach of the DIP Documents, as finally determined by a final non-appealable order of a court of competent jurisdiction. The indemnity includes indemnification for the DIP Agent's and each DIP Lender's exercise of discretionary rights granted under the DIP Facility. In all such litigation, or the preparation therefor, the DIP Agent and DIP Lenders shall each be entitled to select their own counsel and, in addition to the foregoing indemnity, the Debtors agree to promptly pay the reasonable fees and expenses of such counsel.

(b) *Indemnity Account.* Upon the earlier to occur of the Termination Declaration Date and the Revolving Termination Date, the Debtors shall pay, or the DIP Agent may charge against the DIP Facility on the Debtors' behalf, \$2,000,000 into an indemnity account (the "Indemnity Account") in the possession of the DIP Agent and subject to the first

priority liens of the DIP Agent and DIP Lenders and the second priority liens of the Prepetition ABL Agent and Prepetition ABL Lenders as additional security for (i) the Debtors' indemnification obligations to the DIP Agent and DIP Lenders, (ii) the Debtors' indemnification obligations to the Prepetition ABL Agent and Prepetition ABL Lenders, (iii) the repayment of the DIP Obligations and (iv) the repayment of the Prepetition ABL Credit Obligations. If the amounts on deposit in the Indemnity Account are insufficient to pay all such indemnification obligations, the DIP Agent and the Prepetition ABL Agent each reserves the right to recover any deficiency from the Debtors or their estates therefore and shall retain all rights under the DIP Liens and the Prepetition ABL Liens and any other protections granted hereunder as security for such deficiency. The Indemnity Account shall terminate and all remaining amounts held therein shall be released to the Debtor when the following have occurred: the DIP Obligations and the Prepetition ABL Credit Obligations have been irrevocably paid in full in cash (with all such payments and collateral proceeds received by the DIP Agent, DIP Lender, Prepetition ABL Agent and Prepetition ABL Lenders, respectively, irrevocably vested in such parties), the priority and validity of the DIP Obligations and the Prepetition ABL Credit Obligations and the perfection, priority and validity of Prepetition ABL Agent's Liens on the Prepetition Collateral and DIP Agent's Liens on the DIP Collateral are fully and finally allowed and the release by the Debtors set forth herein is final (and not subject to any rights of any third party, including the Creditors' Committee, to object). If any Challenge (as defined below) or other claim is brought or asserted against any of the DIP Agent, DIP Lender, Prepetition ABL Agent and Prepetition ABL Lenders, and all such Challenges and claims are dismissed with prejudice, withdrawn with prejudice, fully and finally settled or otherwise resolved by a final, non-appealable order of a

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court of competent jurisdiction, the Indemnity Account shall terminate and, after satisfaction of the obligations secured by the Indemnity Account, all remaining amounts held therein shall be released to the DIP Agent and applied in accordance with paragraph 20 herein.

28. Proofs of Claim. The DIP Agent, DIP Lenders, Prepetition ABL Agent and Prepetition ABL Lenders will not be required to file proofs of claim in any of the Cases or any Successor Case, and the Debtors' Stipulations in paragraph D of this Interim Order shall be deemed to constitute a timely filed proof of claim. Any order entered by the Court in connection with the establishment of a bar date for any claim (including without limitation administrative claims) in the Cases or any Successor Case shall not apply to the DIP Agent, the DIP Lenders, the Prepetition ABL Agent, or the Prepetition ABL Lenders.

29. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Agent and DIP Lenders under the DIP Documents or the Prepetition ABL Agent and Prepetition ABL Lenders under the Prepetition ABL Credit Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the Prepetition ABL Agent, Prepetition ABL Lenders, DIP Agent and DIP Lenders reasonable access to the Debtors' premises and their books and records in accordance with the Prepetition Documents and DIP Documents, as the case may be, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their independent certified public accountants, financial advisors, restructuring advisers, investment bankers, liquidators and consultants to cooperate, consult with, and provide to the Prepetition ABL Agent and DIP Agent (and so long as an Event of Default has occurred and is continuing, each Prepetition ABL Lender and DIP

Lender) all such information as may be reasonably requested with respect to the business, results of operations and financial condition of the Debtors, including all information relating to any bid proposals and sale procedures in respect of any stores or assets proposed to be sold.

