

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE:

PICCADILLY RESTAURANTS, LLC, *et al.*,

DEBTORS

CASE NO. 12-51127

(JOINTLY ADMINISTERED)¹

CHAPTER 11

CHIEF JUDGE ROBERT SUMMERHAYS

**STIPULATION AND ORDER (A) AUTHORIZING POST-PETITION FINANCING,
(B) AUTHORIZING USE OF CASH COLLATERAL, (C) GRANTING
SUPERPRIORITY SECURITY INTERESTS AND ADMINISTRATIVE CLAIMS
PURSUANT TO 11 U.S.C. § 364, (D) GRANTING ADEQUATE PROTECTION TO PRE-
PETITION LENDERS; (E) GRANTING LIMITED RELIEF FROM THE AUTOMATIC
STAY AND (F) GRANTING RELATED RELIEF**

Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC and Piccadilly Investments, LLC (collectively, the “**Debtors**”), Atalaya Administrative LLC, as DIP Agent (defined below), and the DIP Lenders (defined below), hereby stipulate as to post-petition financing and the granting of priming, superpriority post-petition security interests and superpriority administrative claims pursuant to 11 U.S.C. § 364 on the terms set forth in this Stipulation (the “**Stipulation**”):

ARTICLE I. DEFINITIONS

Section 1.01 Defined Terms. Capitalized terms used herein without definition shall have the meanings given to them in the Pre-Petition Credit Agreement (as defined herein). As used herein, the following terms have the meanings specified below:

- (a) “**Adequate Protection Liens**” has the meaning given in Section 14.01.
- (b) “**Adequate Protection Priority Claims**” has the meaning given in

¹ Jointly administered with *In re Piccadilly Food Services, LLC*, 12-51128 (Bankr. W.D. La.) and *In re Piccadilly Investments LLC*, 12-51129 (Bankr. W.D. La.).

Section 14.01.

(c) “**Approved DIP Cash Projections**” means the Initial Approved DIP Cash Projections.

(d) “**Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as in effect on the Filing Date or as heretofore or hereafter amended if such amendments are made applicable to the Cases.

(e) “**Bankruptcy Court**” means (a) the United States Bankruptcy Court for the Western District of Louisiana, having jurisdiction over the Cases, (b) to the extent there is no reference pursuant to section 157 of title 28 of the United States Code, the United States District Court for the Western District of Louisiana, and (c) any other court having jurisdiction over the Cases from time to time.

(f) “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as in effect on the Filing Date or as heretofore or hereafter amended if such amendments are made applicable to the Cases, and the local rules of the Bankruptcy Court, as the context may require.

(g) “**Borrowers**” mean Piccadilly Restaurants, LLC and Piccadilly Food Service, LLC, as Debtors and debtors-in-possession.

(h) “**Carve-Out**” has the meaning given to such term in Section 12.02 of this Stipulation.

(i) “**Cases**” means the jointly administered chapter 11 cases commenced by the Debtors on the Filing Date and as to any Debtor, individually, a Chapter 11 Case.

(j) “**Cash Equivalents**” means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (b) issued by any agency of the United States, in each case maturing within one year after the date of acquisition; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state

or any public instrumentality thereof, in each case maturing within one year after the date of acquisition and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iii) commercial paper maturing no more than one year from the date of acquisition thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit or bankers' acceptances maturing within one year after the date of acquisition and issued or accepted by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; (v) fully collateralized repurchase agreements with a term of not more than 90 days for securities described in clause (i) above and entered into with a financial institution satisfying the criteria of clause (iv) above; and (vi) shares of any money market mutual fund that (a) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) through (v) above, (b) has net assets of not less than \$500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's.

(k) **"Collateral"** means any and all property, assets and interests in property and assets of the Debtors (or any successor trustee or other estate representative in any Case or Successor Case), including all "property of the estate" (within the meaning of the Bankruptcy Code) of the Debtors (or any successor trustee or other estate representative in any Case or Successor Case), of any kind or nature whatsoever, real, personal or mixed, tangible or intangible now existing or hereafter acquired or created, whether encumbered or unencumbered as of the Filing Date, including, without limitation, all accounts, inventory, goods, contracts, contract rights, investment property, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, all other intellectual property, general intangibles, payment intangibles, rights, interests, intercompany notes and obligations, tax or other refunds, insurance proceeds, letters of credit, letter-of-credit rights, supporting obligations, documents, titled vehicles, machinery and equipment, real property (including all facilities), fixtures, the proceeds

from the disposition of leases (but not the leases themselves unless there is no prohibition in the leases against pledging, hypothecation, or granting a lien or security interest in the specific lease, provided that all applicable landlord rights under section 365 of the Bankruptcy Code are preserved), all of the issued and outstanding capital stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)), all of the issued and outstanding capital stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each subsidiary of each Debtor, all of the capital stock of all other Persons that are not Subsidiaries directly owned by each Debtor, money, investment property, deposit accounts, all commercial tort claims and other causes of action (other than claims or causes of action arising under chapter 5 of the Bankruptcy Code, if any, of the Debtors), cash collateral, and all cash and non-cash proceeds, rents, products, substitutions, accessions, and profits of any of the collateral described above.

(l) “**Committee**” means the official committee of unsecured creditors, if any, appointed by the United States Trustee in the Cases.

(m) “**Debtors**” has the meaning given to it in the first paragraph of this Stipulation.

(n) “**Default**” means any event of condition which upon notice, lapse of time or both would constitute an Event of Default.

(o) “**DIP Agent**” means Atalaya Administrative LLC, as administrative and collateral agent for the DIP Lenders and any successor to Atalaya Administrative LLC in such capacity.

(p) “**DIP Commitment Fee**” has the meaning set forth in Section 3.04.

(q) “**DIP Commitments**” means, collectively, the Initial DIP Commitments identified on Schedule 1 attached hereto..

(r) “**DIP Facility**” means the post-petition financing from the DIP Lenders advanced under and governed by this Stipulation and the other DIP Loan Documents.

(s) “**DIP Financing Motion**” means the motion filed by the Debtors in the Bankruptcy Court seeking, *inter alia*, the entry of the DIP Orders approving the Debtors’ use of

cash collateral and this Stipulation and authorizing the Debtors to enter into the DIP Transactions and perform their obligations under the Stipulation and related documents, as modified by agreement of the parties at the September 13, 2012 hearing to consider approval of the DIP Financing Motion.

(t) **“DIP Lenders”** means Atalaya Special Opportunities Fund IV LP (Tranche B), any other Person that is a signatory as “Lender” to this Stipulation, and any Person that is a permitted assignee of any DIP Lender in accordance with the terms of Section 17.04(b).

(u) **“DIP Liens”** has the meaning given in Section 11.01.

(v) **“Interim DIP Loan Cap”** means \$3,000,000.

(w) **“DIP Loan Documents”** means, collectively, this Stipulation, the DIP Orders and the documents, agreements or instruments executed and delivered in connection herewith or therewith.

(x) **“DIP Loan Parties”** means the Borrowers and the Guarantors

(y) **“DIP Loans”** means, collectively, the Initial DIP Loans and the Supplemental DIP Loans.

(z) **“DIP Obligations”** means (a) the due and punctual payment of (i) the principal of and interest on the DIP Loans, when and as due, whether at maturity, by acceleration or otherwise, (ii) all other monetary obligations any of the Borrowers owe to any of the DIP Secured Parties under this Stipulation and each of the other DIP Loan Documents, including fees, costs, out-of-pocket expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise, (b) the due and punctual performance of all other obligations of any of the Borrowers under or pursuant to this Stipulation and each of the other DIP Loan Documents, and (c) the due and punctual payment and performance of all the obligations of each other DIP Loan Party under or pursuant to this Stipulation and each of the other DIP Loan Documents.

(aa) **“DIP Orders”** means, collectively, the Interim Order and the Final Order.

(bb) **“DIP Secured Parties”** means (a) the DIP Lenders, (b) the DIP Agent and

(c) the permitted successors and assigns of each of the foregoing.

(cc) **“DIP Transactions”** means, collectively, (a) the execution, delivery and performance by the DIP Loan Parties of the DIP Loan Documents to which they are a party and, in the case of the Borrowers, the making of the DIP Loans hereunder and (b) the payment of related fees and expenses.

(dd) **“Event of Default”** has the meaning set forth in Section 8.01.

(ee) **“Filing Date”** means September 11, 2012, the date on which each of the Debtors filed its respective petition for relief in the Bankruptcy Court commencing its Case.

(ff) **“Final DIP Hearing Date”** shall mean October 23, 2012, as that date may be continued or altered by order of the Bankruptcy Court.

(gg) **“Final Order”** means an order having substantially the same terms of the Interim Order with such changes thereto as may be approved by the DIP Lenders in their sole and absolute discretion, which order when entered by the Bankruptcy Court will approve this Stipulation and authorize the Debtors to enter into the DIP Transactions and perform their obligations hereunder on a final and permanent basis.

(hh) **“Financial Officer Certification”** means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of the Borrowers that such financial statements fairly present, in all material respects, the financial condition of the DIP Loan Parties as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

(ii) **“Guarantors”** means Piccadilly Investments, LLC, as a Debtor and debtor-in-possession, and each of its Subsidiaries, if any, now existing or hereafter created, other than the Borrowers.

(jj) **“Incorporated Affirmative Covenants”** has the meaning set forth in Section 6.01.

(kk) **“Incorporated Negative Covenants”** has the meaning set forth in Section

7.01.

(ll) **“Incorporated Provisions”** means, collectively, the Incorporated Representations, the Incorporated Affirmative Covenants and the Incorporated Negative Covenants.

(mm) **“Incorporated Representations”** has the meaning set forth in Section 5.01.

(nn) **“Indemnitee”** has the meaning set forth in Section 17.05(b).

(oo) **“Initial Approved DIP Cash Projections”** means a 13-week cash flow projection, in form and substance satisfactory to the DIP Agent in its sole discretion, for the 13-week period including the Initial Closing Date, which (i) reflects projected cash receipts, operating disbursements, payroll disbursements, non-operating disbursements and cash balances.