30. Carve Out.

(a) *Carve Out.* As used in this Interim Order, the “Carve Out” means the following: (i) statutory fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) (the “US Trustee Carve Out”); and (ii) subject to the terms and conditions of this Interim Order, the allowed and unpaid professional fees and disbursements incurred by the Debtors for any professionals retained by final order of the Court (which order has not been reversed, vacated, or stayed, unless such stay has been vacated) by the Debtors under sections 327 or 363 of the Bankruptcy Code (the “Debtor Professionals”) incurred prior to the business day immediately following the earlier to occur of the Termination Declaration Date and the Revolving Termination Date, to the extent allowed or later allowed by order of the Court (which order has not been reversed, vacated, or stayed, unless such stay has been vacated) under sections 328, 330 and/or 331 of the Bankruptcy Code and any interim compensation procedures order (the “Allowed Debtor Professional Fees”), but solely to the extent such Allowed Debtor Professional Fees sought in any given 4-week operating period<sup>12</sup> do not exceed the amount set forth in the Budget for such Debtor Professionals for the applicable 4-week operating period, plus Allowed Debtor Professional Fees incurred by Debtor Professionals from and after the business day immediately following the earlier to occur of the Termination Declaration Date and the Revolving Termination Date in an amount not to exceed \$500,000 (the “Debtor Professionals

Carve Out”), and (iii) subject to the terms and conditions of this Interim Order, the allowed and unpaid professional fees and disbursements incurred by any Creditors’ Committee for any professionals retained by final order of the Court (which order has not been reversed, vacated, or stayed, unless such stay has been vacated) by any Creditors’ Committee under sections 327 or 1103(a) of the Bankruptcy Code (the “Committee Professionals”), to the extent allowed or later allowed by order of the Court (which order has not been reversed, vacated, or stayed, unless such stay has been vacated) under sections 328, 330 and/or 331 of the Bankruptcy Code and any interim compensation procedures order (the “Allowed Committee Professional Fees”), but solely to the extent such Allowed Committee Professional Fees sought in any given 4-week operating period do not exceed the amount set forth in the Budget for such Committee Professionals for the applicable 4-week operating period, and in any event in an aggregate amount not to exceed \$500,000 (the “Committee Professionals Carve Out”).

(b) *No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees.* The DIP Agent, DIP Lenders, Prepetition ABL Agent, and Prepetition ABL Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any professionals retained by the Debtors or any Creditors’ Committee pursuant to sections 327 and 1103 of the Bankruptcy Code (the “Case Professionals”) incurred in connection with the Cases or any Successor Case under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed (i) to obligate the DIP Agent, DIP Lenders, Prepetition ABL Agent or Prepetition ABL Lenders, in any way to pay compensation to or to reimburse expenses of any Case Professional, or to guarantee that the Debtors have

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<sup>12</sup> For the sake of clarity, the references herein to “4-week operating period” shall refer to consecutive, and not

sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve Out if actual Allowed Professional Fees are higher in fact than reflected in the Budget or estimated fees and disbursements of Case Professional reflected in any Borrowing Base Certificate; or (iii) as consent to the allowance of any professional fees or expenses of any Case Professionals. The Carve Out and the payment of Allowed Debtor Professionals Fees and the Allowed Committee Professionals Fees shall be satisfied first, from the proceeds of DIP Collateral and, second, by payment from the DIP Agent upon demand to the DIP Agent. Any funding of the Carve Out 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 Documents, the Bankruptcy Code and applicable law. The DIP Agent's and DIP Lenders' liens and claims shall, however, be subject to the Carve Out as set forth in this Interim Order.

(c) *Reserves Related to Carve Out.* DIP Agent shall have the right to reserve against borrowing availability under the DIP Documents for the amount of the Carve-Out based, in part, on the budgeted professional fees and disbursements projected to be incurred by the Debtors and any Creditors' Committee, to the extent not paid currently, including, without limitation or duplication, reserves established as of the first day of each 4-week operating period for the professional fees and disbursements projected to be incurred during such 4-week operating period as contemplated by the Budget. By no later than the 15<sup>th</sup> day of each 4-week operating period, the Debtors and any Creditors' Committee shall deliver to the DIP Agent reasonably detailed invoices for their respective professionals' fees incurred during the prior 4-week operating period. Promptly following the issuance by any professional included in the

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overlapping or rolling, 4-week periods.

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Carve-Out of its invoice for services rendered, the Agent may adjust its reserve to reflect the actual invoiced expenses for such period.

31. Limitations on the DIP Facility, the DIP Collateral, the Cash Collateral and the Carve Out. The DIP Facility, the DIP Collateral, the Cash Collateral (subject to the limited use of Cash Collateral during the Remedies Notice Period, as set forth in paragraph 11 above), and the Carve Out may not be used in connection with: (a) preventing, hindering, or delaying any of the DIP Agent's, the DIP Lenders', the Prepetition ABL Agent's, or the Prepetition ABL Lenders' 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 Agent and DIP Lenders, except to the extent permitted under the DIP Credit Agreement; (c) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Agent and DIP Lenders, except to the extent permitted under the DIP Credit Agreement; (d) incurring Indebtedness (as defined in the DIP Agreement) without the prior consent of the DIP Agent and DIP Lenders, except to the extent permitted under the DIP Credit Agreement; (e) objecting to or challenging in any way the claims, liens, or interests (including interests in the Prepetition Collateral or DIP Collateral) held by or on behalf of any Prepetition ABL Agent, Prepetition ABL Lender, DIP Agent or DIP Lender; (f) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against any Prepetition ABL Agent, Prepetition ABL Lender, DIP Agent or DIP Lender; or (g) prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition ABL Credit Obligations, Prepetition ABL

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Liens, DIP Obligations or DIP Liens or any other rights or interests of any of the Prepetition ABL Agent, Prepetition ABL Lenders, DIP Agent or DIP Lenders. Notwithstanding the foregoing, the DIP Facility, the DIP Collateral, the Cash Collateral, and the Committee Professionals Carve Out may be used in an amount not to exceed \$50,000 in the aggregate for Allowed Professional Fees incurred by the Creditors' Committee to investigate the validity, enforceability, perfection, priority or extent of the Prepetition ABL Liens or claims within sixty (60) days following the selection of counsel to the Creditors' Committee.

32. Reservation of Certain Third Party Rights and Bar of Challenges and Claims. A party in interest (other than the Debtors), including any Creditors' Committee, may seek to avoid, object to or otherwise challenge the findings or Debtors' Stipulations regarding (a) the validity, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition ABL Agent, any Prepetition ABL Lender, Prepetition Term Agent or any Prepetition Term Lender or (b) the validity, allowability, priority, fully secured status or amount of the Prepetition ABL Credit Obligations (notwithstanding the payment of any such Prepetition ABL Credit Obligations or conversion of any such Prepetition ABL Credit Obligations to DIP Obligations) or Prepetition Term Credit Obligations. Any such party in interest (other than the Debtors) must commence, as appropriate, a contested matter or adversary proceeding raising such claim, objection, defense, or other challenge, including, without limitation, any claim against any Prepetition ABL Agent, Prepetition ABL Lender, Prepetition Term Agent or any Prepetition Term Lender in the nature of a setoff, counterclaim or defense to the applicable Prepetition ABL Credit Obligations, Prepetition Term Obligations, Prepetition ABL Liens or Prepetition Term Liens (each, a "Challenge") within sixty (60) calendar days after the formation

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of a Creditors' Committee by the U.S. Trustee (together, the "Challenge Period"). The Challenge Period with respect to interests of the Prepetition ABL Agent and Prepetition ABL Lenders may only be extended with the written consent of the Prepetition ABL Agent, and the Challenge Period with respect to interests of the Prepetition Term Agent and Prepetition Term Lenders may only be extended with the written consent of the Prepetition Term Agent, or as such Challenge Periods are otherwise extended by order of the Court. Upon the expiration of the Challenge Period (the "Challenge Period Termination Date"), without the filing of a Challenge (or if any such Challenge is filed and overruled): (A) any and all such Challenges by any party (including, without limitation, any Creditors' Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Case), shall be deemed to be forever waived and barred, and (B) all of the Debtors' Stipulations, waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to the Prepetition ABL Agent's, each Prepetition ABL Lender's, the Prepetition Term Agent's and each Prepetition Term Lender's claims, liens, and interests shall be of full force and effect and forever binding upon all the Debtors' estates and all creditors, interest holders, and other parties in interest in these Cases and any Successor Case. To the extent that a Challenge is timely filed but does not expressly challenge all of the Debtors' Stipulations, or to the extent that no Challenge is timely filed, all such unchallenged Debtors' Stipulations shall be of full force and effect and forever binding upon all the Debtors' estates and all creditors, interest holders, and other parties in interest in these Cases and any Successor Case, notwithstanding any timely-filed Challenge. Upon a successful Challenge brought pursuant to this paragraph 32, the Court may

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fashion any appropriate remedy, including ordering the disgorgement of any payments or unwinding of any conversion of any Prepetition ABL Credit Obligations to DIP Obligations that would not have been paid or converted had the Challenge been successful prior to such payment or conversion.

33. 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.

34. Section 506(c) Claims. Subject to entry of the Final Order, no costs or expenses of administration or similar charges, cost or expenses which have been or may be incurred in the Cases at any time shall be charged against the DIP Agent, DIP Lenders, Prepetition ABL Agent or Prepetition ABL Lenders or any of their respective claims, the DIP Collateral or the Prepetition Collateral pursuant to section 105 or 506(c) of the Bankruptcy Code, without the prior express written consent (before such expense is incurred) of the affected DIP Agent, DIP Lenders, Prepetition ABL Agent or Prepetition ABL Lenders, and no such consent shall be implied, directly or indirectly, from any action, inaction, or acquiescence by any such agents or lenders. Section 506(c) claims charged against the Prepetition Term Agent or Prepetition Term Lenders or any of their respective claims, or the Perfected Term Priority Collateral are hereby expressly preserved and are subject to the DIP Liens pursuant to paragraph 6 herein.

35. No Marshaling/Applications of Proceeds. The DIP Agent, DIP Lenders, Prepetition ABL Agent, and Prepetition ABL Lenders shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral.