(pp) **“Initial Closing Date”** has the meaning set forth in Section 4.01.

(qq) **“Initial DIP Commitment”** means, with respect to each DIP Lender, the commitment of such DIP Lender to make Initial DIP Loans hereunder as set forth on Schedule 1, as the same may be reduced or increased from time to time pursuant to assignments by or to such DIP Lender pursuant to Section 17.04(b).

(rr) **“Initial DIP Loans”** means the loans made by the DIP Lenders to the Borrowers pursuant to Article III on the Initial Closing Date.

(ss) **“Interim Order”** means the order attached to and made a part of this Stipulation, with such changes thereto as may be approved by the DIP Lenders in their sole and absolute discretion, which order when entered by the Bankruptcy Court will approve this Stipulation and authorize the Debtors to enter into the DIP Transactions and perform their obligations hereunder on an interim basis.

(tt) [Intentionally Omitted].

(uu) **“Material Adverse Effect”** shall mean (a) a materially adverse effect on, or any development, event or condition that could reasonably be expected to result in a material adverse effect on, the business, assets, liabilities, operations, financial condition or operating

results of DIP Loan Parties, taken as a whole, (b) a material impairment of the ability of the Borrowers and the other DIP Loan Parties (taken as a whole) to perform their obligations under the DIP Loan Documents or (c) a material impairment of the rights of or benefits available to any of the DIP Secured Parties under the DIP Loan Documents; *provided*, that none of the following in and of itself shall constitute a Material Adverse Effect (i) the filing of the Cases and the related litigation, (ii) the conditions, events and changes that ordinarily occur in connection with a Chapter 11 filing and/or (iii) conditions, events and changes which precipitated the filing of the Cases.

(vv) **“Material Indebtedness”** means Indebtedness (as defined in the Pre-Petition Credit Agreement) in a principal amount equal to or greater than \$500,000.

(ww) **“Narrative Report”** means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of DIP Loan Parties in the form prepared for presentation to senior management thereof for the applicable fiscal quarter or fiscal year and for the period from the beginning of the then current fiscal year to the end of such period to which such financial statements relate.

(xx) **“Person”** means any natural person, corporation, business trust, joint venture, association, company, limited liability company, partnership, governmental authority or other entity.

(yy) **“Pre-Petition Agent”** means Atalaya Administrative LLC, as administrative and collateral agent for the Pre-Petition Lenders, and any successor to Atalaya Administrative LLC in such capacity.

(zz) **“Pre-Petition Credit Agreement”** means that certain Amended and Restated Loan and Secured Agreement, dated as of July 21, 2006, by and among the Borrower, Piccadilly Investments, LLC, as a guarantor, and the Pre-Petition Secured Parties, as amended from time to time through that certain Fifth Amendment, dated as of October 15, 2010, by and among the Borrowers, Piccadilly Investments, LLC, as a guarantor, and the Pre-Petition Secured Parties.

(aaa) **“Pre-Petition Lender Liens”** has the meaning given in Section II(e).

(bbb) **“Pre-Petition Lenders”** has the meaning given to the defined term “Lenders” in the Pre-Petition Credit Agreement.

(ccc) **“Pre-Petition Obligations”** has the meaning given to the defined term “Obligations” in the Pre-Petition Credit Agreement.

(ddd) **“Pre-Petition Secured Parties”** shall have the definition given to the defined term “Lender Group” in the Pre-Petition Credit Agreement.

(eee) **“Related Parties”** means, as to any Person, its officers, directors, employees, agents, representatives, legal advisors and attorneys, financial advisors and accountants, consultants, other professionals, members, managers, partners, shareholders, owners, subsidiaries, predecessors in interest or Affiliates of each the foregoing.

(fff) **“Required DIP Lenders”** means, at any time, DIP Lenders having more than 50% of the aggregate outstanding amount of all DIP Loans or, if no DIP Loans are outstanding at such time, DIP Lenders having more than 50% of the aggregate DIP Commitment.

(ggg) **“Stipulation”** has the meaning given to it in the first paragraph hereof.

(hhh) **“Subsidiary”** means any subsidiary, whether direct or indirect and whether now-existing or hereafter created, of Piccadilly Investments, LLC other than Borrowers.

(iii) **“Successor Case”** means any case subsequent to the Cases brought under the Bankruptcy Code (including any chapter 7 case, whether through conversion or otherwise) involving any of the Debtors.

(jjj) **“Superpriority Claim”** has the meaning set forth in Section 12.01.

(kkk) [Intentionally Omitted].

(lll) [Intentionally Omitted].

(mmm) **“Supplemental DIP Loans”** means the loans made by the DIP Lenders to the Borrowers pursuant to Article III on or after the Initial Closing Date, other than the Initial DIP Loan.

(nnn) **“Termination Date”** has the meaning given in Section 13.01.

Section 1.02 Terms Generally. The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall,” and the words “asset” and “property” shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contracts rights. Except as set forth in Section 1.03, all references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Stipulation unless the context shall otherwise require. Except as otherwise expressly provided herein, (a) any reference in this Stipulation to any DIP Loan Document shall mean such document as amended, restated, supplemented or otherwise modified from time to time, (b) any reference herein (i) to any Person shall be construed to include such Person’s permitted successors and assigns, and (ii) to either of the Borrowers or any other DIP Loan Party shall be construed to include such Borrower or such DIP Loan Party as debtor and debtor-in-possession and any receiver or trustee for either of the Borrowers or any other DIP Loan Party, as the case may be, in any bankruptcy or similar insolvency proceeding, (c) all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided, however*, that if the Borrowers notify the DIP Agent that the Borrowers wish to amend any covenant in Article VII or any related definition to eliminate the effect of any change in GAAP occurring after the date of this Stipulation on the operation of such covenant (or if the DIP Agent notifies the Borrowers that the Required DIP Lenders wish to amend Article VII or any related definition for such purpose), then the Borrowers’ compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrowers and the Required DIP Lenders, and the Borrowers and the Required DIP Lenders agree to negotiate in good faith to amend the

covenants in Article VII and any related definitions in connection with any such change in GAAP and (d) “knowledge” or “aware” or words of similar import shall mean, when used in reference to the Borrowers or the Guarantors, the actual knowledge of any Loan Party. All other terms used in this Stipulation and not defined herein have the meanings specified in the Uniform Commercial Code as applicable in the state of New York.

Section 1.03 Rules for Incorporated Provisions. Except as otherwise set forth in this Section 1.03, capitalized terms used in the Incorporated Provisions (or in the definitions of any capitalized terms used in the Incorporated Provisions) shall have the meanings given to them in (i) this Stipulation if they are defined herein, or (ii) the Pre-Petition Credit Agreement if they are not defined herein. For purposes of this Stipulation, as used in the Incorporated Provisions (or any capitalized terms set forth therein that are not defined in this Stipulation): (A) the capitalized term “Agreement” shall be deemed to be a reference to this Stipulation, (B) the capitalized term “Agent” shall be deemed to be a reference to the DIP Agent, (C) the capitalized term “Loan Documents” shall be deemed to be a reference to the “DIP Loan Documents,” (D) the capitalized term “Obligations” shall be deemed to be a reference to the DIP Obligations, (E) the capitalized terms “Borrower Party” and “Borrower Parties” shall be deemed to be a reference to, respectively, a DIP Loan Party and the DIP Loan Parties, (F) the capitalized term “Lender” shall be deemed to be a reference to a DIP Lender, (G) the capitalized term “Lender Group” shall be deemed to be a reference to the DIP Secured Parties, (H) the capitalized term “Required Lenders” shall be deemed to be a reference to the Required DIP Lenders, (I) any reference to the Agent’s “Liens” shall be deemed to be a reference to the DIP Liens, (J) the capitalized terms “Default” and “Event of Default” shall be deemed to be references to Defaults and Events of Default under this Stipulation, (K) the capitalized term “Lead Lenders” shall be deemed to be a reference to the Required DIP Lenders, and (L) the capitalized term “Closing Date” shall be deemed to be a reference to the Initial Closing Date. Any reference to a “Schedule” in the Incorporated Provisions or in the definition of any capitalized term used in the Incorporated Provisions, which capitalized term is incorporated from the Pre-Petition Credit

Agreement pursuant to this Article I, shall be deemed to be a reference to the applicable Schedule to the Pre-Petition Credit Agreement. Any reference in an Incorporated Provision to another section of the Pre-Petition Credit Agreement shall mean such section as the same may be modified pursuant to this Section 1.03; provided, that, any reference in an Incorporated Provision to Article IV (or any Section thereof) of the Pre-Petition Credit Agreement shall, for purposes hereof, be deemed a reference to Section 11.01 hereof, and any reference in the Incorporated Affirmative Covenants to Section 8.1 of the Pre-Petition Credit Agreement shall, for purposes hereof, be deemed a reference to Section 8.01.

ARTICLE II.

RECITALS

(a) On the Filing Date, the Debtors filed the Cases. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors have retained possession of their assets and are authorized, as debtors and debtors-in-possession, to continue the operation and management of their businesses. The Bankruptcy Court has jurisdiction to approve this Stipulation pursuant to 28 U.S.C. §§157(b)(2) and 1334. Consideration of the DIP Financing Motion, this Stipulation and the DIP Transactions is a core proceeding as defined in 28 U.S.C. §§157(b)(2)(A) and (D). The statutory predicates for the relief sought herein are sections 105, 362, 363, 364, 503 and 507 of the Bankruptcy Code, as complemented by Rule 4001(c) of the Bankruptcy Rules.

(b) On the Filing Date, the Debtors filed the DIP Financing Motion seeking, *inter alia*, the entry of the DIP Orders.

(c) No request has been made for the appointment of a trustee or examiner.

(d) As of the Filing Date, the principal amount of loans, advances and other indebtedness owed by the Borrowers under and pursuant to the Pre-Petition Credit Agreement was approximately \$22.8 million (plus an additional approximately \$2.9 million of outstanding letters of credit), plus interest accrued and accruing thereon and fees, costs, reasonable out-of-pocket expenses incurred (including reasonable fees, charges and disbursements of counsel, accountants, appraisers and financial advisors) and any other charges accrued and accruing with

respect thereto as provided in the Pre-Petition Credit Agreement.

(e) The Pre-Petition Obligations described in the previous paragraph are purported to be secured by security interests (the “**Pre-Petition Lender Liens**”) in certain of the Debtors’ assets.

(f) In the DIP Financing Motion, the Debtors allege that an immediate need exists for the Borrowers to use cash collateral and to obtain funds in order to continue the operation of the Debtors’ businesses pending the negotiation and confirmation of a plan of reorganization in the Cases. The Debtors alleged that without such funds, they will not be able to pay their payrolls, payroll expenses, PACA claims, and operating expenses (including the costs and expenses of the Cases) or preserve their going concern values – all of which are necessary for the Debtors to formulate a plan of reorganization that facilitates the Debtors’ successful reorganization and maximizes the recovery to creditor constituencies. Accordingly, the Debtors alleged that such funds are necessary for a successful conclusion to the Cases, and the absence of such funds would immediately and irreparably harm the Debtors, their estate and their creditors and the possibility for successful chapter 11 proceedings.

(g) The Debtors have alleged that pursuant to sections 364(b) and 364(c)(1) of the Bankruptcy Code, they have attempted but are unable to obtain either unsecured credit or unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense.

(h) The Debtors have alleged that they are unable to obtain credit for borrowed money without the Debtors’ granting to the DIP Agent, for itself and for the DIP Lenders, (i) superpriority priming liens on and security interests in all of the assets of the Debtors pursuant to Bankruptcy Code sections 364(c)(2), 364(c)(3), and 364(d), which liens shall be senior to the Pre-Petition Lender Liens and all other liens and security interests except for Permitted Liens that are senior to the Pre-Petition Lender Liens and subject to payment of the Carve-Out, and (ii) a superpriority administrative expense claim status pursuant to section 364(c)(1) of the Bankruptcy Code, junior only to the Carve-Out, as provided herein. As a condition precedent to

providing financing hereunder, the DIP Lenders have required that upon the occurrence and during the continuance of an Event of Default, the DIP Lenders may exercise any remedies provided hereunder, thereunder or under applicable law.

(i) The Bankruptcy Court held a hearing on September 13, 2012 to consider, among other things, the relief sought by the Debtors in the original DIP Financing Motion. At that hearing, the Pre-Petition Agent objected to the Debtors' request to obtain DIP financing through an affiliate of the managing member of Piccadilly Investments, LLC, CB Agency Investments, LLC.

(j) In order to resolve the Pre-Petition Agent's objection, the DIP Lenders reached an agreement with the Debtors to provide limited financing on the terms set forth herein and on the record at the September 13, 2012 hearing. The DIP Lenders have agreed to provide financing to the Borrowers, but only on the terms and conditions set forth herein and at the September 13, 2012 hearing. The Debtors believe that under the circumstances the terms and conditions set forth herein are a fair and reasonable response to the Debtors' request for financial assistance.

(k) Authorization of this Stipulation will facilitate the negotiation and confirmation of a plan of reorganization and will maintain the value of the Debtors' estates during the pendency of the Cases. Thus, approval of the DIP Financing Motion and this Stipulation, entry of the Interim Order and borrowing by the Borrowers hereunder are in the best interests of the estates and their creditors.

(l) The financing arrangements pursuant to which the DIP Lenders will make the DIP Loans have been negotiated at arms-length and in "good faith" (within the meaning of section 364(e) of the Bankruptcy Code) by and between the DIP Agent, the DIP Lenders and the Debtors. Accordingly, the DIP Agent and the DIP Lenders, in making the DIP Loans pursuant to this Stipulation, are entitled to the protections described in section 364(e) of the Bankruptcy Code.

(m)The terms and conditions of this Stipulation, including those which provide for

the payment of interest to, and fees of, the DIP Agent and the DIP Lenders at the times and in the manner provided below, are fair and reasonable, and are believed by the Debtors to be the best available under the circumstances.

(n) The Motion adequately sets forth the following:

- (i) The negotiations pertaining to this Stipulation;
- (ii) The alleged necessity for this Stipulation; and
- (iii) The Debtors' alleged need for credit to the extent necessary to avoid immediate and irreparable harm to its estate, pending a final hearing in accordance with Bankruptcy Rule 4001(c); and
- (iv) Those expenses that must be paid in order to avoid immediate and irreparable harm to the Debtors' estate.

(o) In order to prevent immediate and irreparable harm to the Debtors' estate pending a final hearing hereon pursuant to Bankruptcy Rule 4001(c), the Borrowers require the Initial DIP Loans and, to the extent provided, the Supplemental DIP Loans which Initial DIP Loans and Supplemental DIP Loans, to the extent provided, are necessary to fund the Debtors' expenses in connection with their operations until such time that a final hearing is held by the Bankruptcy Court on the DIP Financing Motion.

(p) As provided in the DIP Financing Motion, the Debtors have provided notice of the hearing on the DIP Financing Motion and this Stipulation to (a) the Office of the United States Trustee for the Western District of Louisiana, (b) counsel for the Pre-Petition Agent, (c) counsel for the DIP Agent, (d) counsel for the managing member of Piccadilly Investments, LLC, (e) the Debtors' 30 largest unsecured creditors, and (f) the Internal Revenue Service and all governmental agencies required to receive notice under the Bankruptcy Rules and the Local Bankruptcy Rules. Such notice constitutes adequate and appropriate notice under the circumstances in accordance with Bankruptcy Rules 4001(b), (c) and (d) and Bankruptcy Code section 102(1), as required by Bankruptcy Code sections 363(c), 363(e), 364(c) and 364(d).

(q) The foregoing recitals are an integral part of this Stipulation and shall, upon

entry by the Bankruptcy Court of the entry of the Interim Order, constitute findings of fact and conclusions of law, as applicable.

ARTICLE III.

THE POST-PETITION CREDIT FACILITY.

Section 3.01 Initial DIP Commitments. Subject to the terms and conditions of this Stipulation and relying upon the representations and warranties contained herein, each DIP Lender agrees, severally and not jointly, to make Initial DIP Loans to the Borrowers on and after the Initial Closing Date in the amount of the Initial DIP Commitments.

Section 3.02 DIP Loans. On the Initial Closing Date, the Borrowers shall borrow and each DIP Lender shall make Initial DIP Loans ratably in accordance with its Initial DIP Commitment. Following the Initial Closing Date, but no later than 9:00 a.m. (central) on September 17, 2012, the Debtors shall provide the DIP Lender (and any agents, employees, and other representatives of the DIP Lender) with access to the Debtors' books, records, representatives, facilities, and other information that the Pre-Petition Agent would be entitled to inspect or review under the Pre-Petition Credit Agreement. Subject to the DIP Lenders' reasonable review to determine whether the Debtors have a need for additional interim DIP financing, the DIP Lender shall be authorized to extend a \$700,000 Supplemental DIP Loan, less any applicable fees payable to the DIP Lender, to the Debtors on or before September 19, 2012. Should the DIP Lender decline to extend such a \$700,000 Supplemental DIP Loan to the Debtors on or before September 19, 2012, any disputes regarding the DIP Lenders' decision to decline the \$700,000 Supplemental DIP Loan, and requests for additional DIP financing from other potential sources, will be considered at a Bankruptcy Court hearing on September 19, 2012. Additionally, subject to the DIP Lenders' reasonable review to determine whether the Debtors have a need for additional interim DIP financing, the DIP Lender shall extend additional

Supplemental DIP Loans to the Debtors, on or before the Final DIP Hearing Date, provided that: the aggregate amount of outstanding Interim DIP Loans and Supplemental DIP Loans shall not exceed the Interim DIP Loan Cap. Any Supplemental DIP Loans will be made ratably among the DIP Lenders; *provided, however*, that the failure of any DIP Lender to make any DIP Loan shall not in itself relieve any other DIP Lender of its obligations to lend hereunder (it being understood, however, that no DIP Lender shall be responsible for the failure of any other DIP Lender to make any DIP Loan required to be made by such other DIP Lender). Subject to the terms and conditions hereof and satisfaction by the DIP Loan Parties or waiver by the Required DIP Lenders of the conditions set forth in Section 4.01 below, the Debtors shall be permitted, from and after the Initial Closing Date, to request Initial DIP Loans and Supplemental DIP Loans, in either case, by written notice to the DIP Agent (a "Borrowing Request"). Any Initial DIP Loan or Supplemental DIP Loan shall be in a principal amount of no less than the lesser of (i) \$500,000 and (ii) the excess of the Interim DIP Loan Cap over the amount of outstanding Initial DIP Loans and Supplemental DIP Loans. Subject to satisfaction by the DIP Loan Parties or waiver by the Required DIP Lenders of the conditions set forth in Section 4.01, and subject to the other terms and conditions hereof, each DIP Lender shall make such Initial DIP Loan to the Borrowers by wire transfer of immediately available funds to the account designated by the Borrowers in the applicable Borrowing Notice on September 14, 2012 and as regards any Supplemental DIP Loan, to the Borrowers by wire transfer of immediately available funds to the account designated by the Borrowers in the applicable Borrowing Notice within two (2) Business Days after the DIP Agent's receipt of such Borrowing Notice.

Section 3.03 Evidence of Debt. The Borrowers hereby unconditionally promise to pay, on a joint and several basis, to the DIP Agent for the account of each DIP Lender

the principal amount of each DIP Loan, accrued but unpaid interest thereon and each other DIP Obligation on the earlier to occur of (i) the date such amount is otherwise due under this Stipulation and (ii) the Termination Date. The DIP Agent shall maintain accounts in which it will record (i) the amount of each DIP Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each DIP Lender hereunder, and (iii) the amount of any sum received by the DIP Agent hereunder from the Borrowers or any Guarantor and each DIP Lender's share thereof. All calculations and determination made by the DIP Agent under or in accordance with this Stipulation shall be conclusive and binding on the Debtors absent manifest error.