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36. Section 552(b). The DIP Agent, DIP Lenders, Prepetition ABL Agent, Prepetition ABL Lenders, Prepetition Term Agent and Prepetition Term Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition ABL Agent or Prepetition ABL Lenders with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

37. Discharge Waiver. The Debtors expressly stipulate, and the Court finds and adjudicates that, the DIP Obligations and the Prepetition ABL Credit Obligations shall not be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of sections 524 and/or 1141(d) of the Bankruptcy Code, unless the DIP Obligations and the Prepetition ABL Credit Obligations have been paid in full in cash on or before the effective date of a confirmed plan of reorganization. The Debtors shall not propose or support any plan of reorganization or sale of all or substantially all of the Debtors’ assets or entry of any confirmation order or sale order that is not conditioned upon the payment in full in cash, on the effective date of such plan of reorganization or such sale, of all DIP Obligations and all Prepetition ABL Credit Obligations and the cancellation, backlog, or cash collateralization of all letters of credit issued or deemed issued under the DIP Documents and the Prepetition ABL Credit Documents.

38. Rights Preserved.

(a) Notwithstanding anything herein to the contrary, during the existence of an Event of Default under the DIP Facility, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Agent’s, any DIP

Lender's, the Prepetition ABL Agent's or any Prepetition ABL Lender's right to seek any other or supplemental relief in respect of any Debtor, including the right to seek additional adequate protection (without prejudice to any other person's right to object to or otherwise oppose such additional adequate protection); (b) any of the rights of the DIP Agent, any DIP Lender, the Prepetition ABL Agent or any Prepetition ABL Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases or any Successor Case, conversion of any Case to a case under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (iv) seek additional adequate protection. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors' right to oppose any of the relief requested in accordance with the immediately preceding sentence, except as expressly set forth in this Interim Order.

(b) Other than as expressly set forth in this Interim Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Agent, DIP Lenders, Prepetition ABL Agent, Prepetition ABL Lenders, Prepetition Term Agent, and Prepetition Term Lenders are preserved.

39. No Waiver by Failure to Seek Relief. The failure of the DIP Agent, any DIP Lender, Prepetition ABL Agent, any Prepetition ABL Lender, Prepetition Term Agent, or any Prepetition Term Lender, to seek relief or otherwise exercise its respective rights and remedies under this Interim Order, the DIP Documents, the Prepetition ABL Credit Documents, the

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Prepetition Term Credit Documents or applicable law, as the case may be, or to file an objection to the Debtors' use of Cash Collateral except in accordance with this Interim Order, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the applicable DIP Agent, DIP Lender, Prepetition ABL Agent, Prepetition ABL Lender, Prepetition Term Agent or Prepetition Term Lender.

40. Binding Effect of Interim Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Agent, the DIP Lenders, the Prepetition ABL Agent, the Prepetition ABL Lenders, the Prepetition Term Agent, the Prepetition Term Lenders, all other creditors of the Debtors, any Creditors' Committee or any other court appointed committee appointed in any Case, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Cases, any Successor Case, or upon dismissal of any Case or any Successor Case.

41. No Modification of Interim Order. Until and unless the DIP Obligations and Prepetition ABL Credit Obligations have been indefeasibly paid in full in cash, and all letters of credit issued or deemed issued under the DIP Facility and Prepetition ABL Facility shall have been cancelled, backed, or cash collateralized in accordance with the terms thereof (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), the Indemnity Account has been fully funded, and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a)

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without the prior written consent of the DIP Agent (i) any modification, stay, vacatur or amendment to this Interim Order (and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent or DIP Lenders); or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (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), 507(a) or 507(b) of the Bankruptcy Code) in the Cases or any Successor Case equal or superior to the DIP Superpriority Claim or Adequate Protection Superpriority Claims, other than the Carve Out; (b) upon entry of the Final Order, without the prior written consent of the DIP Agent, any order allowing use of Cash Collateral (other than as permitted during the Remedies Notice Period); and (c) without the prior written consent of the DIP Agent and Prepetition ABL Agent, any lien on any of the DIP Collateral or Prepetition Collateral with priority equal or superior to the DIP Liens, Prepetition ABL Liens, or ABL Adequate Protection Liens, except as specifically provided in the DIP Documents.

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

43. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any Case; (b) converting any Case to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any Case or any Successor Case; (d) discharging any Debtor; or (e) pursuant to which this Court abstains from hearing any Case or any Successor Case. The terms and provisions of this Interim Order, including the claims, liens, security interests and other

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protections granted to the DIP Agent, DIP Lenders, Prepetition ABL Agent, Prepetition ABL Lenders, Prepetition Term Agent and Prepetition Term Lenders pursuant to this Interim Order and/or the DIP Documents, notwithstanding the entry of any such order, shall continue in the Cases, in any Successor Case, or following dismissal of any Case or any Successor Case, and shall maintain their priority as provided by this Interim Order until all DIP Obligations and Prepetition ABL Credit Obligations and Prepetition Term Credit Obligations have been indefeasibly paid in full in cash, all letters of credit issued or deemed issued under the DIP Facility shall have been cancelled, backed, or cash collateralized in accordance with the terms thereof, and all commitments to extend credit under the DIP Facility are terminated. The terms and provisions concerning the indemnification of the DIP Agent and DIP Lenders shall continue in the Cases, in any Successor Case, following dismissal of the Cases or any Successor Case, and following termination of the DIP Documents and/or the repayment of the DIP Obligations.