Section 3.04 DIP Commitment Fee. Upon entry of the Interim Order, each DIP Lender shall be deemed to have fully earned a non-refundable commitment fee in an amount equal to two percent (2%) of each Initial DIP Loan or Subsequent DIP Loan extended to the Debtors (the "DIP Commitment Fee"). The Borrowers shall also pay to the DIP Agent an agent fee (the "Agent Fee") of \$10,000 upon extension of the Initial DIP Loan, and \$10,000 upon the extension of each Supplemental DIP Loan, provided that: (i) the aggregate amount of Agent Fees payable to the DIP Lenders prior to the Final DIP Hearing Date shall not exceed \$60,000; and (ii) once the total amount of Initial DIP Loans and Supplemental DIP Loans extended to the Debtors exceeds \$2,000,000, the full \$60,000 Agent Fee shall be payable to the DIP Agent. To the extent that the Borrowers have insufficient funds to pay the DIP Commitment Fee and/or the Agent fee, the DIP Commitment Fee and/or Agent fee shall be paid from the proceeds of the Initial DIP Loans and Supplemental DIP Loans, provided that the DIP Commitment Fee and Agent Fee for the Initial DIP Loan shall not be paid from proceeds of the Initial DIP Loan, but shall be payable either: (i) as an offset to future Supplemental DIP Loans

extended to the Debtors, including, without limitation, the \$700,000 Supplemental DIP Loan proposed to be extended on or before September 19, 2012; or (ii) on the next date that Interest on the DIP Loans would be payable pursuant to Section 3.05 herein.

Section 3.05 Interest. Interest on the DIP Loans shall accrue at an interest rate of ten percent (10.00%) per annum (calculated on a 360-day year basis) and shall be payable in arrears on the first Business Day of each month. Upon and during the continuance of any Event of Default, default interest shall accrue and be payable at the then applicable rate plus two percent (2%). All determinations made by the DIP Agent under this Section shall be conclusive and binding on the Debtors absent manifest error.

Section 3.06 Principal Payments. Except as otherwise set forth in Sections 3.04 and 3.05 and subject to the provisions of Section 11.01, all DIP Obligations, including all principal of the DIP Loans, shall be immediately due and payable in cash on the Termination Date.

Section 3.07 Use of Proceeds. The Borrowers shall use the proceeds of the DIP Loans for general working capital purposes subject to the covenants set forth in Section 6.02(c) and (d).

ARTICLE IV.

CONDITIONS PRECEDENT.

Section 4.01 Conditions Precedent. The date designated by the DIP Agent and the Borrowers on or after the following conditions precedent have been satisfied shall be the "Initial Closing Date:"

- (i) The DIP Agent shall have received: (A) an executed copy of this Stipulation, which shall be in full force and effect (subject only to Bankruptcy Court approval) and shall not have been vacated, reversed, modified or amended except as may be

agreed to by the DIP Lenders in writing in the DIP Lenders' sole discretion; and
(B) executed copies of all other DIP Loan Documents, if any, which shall be in full force and effect (subject only to Bankruptcy Court approval, to the extent necessary) and shall not have been vacated, reversed, modified or amended except as may be agreed to by the DIP Lenders in writing in the DIP Lenders' sole discretion;

- (ii) The DIP Agent shall have received evidence that all authorizations and consents required for the execution and delivery of the DIP Loan Documents and the performance of the Borrowers' obligations hereunder and thereunder have been obtained;
- (iii) The DIP Agent shall have received financial projections for the DIP Loan Parties that are in form and substance reasonably satisfactory to the DIP Lenders in their sole discretion.
- (iv) The Bankruptcy Court shall have entered the Interim Order on or prior to September 17, 2012.

The DIP Lenders shall have no obligation to make any DIP Loan prior to the Initial Closing Date. From and after the Initial Closing Date, the DIP Lenders' obligation to make Initial DIP Loans shall be subject to satisfaction or waiver by the DIP Lenders of the following conditions:

- a. No Material Adverse Effect shall have occurred since the Filing Date;
- b. The Interim Order shall be in full force and effect and shall not have been stayed pending appeal, modified or be the subject of any motion to vacate, amend or reconsider;
- c. No Default or Event of Default, hereunder, shall have occurred and be continuing or shall be caused by the making of such DIP Loans;
- d. Aggregate cash and Cash Equivalents of the DIP Loan Parties, less the sum of cash disbursements as reflected in the Approved DIP Cash Projections for the then current week and the next week, will not exceed \$1,000,000; and
- e. The representations and warranties in this Stipulation and all other DIP Loan

Documents are correct in all material respects on the date of such DIP Loans (except to the extent such representations relate to a specific date, in which case, they were correct in all material respects as of such date) and were correct when made.

Section 4.02 [Intentionally Omitted]

ARTICLE V.

REPRESENTATIONS AND WARRANTIES.

Section 5.01 Incorporation of Representations and Warranties. The representations and warranties contained in Sections 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7 (provided that the Interim Order and Final Order shall be deemed to be included in the filings and approvals required in subsections (c) and (g) thereof), 5.8, 5.11, 5.12, 5.13 and 5.14 of the Pre-Petition Credit Agreement (the “Incorporated Representations”) are incorporated herein by this reference as though such representations and warranties were made directly by the DIP Loan Parties to the DIP Agent and the DIP Lenders as of the date hereof except to the extent such representations expressly relate to a specific date, in which case they shall be, or shall have been, true and correct in all material respects, as of such date.

Section 5.02 Additional Representations and Warranties. In addition to the representations and warranties made pursuant to Section 5.01 above, each of the DIP Loan Parties represents and warrants to the DIP Agent and each of the DIP Lenders that, upon approval of this Stipulation through entry of the Interim Order and the Final Order, as applicable, this Stipulation will create in favor of the DIP Agent, for the ratable benefit of the DIP Secured Parties, a legal, valid and enforceable perfected lien on and security interest in the Collateral as described in and having the priority set forth in Section 11.01, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating

to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding thereof may be brought.

ARTICLE VI.

AFFIRMATIVE COVENANTS.

Section 6.01 Incorporation of Affirmative Covenants. The affirmative covenants contained in Sections 6.1, 6.2 (except that Borrowers shall not be required to deliver, and shall not be required to cause any of its Subsidiaries to deliver, the reports described in clause (b) thereof), 6.4, 6.5 (provided that this covenant shall apply only to assessments and taxes incurred from and after the Filing Date), 6.6, 6.7, 6.8, 6.9 (provided that this covenant shall apply only with respect to amounts that are accrued or become payable from and after the Filing Date), 6.10, 6.11 and 6.12 of the Pre-Petition Credit Agreement (the "Incorporated Affirmative Covenants") are incorporated herein by this reference as though such covenants were made directly by the DIP Loan Parties to the DIP Agent and each of the DIP Lenders as of the date hereof. Each DIP Loan Party covenants and agrees with each DIP Lender that so long as this Stipulation shall remain in effect and until the DIP Commitments have been terminated and the DIP Obligations have been satisfied in accordance with Section 3.06, unless the Required DIP Lenders shall otherwise consent in writing, each DIP Loan Party will, and will cause each of its Subsidiaries to adhere to and comply with, the Incorporated Affirmative Covenants.

Section 6.02 Other Affirmative Covenants. In addition to the Incorporated Affirmative Covenants, each DIP Loan Party covenants and agrees with each DIP Lender that so long as this Stipulation shall remain in effect and until the DIP Commitments have been terminated and the DIP Obligations have been satisfied in accordance with Section

3.06, unless the Required DIP Lenders shall otherwise consent in writing, each DIP Loan Party will, and will cause each of its Subsidiaries to:

f. Use the proceeds of the DIP Loans only for the purposes set forth in Section 3.07. No proceeds of the DIP Loans shall be utilized by any DIP Loan Party to fund the prosecution or assertion of any claims against the DIP Agent or the DIP Lenders except as set forth in Section 15.03; Promptly provide the DIP Agent with a copy of any written notices, reports, certificates, financials or other information or documents that either of the Borrowers or any of the other DIP Loan Parties provides to any Person under or in connection with the Pre-Petition Credit Agreement;

g. As of the last day of each week during the period of the Initial Approved DIP Cash Projections, aggregate cash receipts actually received, calculated on a cumulative basis, shall not be less than 75% of cumulative cash receipts projected to be received on or before such date;

h. As of the last day of each week during the period of the Initial Approved DIP Cash Projections, aggregate cash outlays actually made, calculated on a cumulative basis, shall not be more than 125% of cumulative cash outlays projected to be received on or before such date; and

i. Timely pay all fees payable pursuant to 28 U.S.C. § 1930.

Section 6.03 Reporting Covenants. The DIP Loan Parties shall deliver to the DIP Agent:

(a) Monthly Reports. As soon as available, and in any event within 30 days after the end of the first two months in each fiscal quarter, commencing with the month in which the Initial Closing Date occurs, the consolidated balance sheet of the DIP Loan Parties as at the end of such month and the related consolidated statements of income, stockholders' equity and cash flows of the DIP Loan Parties for such month and for the period from the beginning of the

then current fiscal year to the end of such month, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous fiscal year, all in reasonable detail, together with a Financial Officer Certification;

(b) Quarterly Financial Statements. As soon as available, and in any event within 60 days after the end of each of the first three fiscal quarters of each fiscal year, commencing with the fiscal quarter in which the Initial Closing Date occurs, the consolidated balance sheets of the DIP Loan Parties as at the end of such fiscal quarter and the related consolidated statements of income, stockholders' equity and cash flows of the DIP Loan Parties for such fiscal quarter and for the period from the beginning of the then current fiscal year to the end of such fiscal quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous fiscal year and, except for the cash flow statements, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto;

(c) [Reserved];

(d) Compliance Certificate. Together with each delivery of financial statements of the DIP Loan Parties pursuant to Sections 6.03(b), a duly executed and completed compliance certificate in form and substance satisfactory to the DIP Agent (a "**Compliance Certificate**");

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the most recent financial statements delivered prior to the Initial Closing Date, the consolidated financial statements of the DIP Loan Parties delivered pursuant to Section 6.03(b) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made and such change would have an effect on the calculations required pursuant to the Compliance Certificate, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in

form and substance reasonably satisfactory to the DIP Agent;