44. Final Hearing. The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for April 8, 2009 at 9:00 a.m. (Eastern Time) before the Honorable Helen E. Burris, United States Bankruptcy Judge, Courtroom \_\_\_\_\_ at the United States Bankruptcy Court for the District of South Carolina. On or before April 3, 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 a copy of this Interim Order and the DIP Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; and (c) counsel for any Creditors' Committee. Any objections shall be served to: (i) counsel to the Debtors, attn: Christopher M. Dawe, Esq. and Josiah M. Daniel, Esq., Vinson & Elkins,

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LLP, 2001 Ross Ave., Suite 3700, Dallas, Texas 75201; (ii) local counsel to the Debtors, attn: George B. Cauthen, Nelson, Mullins, Riley & Scarborough, LLP, 1320 Main Street, 17<sup>th</sup> Floor, Columbia, South Carolina 29201; (iii) counsel to Creditors' Committee, Glenn B. Rice, Otterbourg, Steindler, Houston & Rosen, P.C., 230 Park Avenue, New York, New York 10169; (iv) counsel to the DIP Agent and Prepetition ABL Agent, attn: J. Douglas Bacon, Esq. and Stephen R. Tetro II, Esq., Latham & Watkins LLP, Sears Tower, Suite 5800, 233 South Wacker Drive, Chicago, Illinois 60606; (v) local counsel to the DIP Agent and Prepetition ABL Agent, attn: Julio E. Mendoza, Jr., 1230 Main St., Suite 700, P.O. Box 2426, Columbia, South Carolina 29202; (vi) co-counsel to the Prepetition Term Agent and/or Ad Hoc Committee, attn: Erica M. Ryland, Jones Day, 222 East 41<sup>st</sup> Street, New York, New York, 10017, (vii) co-counsel to the Prepetition Term Agent and/or Ad Hoc Committee, Attn: Michael M. Beal, McNair Law Firm, P.A., 1301 Gervais Street, 17<sup>th</sup> Floor, Columbia, South Carolina, 29201, and (viii) the Office of the United States Trustee for the District of South Carolina.

45. 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 hereof.

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

SO ORDERED by the Court this \_\_\_ day of \_\_\_\_\_, 2009.

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UNITED STATES BANKRUPTCY JUDGE

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AND SCHEDULING A FINAL HEARING**



**ENTERED**

**FILED**

1 O'clock & min. M

APR 24 2009

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

APR 24 2009

**K.R.W.**

In re:

**Daufuskie Island Properties, LLC,**

**Debtor.**

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United States Bankruptcy Court  
Columbia, South Carolina (26)  
**Case No. 09- 00389-jw**  
**Chapter 11**

**INTERIM ORDER APPROVING POSTPETITION SECURED SUPERPRIORITY  
FINANCING, GRANTING LIENS AND PROVIDING SUPERPRIORITY  
ADMINISTRATIVE EXPENSE STATUS**

THIS MATTER came before the Court upon the motion (the "Motion") of Robert C. Onorato, as Trustee (the "Trustee") for the Chapter 11 bankruptcy estate of Daufuskie Island Properties, LLC (the "Debtor") pursuant to §§ 105(a), 361, 362(d), 363(c), 364(b), 364(c)(1), 364(c)(2), 364(d) and 507(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 4001-4 of the District of South Carolina Local Bankruptcy Rules ("SCLBR") seeking entry of an interim order (the "Interim Order"), *inter alia*:

(i) authorizing the Trustee to obtain \$140,000 of secured, superpriority postpetition financing (the "Loan") from Beach First National Bank ("Beach First"), on an interim basis pending the final hearing set for May 6, 2009, pursuant to the terms and conditions stated hereinbelow (upon final approval of the Loan following the final hearing on the Motion, the Trustee and Beach First will execute documents more fully stating the terms and provisions of the Loan (such documents, collectively, being the "Loan Documents"), copies of which documents shall be provided to the Committee and to interested creditors and parties in advance of their actual execution);

(ii) authorizing the Trustee to execute and deliver the Loan Documents and to perform other acts in connection with the Loan Documents;

(iii) granting to Beach First, pursuant to § 364(b), an allowed superpriority administrative expense claim for the Loan and all obligations owing thereunder (collectively, the “Loan Obligations”);