(f) Notice of Default. Promptly upon, but in any event within seven Business Days after, any executive officer of either Borrower obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to any Borrower with respect thereto; (ii) that any Person has given any notice to any DIP Loan Party or taken any other action with respect to any event or condition set forth in Section 8.01(g); or (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of an authorized officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action such Borrower has taken, is taking and proposes to take with respect thereto;

(g) Notice of Litigation. Promptly upon, but in any event within seven Business Days after, any executive officer of any DIP Loan Party obtaining knowledge of (i) the institution of, or non-frivolous threat of, any claim, suit, litigation or other proceeding claiming damages in excess of (A) with respect to any such claim, suit, litigation or other proceeding involving automobile and workers compensation claims in the ordinary course of business, \$1,500,000 and (B) with respect to all other claims, suits, litigations and other proceedings, \$500,000, in each case not previously disclosed in writing by Borrowers to the DIP Lenders, or (ii) any material development in any claim, suit, litigation or other proceeding that, in the case of either clause (i) or (ii), if adversely determined could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to the DIP Loan Parties to enable the DIP Lenders and their counsel to evaluate such matters;

(h) Weekly Cash Report. Not later than Wednesday of each week, the Borrowers shall deliver to DIP Agent a cash flow statement for the prior week, which will

include the actual cash receipts, actual operating disbursements, actual payroll disbursements, actual non-operating disbursements and actual beginning and ending cash balances for such week, and show variances from the Approved DIP Cash Projections;

(i) Insurance Report. As soon as practicable and in any event by the last day of each fiscal year, if requested by DIP Agent, a certificate from the DIP Loan Parties' insurance broker(s) in form and substance reasonably satisfactory to the DIP Agent outlining all material insurance coverage maintained as of the date of such certificate by the DIP Loan Parties;

(j) New Cash Projections. Not later than the first Business Day of the last week of the then current Approved DIP Cash Projections, Borrowers shall deliver proposed 13-week cash flow projections for the next subsequent 13-week period, and will cooperate with Required DIP Lenders in providing any information requested by Required DIP Lenders with respect to such projections;

(k) Notice Regarding Material Contracts. With reasonable promptness, written notice (i) after any material contract of any DIP Loan Party is terminated (except, with respect to any material contract, at the scheduled completion of the term of such material contract) or amended in a manner that is materially adverse to the DIP Loan Parties, taken as a whole, or (ii) any new material contract (other than a renewal of a previous contract on similar terms and conditions) is entered into, a written statement describing such event, with copies of such material amendments or new contracts, delivered to the DIP Agent (to the extent such delivery is permitted by the terms of any such material contract; provided, no such prohibition on delivery shall be effective if it were bargained for by any DIP Loan Party with the intent of avoiding compliance with this Section 6.03(k)), and an explanation of any actions being taken with respect thereto;

(l) Information Regarding Collateral. (a) The DIP Loan Parties will furnish to the DIP Agent prompt written notice of any change (i) in any DIP Loan Party's corporate name, (ii) in any DIP Loan Party's identity or corporate structure, (iii) in any DIP Loan Party's jurisdiction of organization, (iv) in any DIP Loan Party's place of business, chief executive

office or domicile, or (v) in any DIP Loan Party's Federal Taxpayer Identification Number or state organizational identification number. The DIP Loan Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the DIP Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral as contemplated herein. The DIP Loan Parties also agree promptly to notify the DIP Agent if any material portion of the Collateral is damaged or destroyed;

(m) Cases. The DIP Loan Parties shall immediately provide to each DIP Lender copies of all material pleadings, notices, orders, agreements, and all other documents served, filed or entered, as the case may be, in connection with, or in relation to, the Cases; and

(n) Other Information. (A) Promptly upon, but in any event within seven Business Days after, their becoming available, copies of (i) all financial statements sent or made available generally by the DIP Loan Parties to their security holders acting in such capacity, (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed by any of the DIP Loan Parties with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, (iii) all press releases and other statements made available generally by any of the DIP Loan Parties to the public concerning material developments in the business of the DIP Loan Parties and (B) such other information and data with respect to the DIP Loan Parties as from time to time may be reasonably requested by the DIP Agent or any DIP Lender.

ARTICLE VII.

NEGATIVE COVENANTS.

Section 7.01 Incorporation of Negative Covenants. The negative covenants contained in Sections 7.1 (provided that, for purposes hereof, the following new subsection (l) shall be added to such section : "(l) Indebtedness under this Stipulation"), 7.2 (provided that, for purposes hereof, the DIP Liens shall be deemed to be Permitted Liens), 7.3

(provided that, subject to any other provisions of this Stipulation, nothing in such section shall prevent or prohibit the Debtors from formulating, negotiating and seeking confirmation of any plan of reorganization in the Cases), 7.4, 7.5, 7.6, 7.7 (provided that clause (ii) of subsection (a) shall not be applicable for purposes of this Stipulation and subsection (b) shall be subject to the formulation, negotiation, confirmation and consummation of a plan of reorganization in the Cases), 7.8 (provided that this section shall be deemed to be subject to the formulation, negotiation, confirmation and consummation of a plan of reorganization in the Cases), 7.9, 7.10, 7.11, 7.12, 7.13, 7.14 and 7.16 of the Pre-Petition Credit Agreement (the “Incorporated Negative Covenants”) are incorporated herein by this reference as though such covenants were made directly by the DIP Loan Parties to the DIP Agent and each of the DIP Lenders as of the date hereof. Each DIP Loan Party covenants and agrees with each DIP Lender that so long as this Stipulation shall remain in effect and until the DIP Commitments have been terminated and the DIP Obligations have been satisfied in accordance with Section 3.06, unless the Required DIP Lenders shall otherwise consent in writing, each DIP Loan Party will, and will cause each of its Subsidiaries to adhere to and comply with the Incorporated Negative Covenants.

Section 7.02 Other Negative Covenants. In addition to the Incorporated Negative Covenants, each DIP Loan Party covenants and agrees with each DIP Lender that so long as this Stipulation shall remain in effect and until the DIP Commitments have been terminated and the DIP Obligations have been satisfied in accordance with Section 3.06, unless the Required DIP Lenders shall otherwise consent in writing, each DIP Loan Party will not, and will not permit any of its Subsidiaries to:

1. Incur, create, assume, suffer to exist or permit any other Superpriority Claim which is *pari passu* with or senior to the claims of the DIP Agent and the DIP Lenders

against the Borrowers and the Guarantors hereunder, except for the Carve-Out.

2. Permit the aggregate amount of Capital Expenditures made at any time after the Initial Closing Date to exceed an amount to be agreed upon between the Debtors and the DIP Agent (in its sole discretion) prior to the Initial Closing Date.

3. Permit during any month, the sum of (i) cash and Cash Equivalents plus (ii) undrawn amounts under the DIP Commitments, to be less than an amount to be agreed to by the Borrowers and the DIP Agent (in its sole discretion) prior to the Initial Closing Date.

4. Pay any pre-petition claims of vendors, whether secured, unsecured or entitled to priority under the Bankruptcy Code or any other federal or state statute, without the prior written consent of the DIP Agent.

ARTICLE VIII.

EVENTS OF DEFAULT

Section 8.01 Events of Default. Each of the following occurrences shall constitute and event of default (each, an “Event of Default”) under this Stipulation:

(a) any representation or warranty made or deemed made in any DIP Loan Document, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any DIP Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished,

(b) default shall be made in the payment of any principal of any DIP Loan (including the DIP Commitment Fee) when and as the same shall become due and payable;

(c) default shall be made in the payment of any interest on any DIP Loan or any Fee or any other amount (other than an amount referred to in paragraph (b) of this Article) due under any DIP Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three (3) Business Days;

(d) default shall be made in the due observance or performance by any DIP Loan Party of any covenant, condition or agreement contained in Section 6.02(f) or 7.02(a) of this Stipulation or Section 6.2, 6.7, 6.8 or 6.9 of the Pre-Petition Credit Agreement to the extent incorporated herein pursuant to Section 6.01 above (after given effect to any modifications set forth in such section) and such default shall continue for a period of 5 Business Days;

(e) default shall be made in the due observance or performance by any DIP Loan Party of any covenant, condition or agreement contained in Section 6.1, 6.3, or 6.4 of the Pre-Petition Credit Agreement to the extent incorporated herein pursuant to Section 6.01 above (after given effect to any modifications set forth in such section) and such default shall continue for a period of 15 Business Days;

(f) (i) default shall be made in the due observance or performance by any DIP Loan Party of any covenant, condition or agreement contained in Section 6.02(a), 6.02(c), 6.02(d), 6.02(e), 6.03, 7.02(b) or 7.02(c) (as to any such Default there shall be no cure period) or (ii) default shall be made in the due observance or performance by any DIP Loan Party of any other covenant, condition or agreement contained in any DIP Loan Document (other than those specified elsewhere in this Section 8.01) and such default shall continue for a period of 30 days;

(g) (i) any DIP Loan Party shall fail to pay any principal or interest, regardless of amount, due in respect of any Material Indebtedness, when and as the same shall become due and payable (including all relevant grace periods), or (ii) any other event or condition occurs (and all relevant grace periods have expired) that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity;

(h) one or more judgments or orders shall be rendered against any DIP Loan Party or any combination thereof as to any obligation arising after the Filing Date and the same shall not be effectively stayed, and (i) is for an amount in excess of \$500,000 in the aggregate not

covered by insurance or (ii) is for injunctive relief and could reasonably be expected to result in a Material Adverse Effect,

(i) there shall have occurred a Change in Control;

(j) any Guarantee for any reason shall cease to be in full force and effect (other than in accordance with its terms), or any Guarantor shall deny in writing that it has any further liability under the Guarantee (other than as a result of the discharge of such Guarantor in accordance with the terms of the DIP Loan Documents);

(k) any security interest in Collateral that, individually or in the aggregate, is valued in excess of \$100,000 purported to be created by any DIP Order and/or by this Stipulation and/or any other DIP Loan Document shall cease to be, or shall be asserted by either of the Borrowers or any other DIP Loan Party not to be, a valid, perfected security interest in the securities, assets or properties covered thereby;