(iv) granting to Beach First, pursuant to §§ 364(c)(1) and (2) and 364(d), automatically perfected security interests in and liens on all assets of the Debtor’s bankruptcy estate, including, without limitation, all property constituting “cash collateral” (as defined in § 363(a) of the Bankruptcy Code, “Cash Collateral”), but excluding all causes of action and any recoveries under Chapter 5 of the Bankruptcy Code;

(v) authorizing and directing the Trustee to pay the principal, interest, fees, expenses and other amounts payable under the Loan Documents as they become due, and, if the Trustee obtains final post-petition financing from someone other than Beach First, authorizing the Trustee to pay Beach First the Loan Obligations at the closing of the final post-petition financing;

(vi) providing adequate protection to prepetition lenders for any diminution in value of their interests in their prepetition collateral, including cash collateral, which adequate protection shall be, pursuant to § 361(3), the Trustee’s use of the Loan proceeds in protecting and maintaining the prepetition collateral securing prepetition lenders;

(vii) modifying the automatic stay imposed by § 362(a) of the Bankruptcy Code to the extent necessary (1) to permit the Trustee to grant the security interests, liens and superpriority claims to secure the Loan and to perform such acts as may be necessary or appropriate to assure the perfection and priority of such security interests and liens, (2) to permit

Beach First to file all documents necessary or appropriate to provide notice of the security interests and liens securing the Loan, and (3) to implement and effectuate the terms of this Order; and

(viii) ordering that the ten (10) day stay provisions of Bankruptcy Rule 6004(h) shall be inapplicable to the provisions of this Interim Order.

The Court having considered the Motion and the evidence submitted and the statements of counsel made at the preliminary hearing held on April 20, 2009 (the "Preliminary Hearing"); and objections to the relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the relief requested on an interim basis pending the final hearing on the Motion is fair and reasonable and in the best interests of the Debtor, its estate, and its creditors, and is essential for the preservation of the Debtor's assets pending at this time; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

Based upon the record established by the Trustee, the Court hereby makes the following findings of fact and conclusions of law:

A. **Petition Date.** On January 20, 2009 (the "Petition Date"), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of South Carolina (the "Court").

B. **Trustee.** On March 17, 2009, the Court entered its Order Granting Joint Motion for Appointment of Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104, granting the joint motion of Beach First, AFG, LLC ("AFG") and the Official Committee of Unsecured Creditors (the "Committee") for the appointment of a trustee in this case. Thereafter, on March 20, 2009, the

Court entered its Order Approving Appointment of Trustee, approving the United States Trustee's appointment of Robert C. Onorato, as Trustee for the Debtor's Chapter 11 estate.

C. **Jurisdiction and Venue.** This Court has jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157(a) and (b), and Local Civil Rule 83.IX.01, DSC, over these proceedings, and over the property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for this bankruptcy case and proceeding on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. **The Loan Terms.** The terms of the Loan will be stated in the Loan Documents, which had not been prepared as of the Preliminary Hearing. The Loan Documents shall be consistent with this Order, and any inconsistency or uncertainty arising by provisions in the Loan Documents which are different from this Order shall be resolved by the provisions of this Order taking precedence over all other terms or provisions in other documents; provided, however, that the Order entered upon the final hearing on the Motion shall take precedence and govern the interpretation of all provisions in all documents, including this Interim Order. The Loan Terms are summarized as follows:

(1) **Borrower.** Robert C. Onorato, as Trustee for the Chapter 11 bankruptcy estate of Daufuskie Island Properties, LLC.

(2) **Post-Petition Lender.** Beach First National Bank.

(3) **Amount of Loan.** \$1 million, provide, however, that only \$140,000.00 of the Loan is authorized under this Interim Order.

(4) **Closing Date.** Upon entry of this Interim Order and completion of all conditions precedent to the loan.

(5) **Term of the Loan.** The Loan shall mature and terminate on the earliest of the following (such date being the "Termination Date"): (a) November 1, 2009; (b) the sale of substantially all of the assets of the estate; (c) the conversion or dismissal of the Debtor's bankruptcy case; or (d) an event of default under the Loan Documents; provided, however, that for purposes of this Interim Order, the Loan shall terminate upon the earliest of: (e) entry of an Order denying the Motion; (f) entry of an Order authorizing the Trustee to obtain post-petition financing from a lender other than Beach First, which financing is secured by a first lien on the assets of the estate; or (g) the failure of the Trustee to comply with the provisions of this Interim Order.

(6) **Budget.** The Trustee's borrowings, disbursements and expenditures from the Loan proceeds shall be limited, subject to certain variances, to be consistent with the expenditures set forth in the budget (the "Budget") in **Schedule 1** attached to this Interim Order. The Budget shall be updated by the Trustee (with the reasonable consent and/or at the request of Beach First) from time to time, and the Trustee shall provide a report to Beach First and the Committee not less than on a monthly basis (with delivery to Beach First on or before the 15<sup>th</sup> day of each month) showing the actual expenditures during the calendar month compared with the budgeted and anticipated expenses for that same month. The Budget shall not be materially modified unless the modification is made with the consents of Beach First and the Committee, or by Order of the Court; provided, however, that the Trustee shall not be required to make expenditures allowed under the Budget if he determines that such expenditures are not beneficial or in the best interest of the bankruptcy estate.