(l) any of the Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or otherwise, a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases and the order appointing such trustee, responsible officer or examiner shall not be reversed or vacated within 30 days after the entry thereof;

(m) (i) any application shall be filed by any of the DIP Loan Parties without the consent of the DIP Lenders for the approval of (A) any other superpriority administrative claim or any Lien on any of the Collateral in any of the Cases which is, in either case, *pari passu* with or senior to, respectively, the claims or Liens of the DIP Agent and the DIP Lenders against the DIP Loan Parties hereunder, or (B) the use of proceeds of the Collateral, or (ii) there shall arise or be granted (i) any such *pari passu* or senior superpriority administrative claim or Lien or (ii) any right to use proceeds of the Collateral;

(n) any of the DIP Loan Parties shall file a pleading seeking, or otherwise

consenting to, any of the matters listed in Section 8.01(l);

(o) [Reserved];

(p) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of the DIP Loan Parties;

(q) any order of the Bankruptcy Court shall be entered (i) staying, reversing, modifying or vacating the Interim Order, the Final Order or the DIP Facility, or (ii) without the written consent of the DIP Agent (which consent shall be in its sole discretion), otherwise amending, supplementing or modifying the Interim Order, the Final Order or DIP Facility;

(s) a plan of reorganization or liquidation shall be filed by any DIP Loan Party that does not provide for the indefeasible payment in full of the DIP Obligations in cash or otherwise provide acceptable treatment to the DIP Secured Parties, in the sole and absolute discretion of the Required DIP Lenders;

(t) (i) any DIP Loan Party shall assert any claims against the DIP Lenders pursuant to section 506(c) of the Bankruptcy Code or any other action is commenced by any DIP Loan Party that is adverse to the DIP Lenders or the DIP Lenders' respective rights and remedies under this Stipulation the DIP Facility or any DIP Order, or (ii) any Person shall prevail in the assertion of any claim against the DIP Lenders pursuant to section 506(c) of the Bankruptcy Code;

(u) there shall occur any event that has or could reasonably be expected to have a Material Adverse Effect, other than those customarily caused by a filing of a Chapter 11 case;

(v) any order, judgment or decree shall be entered against any DIP Loan Party decreeing the winding up, dissolution or split up of such DIP Loan Party and such order shall remain undischarged or unstayed for a period in excess of thirty days;

(w) any DIP Loan Party shall file a motion with the Bankruptcy Court, whether under section 363 of the Bankruptcy Code or otherwise, seeking authority to sell any of the DIP

Loan Parties' assets with a value in excess of \$500,000; provided the filing of such a motion or the granting of relief thereunder shall not constitute an Event of Default if (i) such motion provides for the payment of any net proceeds from such sale to be paid to the DIP Agent for applicable to outstanding DIP Loans and, upon consummation of such sale, such net proceeds are actually paid over to the DIP Agent, (ii) the Required DIP Lenders have consented in their sole and absolute discretion to such sale or (iii) proceeds from such sale will be sufficient to indefeasibly pay all outstanding DIP Obligations in full and, upon consummation of such sale, are actually used to indefeasibly pay all outstanding DIP Obligations in full (in which case, unless the Required DIP Lenders otherwise consent in their sole and absolute discretion, all DIP Commitments hereunder shall terminate and the DIP Lenders shall have no further obligation related thereto notwithstanding anything to the contrary contained in this Stipulation);

(x) except to the extent the Required DIP Lenders support the motion or application in their sole and absolute discretion, any motion or application is filed by or on behalf of any Committee in any of the Cases seeking the entry of an order, or an order is entered in any of the Cases, approving any subsequent debtor in possession facility for borrowed money or other extensions of credit unless such motion or applications and such order expressly provide for the indefeasible payment and complete satisfaction in full in cash to the DIP Secured Parties of all DIP Obligations prior to, or concurrently with, any initial borrowings or other extensions of credit under such subsequent facility and either (a) the Debtors do not immediately and diligently oppose such application or (b) an order is entered approving such subsequent debtor in possession facility for borrowed money or other extension of credit; or

(y) the commencement of a suit or action against any DIP Secured Party or any of their Affiliates that asserts or seeks, (a) any claim in excess of \$100,000, or (b) any legal or equitable remedy that would have the effect of subordinating any or all of the DIP Obligations or DIP Liens.

Section 8.02 Effect of Event of Default. Upon the occurrence and

during the continuance of an Event of Default, the DIP Agent may, and at the request of the Required DIP Lenders shall, by notice to the Borrowers, take either or both of the following actions, at the same or different times; (i) terminate forthwith the DIP Commitments and (ii) declare the DIP Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the DIP Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued fees and all other liabilities of the Borrowers accrued hereunder and under any other DIP Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by each of the Borrowers, anything contained herein or in any other DIP Loan Document to the contrary notwithstanding. Upon the occurrence of an Event of Default, the automatic stay provided in section 362 of the Bankruptcy Code shall be deemed automatically vacated and the DIP Lenders shall have the right to exercise any of the remedies under the DIP Loan Documents, including any rights and remedies provided in the DIP Orders and the right to realize on all of the Collateral without relief or order of the Bankruptcy Court after providing 5 Business Days' written notice to the DIP Loan Parties, counsel for the Pre-Petition Agent, the United States Trustee and counsel to the Committee, if any. Upon the occurrence of an Event of Default, the DIP Lenders are authorized to exercise their remedies and proceed under or pursuant to the DIP Loan Documents, except that, with respect to any of the Debtors' leasehold locations, the DIP Lenders' rights shall be limited to such rights (a) as may be ordered by the Bankruptcy Court upon motion and notice to the applicable landlord with an opportunity to respond that is reasonable under the circumstances; (b) to which the applicable landlord agrees in writing with the DIP Lenders; or (c) which the DIP Lenders have under applicable non-bankruptcy law. All proceeds realized from any of the foregoing shall be turned

over to the DIP Lenders.

ARTICLE IX.

DIP AGENT

Section 9.01 The DIP Agent. Each of the DIP Lenders hereby irrevocably appoints the DIP Agent its agent and authorizes the DIP Agent to take such actions on its behalf and to exercise such powers as are delegated to the DIP Agent by the terms of the DIP Loan Documents, together with such actions and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, the DIP Agent is hereby expressly authorized to execute any and all documents (including releases) with respect to the Collateral and the rights of the DIP Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Stipulation.

The Person serving as the DIP Agent hereunder shall have the same rights and powers in its capacity as a DIP Lender as any other DIP Lender and may exercise the same as though it were not the DIP Agent, and such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with either of the Borrowers or any Subsidiary or other Affiliate thereof as if it were not the DIP Agent hereunder.

The DIP Agent shall not have any duties or obligations except those expressly set forth in the DIP Loan Documents. Without limiting the generality of the foregoing, (a) the DIP Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the DIP Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the DIP Agent is instructed in writing to exercise by the Required DIP Lenders, and (c) except as expressly set forth in the DIP Loan Documents, the DIP Agent shall not have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to any DIP Loan Party that is communicated to or obtained by the Person

serving as the DIP Agent or any of its Affiliates in any capacity. The DIP Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required DIP Lenders or in the absence of its own gross negligence or willful misconduct. The DIP Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to the DIP Agent by the Borrowers or a DIP Lender, and the DIP Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any DIP Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any DIP Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any DIP Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any DIP Loan Document, other than to confirm receipt of items expressly required to be delivered to the DIP Agent.

The DIP Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The DIP Agent may also rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The DIP Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The DIP Agent may perform any and all its duties and exercise its rights and powers (including the rights and powers with respect to collateral monitoring) by or through any one or more sub-agents appointed by it. The DIP Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related

Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the DIP Agent and any such sub-agent, and shall apply to their respective activities in connection with the activities as DIP Agent.

Subject to the appointment and acceptance of a successor DIP Agent as provided below, the DIP Agent may at any time give notice of its resignation to the DIP Lenders and the Borrowers. Upon any such notice of resignation, the Required DIP Lenders shall have the right, in consultation with the Borrowers, to appoint a successor. If no successor shall have been so appointed by the Required DIP Lenders and shall have accepted such appointment within 30 days after the retiring DIP Agent gives notice of its resignation, then the retiring DIP Agent may, on behalf of the DIP Lenders and in consultation with the Borrowers, appoint a successor DIP Agent. Upon the acceptance of its appointment as DIP Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring DIP Agent, and the retiring DIP Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrowers to a successor DIP Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After a DIP Agent's resignation hereunder, the provisions of this Article and Section 17.05 shall continue in effect for the benefit of such retiring DIP Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while acting as DIP Agent.

Each DIP Lender acknowledges that it has, independently and without reliance upon the DIP Agent or any other DIP Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Stipulation. Each DIP Lender also acknowledges that it will, independently and without reliance upon the DIP Agent or any other DIP Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Stipulation or any other DIP Loan Document, any related agreement or any document furnished hereunder or thereunder.

ARTICLE X.

GUARANTEE

Section 10.01 **Guarantee.** Each Guarantor unconditionally guarantees, jointly with the other Guarantors and severally, as a primary obligor and not merely as a surety, the due and punctual payment and performance of the DIP Obligations. Each Guarantor further agrees that to the extent permitted by applicable law, the DIP Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any extension or renewal of any DIP Obligation. To the extent permitted by applicable law, each Guarantor waives presentment to, demand of payment from and protest to the Borrowers or any other DIP Loan Party of any DIP Obligation, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment.

Section 10.02 **Guarantee of Payment.** Each Guarantor further agrees that its guarantee hereunder constitutes a guarantee of payment when due and not of collection, and waives any right to require that any resort be had by the DIP Agent or any other DIP Secured Party to any security held for the payment of the DIP Obligations or to any balance of any deposit account or credit on the books of the DIP Agent or any other DIP Secured Party in favor of either of the Borrowers or any other Person.