(7) **Use of the Loan Proceeds.** The Loan proceeds shall be used solely for (a) working capital to the extent set forth in the Budget, subject to certain variances; (b) costs of

administration of the Chapter 11 case to the extent set forth in the Budget; and (c) certain fees and expenses of Beach First.

(8) **Collateral Securing the Loan and Superpriority Claim Status.**

Subject to permitted encumbrances approved by Beach First in its sole discretion, the Loan and the Loan Obligations (a) will be entitled to superpriority claim status pursuant to § 364(c)(1) of the Bankruptcy Code, and (b) will be secured by a perfected security interest (the "Post-Petition Lien") pursuant to §§ 364(c)(2) and 364(d) of the Bankruptcy Code (the liens securing the Loan shall be senior to the liens securing prepetition debt) in all assets of the Debtor, including all real property and personal property, whether now existing or hereafter arising (the "Post-Petition Collateral") subject to this Interim Order and the Order entered upon the final hearing on the Motion; provided, however, that notwithstanding the foregoing language, the Post-Petition Lien shall not include avoidance actions and recoveries from avoidance actions. In addition, Beach First will have the right to utilize, at no cost or expense, any tradenames, trademarks, copyrights or other intellectual property of the Debtor to the extent necessary or appropriate in order to sell, lease or otherwise dispose of any of the Post-Petition Collateral. The Post-Petition Liens shall be first priority liens, senior to all other liens or security interests.

The term "Post-Petition Collateral" shall also include, subject to the entry of an Order upon the final hearing on the Motion, the Trustee's rights under § 506(c) of the Bankruptcy Code and the proceeds thereof.

(9) **Default Rights.** Upon a default under the Loan or upon the Termination Date, Beach First may foreclose on any of the assets securing the Loan. Prior to proceeding with a foreclosure action or other state law remedies, Beach First must first file and serve on all interested parties a motion for relief from the stay pursuant to § 362(d) of the Bankruptcy Code.

(10) **Interest Rate and Fees Paid to Lender.** Interest on the Loan shall accrue at the rate of ten percent (10%) per annum; provided, however, that in the event of a default under the Loan, interest will accrue at the default rate of fourteen percent (14%) per annum. In addition to interest accruing on the Loan, the Trustee shall pay a loan Administration Fee of \$1,000.00 per month, which shall be paid monthly; an Exit Fee of four percent (4%) of the aggregate amount of advances under the Loan by Beach First to the Trustee, which Exit Fee shall be due and payable upon the Termination Date; and the legal expenses and costs incurred by Beach First in connection with the making, documenting and closing of the Loan. The Trustee shall be responsible for payment of recording fees and documentary stamps associated with the Loan and the Loan Documents.

E. **Trustee's Asserted Need for Funding.** The Trustee states that he is in urgent need of funding to pay expenses necessary to protect and preserve the assets of the bankruptcy estate, and to protect the interests of the creditors and parties in interest in this case. In this regard, the Trustee states that:

(1) After his appointment and in reviewing and inspecting the assets of the estate, the Trustee determined that certain actions must be taken immediately to protect and preserve the assets. These actions included, but were not limited to, obtaining security, arranging onsite supervision of the assets, cutting the grass on the golf courses, and removing trash and waste. As such, the Trustee has incurred certain expenses prior to the approval of the Loan (the "Pre-Loan Expenses"). Beach First has advanced \$40,000 to the Trustee to pay part of the Pre-Loan Expenses. The Trustee will include the Pre-Loan Expenses in the Budget to the Loan and Beach First will be paid the amount outstanding under the Loan.

(2) Pending the final hearing on the Motion, the Trustee needs funds to make payments to keep insurance in effect covering the assets, to pay for allowed maintenance of a seawall, to pay for continuing security and property supervision, to pay expenses necessary to maintain the golf courses, and to pay other expenses to protect and preserve the property.

(3) The Trustee has attempted but is unable to obtain credit to fund the payment of the necessary and appropriate expenses from other sources upon terms which are workable and beneficial for the estate. The Trustee states that in all material respects the terms required by Beach First are at least as favorable as, and generally more favorable than, terms for post-petition financing from other sources. Among the critical considerations in the evaluation of financing alternatives is the timing of funding; obtaining post-petition financing from other potential sources would require time, and the need for funding is immediate. In addition, the Trustee is informed and believes that other potential lenders would require the same superpriority lien on all assets and a superpriority administrative claim required by Beach First to provide the post-petition financing.