Section 10.03 **No Limitations, Etc.**

(a) Except for the termination of a Guarantor's obligations hereunder as expressly permitted hereby and to the extent permitted by applicable law, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense (other than payment in full in cash) or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the DIP

Obligations. Without limiting the generality of the foregoing, to the extent permitted by applicable law, the obligations of each Guarantor hereunder shall not be discharged or impaired or otherwise affected by (i) the failure of the DIP Agent or any other DIP Secured Party to assert any claim or demand or to enforce any right or remedy under the provisions of any DIP Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any DIP Loan Document, including with respect to any other Guarantor under this Stipulation, (iii) the release of, or any impairment of or failure to perfect any DIP Lien on or security interest in, any security held by the DIP Agent or any other DIP Secured Party for the DIP Obligations or any of them, (iv) any default, failure or delay, willful or otherwise, in the performance of the DIP Obligations, or (v) any other act or omission that may or might in any manner or to any extent operate as a discharge of any Guarantor as a matter of law or equity (other than the payment in full in cash of all the DIP Obligations). To the extent permitted by applicable law, each Guarantor expressly authorizes the DIP Agent to take and hold security for the payment and performance of the DIP Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in its reasonable discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the DIP Obligations, all without affecting the obligations of any Guarantor hereunder.

(b) To the fullest extent permitted by applicable law, each Guarantor waives any defense based on or arising out of any defense of either of the Borrowers or any other DIP Loan Party or the unenforceability of the DIP Obligations or any part thereof from any cause, or the cessation from any cause of the liability of either of the Borrowers or any other DIP Loan Party, other than the payment in full in cash of all the DIP Obligations; provided that for the purposes of this Stipulation, the refinancing in full of all of the DIP Obligations shall be considered to be a payment in full in cash of the DIP Obligations. During the continuance of an Event of Default but subject to the provisions of this Stipulation, the DIP Agent and the other DIP Secured Parties may, at their reasonable election, foreclose on any security held by one or more of them by one

or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the DIP Obligations, make any other accommodation with either of the Borrowers or any other DIP Loan Party or exercise any other right or remedy available to them against either of the Borrowers or any other DIP Loan Party, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the DIP Obligations have been paid in full in cash. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against either of the Borrowers or any other DIP Loan Party, as the case may be, or any security.

Section 10.04 **Reinstatement.** Each Guarantor agrees that its guarantee hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any DIP Obligation is rescinded or must otherwise be restored by the DIP Agent or any other DIP Secured Party for any reason whatsoever.

Section 10.05 **Agreement To Pay.** In furtherance of the foregoing and not in limitation of any other right that the DIP Agent or any other DIP Secured Party has at law or in equity against any Guarantor by virtue hereof, subject to the terms of Sections 8.01 and 8.02, upon the failure of the Borrowers or any other DIP Loan Party to pay any DIP Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the DIP Agent for distribution to the applicable DIP Secured Parties in cash the amount of such unpaid DIP Obligation.

Section 10.06 **Information.** Each Guarantor assumes all responsibility for being and keeping itself informed of each Borrower's and each other DIP Loan Party's

financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the DIP Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that neither the DIP Agent nor any other DIP Secured Party will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

Section 10.07 **Maximum Liability.** Anything herein or in any other DIP Loan Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other DIP Loan Documents shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal and state laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 10.08).

Section 10.08 **Contribution and Subrogation.** Each Guarantor (a “Contributing Guarantor”) agrees that, in the event a payment shall be made by any other Guarantor hereunder in respect of any DIP Obligation or assets of any other Guarantor shall be sold pursuant to any DIP Security Document to satisfy any DIP Obligation owed to any DIP Secured Party and such other Guarantor (the “Claiming Guarantor”) shall not have been fully indemnified by the Borrowers, as provided in Section 10.09, the Contributing Guarantor shall indemnify the Claiming Guarantor in an amount equal to the lesser of (i) the amount of such payment or (ii) the greater of the book value or the fair market value of such assets, as the case may be, in each case multiplied by a fraction of which the numerator shall be the net worth of the Contributing Guarantor on the date hereof and the denominator shall be the aggregate net worth of all the Guarantors on the date hereof. Any Contributing Guarantor making any payment to a Claiming Guarantor pursuant to this Section 10.08 shall be subrogated to the rights of such

Claiming Guarantor to the extent of such payment.

Section 10.09 **Indemnity and Subrogation.** In addition to all such rights of indemnity and subrogation as the Guarantors may have under applicable law (but subject to Section 10.10), each Borrower agrees that (a) in the event a payment shall be made by any Guarantor under this Stipulation, such Borrower shall indemnify such Guarantor for the full amount of such payment and such Guarantor shall be subrogated to the rights of the Person to whom such payment shall have been made to the extent of such payment and (b) in the event any assets of any Guarantor shall be sold pursuant to this Stipulation or any other DIP Security Document to satisfy in whole or in part a claim of any DIP Secured Party, such Borrower shall indemnify such Guarantor in an amount equal to the amount received for the assets so sold.

Section 10.10 **Subordination.**

(a) Notwithstanding any provision of this Stipulation to the contrary, all rights of the Guarantors under Sections 10.08 and 10.09 and all other rights of indemnity, contribution or, subrogation under applicable law or otherwise shall be fully subordinated to the payment in full in cash of the DIP Obligations. To the extent permitted by applicable law, no failure on the part of either Borrower or any Guarantor to make the payments required by 10.08 and 10.09 (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of any Guarantor with respect to its obligations hereunder, and each Guarantor shall remain liable for the full amount of its obligations hereunder.

(b) Each Guarantor hereby agrees that any Indebtedness of either Borrower or any other Guarantor now or hereafter owing to such Guarantor, whether heretofore, now or hereafter created (the “**Guarantor Subordinated Debt**”), is hereby subordinated to the payment in full in cash of all of the DIP Obligations and that the Guarantor Subordinated Debt shall not, during the continuation of an Event of Default and after notice from the DIP Agent, be paid in whole or in part until the DIP Obligations have been paid in full in cash and this Guaranty is

terminated and of no further force or effect. No Guarantor shall accept any payment of or on account of any Guarantor Subordinated Debt at any time in contravention of the foregoing. Upon the occurrence and during the continuance of an Event of Default, each of the Borrowers shall pay to the DIP Agent any payment of all or any part of the Guarantor Subordinated Debt and any amount so paid to the DIP Agent shall be applied to payment of the DIP Obligations as provided in Section 3.06 of this Stipulation. Each payment on the Guarantor Subordinated Debt received in violation of any of the provisions hereof shall be deemed to have been received by such Guarantor as trustee for the DIP Agent and the DIP Lenders and shall be paid over to the DIP Agent immediately on account of the DIP Obligations, but without otherwise affecting in any manner such Guarantor's liability hereof.

ARTICLE XI.

SUPERPRIORITY SECURITY INTERESTS.

Section 11.01 **Security Interests.** Pursuant to section 364(c) and (d) of the Bankruptcy Code, all DIP Obligations which may from time to time hereafter be owing by any of the DIP Loan Parties to the DIP Secured Parties, shall be and hereby are secured by (effective immediately without the necessity of the execution by any DIP Loan Party of mortgages, security agreements, financing statements or any other documentation) perfected liens upon and security interests in the Collateral, wheresoever located and whether now existing or hereafter arising or acquired by any DIP Loan Party (collectively, the "DIP Liens"). The Liens created and perfected hereunder shall be (i) senior in all respects to the Pre-Petition Lender Liens, (ii) subject to Permitted Liens, if any, that are senior to the Pre-Petition Liens, and (iii) subject to the payment of the Carve-Out.

Except as otherwise provided herein, upon entry of the Interim Order, the DIP Liens by virtue of this Stipulation shall be valid and perfected as against all third parties, without regard to applicable federal, state or local filing and recording statutes, as of the date that the

Interim Order is entered by the Court and without further action of any party, including the DIP Agent, provided, that, the DIP Agent may, but need not, take such steps as it deems desirable and applicable to comply with such statutes, and all financing statements which are filed listing the Debtor as “debtor” respectively and the DIP Agent as “secured party,” all mortgages or similar instruments which are filed granting to the DIP Agent, for and on behalf of itself and the DIP Lenders, the DIP Liens shall be deemed to have been filed and the DIP Liens evidenced thereby shall be deemed perfected as of the entry of the Interim Order.

ARTICLE XII.

ADMINISTRATIVE PRIORITY CLAIMS.

Section 12.01 **Superpriority Claim.** All DIP Obligations and the DIP Liens shall have priority under the provisions of section 364(c)(1) of the Bankruptcy Code over all administrative expenses incurred in these Cases of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code (the “Superpriority Claim”), except that the Superpriority Claim shall be junior and subordinate to the Carve-Out. The Superpriority Claim shall at all times be senior to the rights of the Debtors in these proceedings under the Bankruptcy Code and shall have priority over any and all secured, unsecured and priority claims or costs and expenses in these Cases other than as otherwise set forth in this Section 12.01, whether incurred or arising prior or subsequent to the Filing Date, the authorization of this Stipulation by the Bankruptcy Court or a conversion of any of the Cases pursuant to section 1112 of the Bankruptcy Code or in any other proceeding related hereto, and whether incurred pursuant to section 726(b) of the Bankruptcy Code or otherwise. Except as expressly provided by this Stipulation, no claims shall be prior to or on a parity with the DIP Agent or with the DIP Liens upon, the Collateral, and no costs or expenses of administration shall be imposed against the DIP Agent or any of the DIP Lenders, their claims or the Collateral.