F. **MCI's Agreement.** The Melrose Club, Inc. ("MCI") has agreed, as confirmed herein, that Beach First will have a first priority lien on the Debtor's assets in which MCI claims an interest to the extent of the Loan Obligations. MCI has agreed that its interests in the real property are subordinate to Beach First's Loan. This Order is otherwise without prejudice to MCI. In consideration of the subordination of MCI's interests in the real property to Beach First's Loan, Beach First agrees to grant MCI a right of first refusal to purchase the Loan for the then outstanding amount of the Loan Obligations in the event Beach First were to decide to sell the Loan. Furthermore, to the extent funds are available in the Budget after expenses for the maintenance and preservation of the Loan Collateral and expenses related to the sale of the Loan



Collateral, Beach First will not unreasonably withhold its consent to the use of the Loan proceeds to operate some of the facilities at a minimal level.

G. Findings Regarding the Postpetition Financing.

(1) *Need for Postpetition Financing.* The Trustee has provided evidence that the Loan is, in the Trustee's prudent business judgment, superior to the Trustee's other alternatives including the use of cash collateral alone and/or alternative post-petition financing proposals received. The Trustee needs to obtain credit pursuant to the Loan in order to enable the Trustee to preserve the assets of the estate. The Trustee provided evidence that he does not have sufficient available sources of capital and financing to maintain the Debtor's assets without the Loan, and that there is an immediate need for the Loan on an interim basis to address approximately \$140,000.00 of the expenses reflected on **Schedule 1** attached hereto.

(2) *No Credit Available on More Favorable Terms.* The Trustee is unable to obtain comparable financing meeting his needs from sources other than Beach First on terms that are, in his prudent business judgment, more favorable than Beach First. The Trustee has been unable to obtain sufficient unsecured credit allowable under § 503(b)(1) of the Bankruptcy Code as an administrative expense. The Trustee also has been unable to obtain comparable credit meeting his post-petition financing needs solely upon terms: (i) having priority over administrative expenses of the kind specified in §§ 503(b), 507(a) and 507(b) of the Bankruptcy Code; or (ii) secured by a lien on property of the Debtor and its estate that is not otherwise subject to a lien. The proposed necessary financing is not otherwise available without granting Beach First, (x) perfected first priority security interests in and liens on all of the Debtor's existing and after-acquired assets (except for causes of action and any recoveries under Chapter 5

of the Bankruptcy Code), (y) superpriority claims, and (z) the other protections set forth in this Order.

(3) *Use of Proceeds of the Loan.* As a condition to the entry into the Loan, the extension of credit under the Loan, Beach First requires, and the Trustee has agreed, that proceeds of the Loan shall be used in a manner consistent with the terms and conditions of the Loan Documents and in accordance with and to the extent set forth in the Budget attached hereto as **Schedule 1**.

H. **Adequate Protection.** Creditors who assert a prepetition lien on the Debtor's assets will be adequately protected by the use of the Loan funds to protect and maintain the property and preserve its value.

I. **Good Faith of Beach First.**

(1) *Willingness to Provide Financing.* Beach First has indicated a willingness to provide financing to the Trustee subject to the entry of this Order and execution of the Loan Documents by the Trustee.

(2) *Business Judgment and Good Faith Pursuant to Section 364(e).* The terms and conditions of the Loan (i) are fair, reasonable, and the best available to the estate under the current circumstances in order to obtain postpetition financing on an interim basis, (ii) reflect the Trustee's exercise of prudent business judgment consistent with his fiduciary duties, and (iii) are supported by reasonably equivalent value and consideration. The Loan was negotiated in good faith and at arms' length among the Trustee and Beach First. Accordingly, the Loan is obtained and made in good faith, and for valid business purposes and uses, within the meaning of § 364(e) of the Bankruptcy Code, and Beach First is entitled to the protection and benefits of §364(e) and this Order.

**Notice.** Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Trustee, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, as reflected in the certificate of service filed with the Court. The Trustee states that, to the best of his knowledge and belief, all parties who claim an interest in the Loan Collateral have been provided notice of this agreement and the granting to Beach First of a superpriority lien on all the Debtor's assets. The parties have made reasonable efforts to afford the best notice possible under the circumstances to permit interim relief previously requested relating to the Motion, and no other or further notice is or shall be required.

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

IT IS HEREBY ORDERED that the Motion is granted as set forth hereinabove on an interim basis.

IT IS FURTHER ORDERED that the final hearing on the Motion is hereby scheduled for May 6, 2009 at 2:00 p.m., in the United States Bankruptcy Court, 145 King Street, Room 225, Charleston, South Carolina.

**AND IT IS SO ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
4/24, 2009

**SCHEDULE 1**  
**BUDGET UNDER INTERIM ORDER**

INSURANCE DUE BY 4/30	\$70,000
ACCOUNTING	2,000
CLEANING KITCHENS	8,900
GOLF COURSE (PARTIAL)	24,000
SEA WALL ( PARTIAL)	12,100
PROJECT MANAGER	12,000
LAURA DUGGAN	4,000
COASTAL SECURITY	<u>7,000</u>
	\$140,000