Section 12.02 **Carve-Out.**

a. Upon the occurrence and during the continuation of an Event of Default, payments on account of the DIP Liens and the Superpriority Claim shall be subject and subordinate only to payment of: (i) amounts payable pursuant to 28 U.S.C. § 1930(a)(6) and to the clerk of the Bankruptcy Court; (ii) allowed and unpaid fees and expenses that are owed to the attorneys, accountants and other professionals retained in the Cases by the Debtors pursuant to Bankruptcy Code sections 327, 328, 330, 331, 363, 503 or 1103 (collectively, the “Debtor Professionals”) (x) incurred from the Filing Date to the date of notice (such notice, the “Termination Notice”) from the DIP Agent to the Debtors and the Committee, if any, that an Event of Default has occurred (such fees and expenses, whether allowed before or after the Termination Notice, the “Debtors’ Pre-Termination Allowed Fees”); and (y) incurred after the date of the Termination Notice (such period, the “Post-Termination Notice Period”) in an amount of up to (but no more than) \$200,000 in the aggregate (the “Debtors’ Post-Termination Allowed Fees,” and such cap the “Debtor Professional Expense Cap”); and (iii) allowed and unpaid fees and expenses that are owed to the attorneys, accountants and other professionals retained in the Chapter 11 Cases by the Committee pursuant to Bankruptcy Code sections 328, 330, 331, 363, 503 or 1103 (collectively, the “Committee Professionals,” and together with the Debtor Professionals, the “Estate Professionals”) (x) incurred from the Filing Date to the date of the Termination Notice (such fees and expenses, whether allowed before or after the Termination Notice, the “Committee’s Pre-Termination Allowed Fees,” and together with the Debtor’s Pre-Termination Allowed Fees, the “Pre-Termination Allowed Fees”) in an amount of up to (but no more than) \$100,000 in the aggregate (the “Committee Pre-Termination Expense Cap”) and (y) incurred during the Post-Termination Notice Period (the “Committee’s Post-Termination Allowed Fees,” and together with the Debtors’ Post-Termination Allowed Fees, the “Post-Termination Allowed Fees”), in an amount of up to (but no more than) \$25,000 in the aggregate the “Committee Post-Termination Expense Cap,” and together with the Committee Pre-Termination Expense Cap, the “Committee Expense Cap”). The fees and expenses described in

clauses (i) through (iii) of the preceding sentence are referred to herein as the “Carve-Out.”

b. Notwithstanding anything to the contrary in paragraph 12.02(a), the Debtor Professional Expense Cap and the Committee Professional Expense Cap shall be reduced on a dollar-for-dollar basis by the amount of any retainers held by, respectively, the Debtors’ professional and the Committee’s professionals as of the date of the Termination Notice. In addition, for purposes of the Carve-Out, Allowed Professional Fees (i) shall include only those fees and expenses that are owed pursuant to the terms of the applicable Estate Professional’s engagement letter or other agreement of engagement and (ii) shall not include any success fee, transaction fee, or other similar fee whether or not set forth in such Estate Professional’s engagement letter or other agreement. Following the delivery of a Termination Notice, (w) any payment made to any Estate Professional from any source on account of Allowed Professional Fees shall reduce the Carve-Out (and to the extent made on account of a Post-Termination Allowed Fee, the Debtor Professional Fee Cap or the Committee Professional Fee Cap, as applicable) on a dollar-for-dollar basis, (x) any payment made to any Committee Professional from any source on account of Committee Pre-Termination Allowed Fees shall reduce the Committee Pre-Termination Expense Cap on a dollar-for-dollar basis, (y) any payment made to, respectively, any Debtor Professional or any Committee Professional from any source on account of any Post-Termination Allowed Fees shall reduce, as applicable, the Debtor Post-Termination Expense Cap or the Committee Post-Termination Expense Cap and (y) no Allowed Professional Fee shall be paid from the proceeds of the DIP Loan or Collateral (including cash collateral) to any Estate Professional holding a retainer until such time as that retainer has been reduced to zero by application of such retainer to the Allowed Professional Fees of such Estate Professional.

ARTICLE XIII.

TERMINATION.

Section 13.01 **Termination.** For purposes hereof, “Termination Date”

shall mean the earliest to occur of (i) September 11, 2013, (ii) the effective date of a plan of reorganization confirmed in the Cases, (iii) September 17, 2012, if the Interim Order has not been entered on or before that date, (iv) the Final DIP Hearing Date, if the Final Order has not been entered on or before that date, (v) the date on which any DIP Order is reversed, modified, invalidated or amended in any respect unless agreed to in advance by the Required DIP Lenders, and (vi) the date on which the event described in clause (ii) of Section 8.02 occurs.

ARTICLE XIV.

ADEQUATE PROTECTION

Section 14.01 Adequate Protection for Pre-Petition Secured

Parties. As adequate protection to the Pre-Petition Secured Parties for the Debtors' use of Cash Collateral and the extension of the DIP Loans pursuant to Section 364(d), the Agent, for and on behalf of the Pre-Petition Secured Parties, is hereby granted (i) valid, enforceable, binding, non-avoidable and fully perfected postpetition security interests and liens (the "Adequate Protection Liens") on all of the Collateral, and (ii) priority superpriority administrative expense claims under section 364(c)(1) of the Bankruptcy Code (the "Adequate Protection Priority Claims"). Notwithstanding the foregoing, any adequate protection granted to any of Pre-Petition Secured Parties hereunder shall be limited solely to the extent of the aggregate diminution in value, if any, of the Pre-Petition Secured Parties' interest in the Collateral, including, without limitation, any such diminution resulting from or attributable to, any or all of the Carve-Out, the imposition of the automatic stay, the use of any cash collateral, any sale, lease or use by the Debtors, physical deterioration, or other decline in value of any other Collateral existing as of the Filing Date, and the priming of the Pre-Petition Lender Liens by the DIP Liens.

a. Without limiting the foregoing, the Pre-Petition Secured Parties shall have all of the rights accorded to them under sections 503 and 507(b) of the Bankruptcy Code in respect of the adequate protection provided herein.

b. The Adequate Protection Liens shall be junior and subordinate in all respects to the DIP Liens, any Permitted Liens that are senior to the Pre-Petition Lender Liens and payment of the Carve-Out. The Adequate Protection Priority Claims shall be junior and subordinated to the DIP Secured Parties' Superiority Claims and payment of the Carve-Out.

ARTICLE XV.

CHALLENGE PERIOD.

Section 15.01 **Limitations on Use of Proceeds.** Proceeds of the DIP Loan and the Collateral (including any cash collateral) shall not be used by any person or entity, but excluding the Debtors (or any successor trustee or other estate representative in any or Successor Case) and the Committee subject to the limitations set forth below, in connection with the investigation, pursuit or assertion of, or joinder in, any claim, cause of action, defense, counterclaim, proceeding, application, motion, objection, defense or other contested matter or discovery against any of the DIP Agent, the other DIP Secured Parties, and/or their respective affiliates or Related Parties, the purpose of which is to seek, or the result of which would be, to obtain any order, judgment, determination, declaration or similar relief: (x) invalidating, setting aside, avoiding, recharacterizing or subordinating, in whole or in part, any claim, indebtedness, liens and/or security interests of any of the DIP Agent, the other DIP Secured Parties, and/or their respective affiliates or Related Parties; (y) objecting to or commencing any action that prevents or affirmatively delays the exercise by any of the DIP Agent, the other DIP Secured

Parties, and/or their respective affiliates or Related Parties of any of their respective rights and remedies under any agreement or document or this Interim Order or the Final Order; or (z) seeking any affirmative legal or equitable remedy against any of the DIP Agent, the other DIP Secured Parties, and/or their respective affiliates and Related Parties.

Section 15.02 Challenge Actions. Notwithstanding anything herein to the contrary, Debtors, any Committee and other non-Debtor parties-in-interest shall have the right to file a complaint pursuant to Bankruptcy Rule 7001, or assert (through appropriate filings with the Court) a claim, offset or defense that seeks to invalidate, subordinate, recharacterize or otherwise challenge any actions taken prepetition by any DIP Secured Party and/or their respective affiliates or Related Parties (a “Challenge Action”); provided, however, that any Challenge Action must be brought on or before the later to occur of (i) seventy-five (75) days after the Filing Date and (ii) sixty (60) days after the formation of the Committee (the “Challenge Period”). If no Challenge Action is filed before the end of the Challenge Period, the Debtors, the Committee, all holders of claims and interests and all other parties-in-interest shall be forever barred from bringing or taking any Challenge Action on behalf of themselves, the Debtors or these estates, and the release of such Challenge Actions shall be binding on all parties in interest. If a Challenge Action is properly brought during the Challenge Period, only those causes of action, claims, offsets, setoff and defenses expressly included in such Challenge Action shall be preserved, and any and all other Challenge Actions and any causes of action, claims, offsets, setoffs and defenses not expressly brought during the Challenge Period in such Challenge Action shall be forever barred and released. In the event of a timely and successful Challenge Action, this Court shall fashion the appropriate remedy with respect to the applicable DIP Secured Party(ies) and/or their respective Related Parties and affiliates.

Section 15.03 **Challenge Fees.** Debtors and/or the Committee shall be permitted to spend up to (but no more than) \$25,000 in the aggregate of proceeds of the DIP Loan and Collateral in investigating, taking discovery with respect to, filing and prosecuting any and all Challenge Actions (the “Challenge Fees”).

Section 15.04 **Trustee’s Right to Bring Challenge Actions.** If a trustee is appointed pursuant to Bankruptcy Code section 702 or 1104 prior to the end of the then-extant Challenge Period, the trustee shall have until the later of the end of the Challenge Period and 10 days after his or her appointment to file any Challenge Action. The appointment of a trustee shall not extend the Challenge Period for any other party.

Section 15.05 **Extensions of Challenge Period.** The Challenge Period may be extended by the Bankruptcy Court by motion filed prior to its expiration and upon notice and a showing of good cause, or by stipulation by the DIP Agent in its sole discretion.

ARTICLE XVI.

RELEASES.

Section 16.01 **Releases of DIP Secured Parties Relating to DIP Facility.** Subject to the rights set forth in Article XV above, the Debtors, on behalf of themselves and their estates (including any successor trustee or other estate representative in any Case or Successor Case), forever and irrevocably (i) release, discharge, and acquit the DIP Agent, each of the DIP Lenders, in their capacity as DIP Lenders, and each of their respective former, current or future Related Parties, solely in each of their capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type, including, without limitation, any so-called “lender liability” or equitable subordination claims or defenses, with respect to or relating to the

negotiation and execution of the DIP Facility, the DIP Orders, this Stipulation and the negotiation of the terms hereof or thereof and (ii) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and nonavoidability of the DIP Liens and Superpriority Claims.

Section 16.02 [Intentionally Omitted].

ARTICLE XVII.

MISCELLANEOUS

Section 1.02 Notices. Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, as follows:

(a) if to the Borrowers, to Piccadilly Restaurants, LLC and Piccadilly Food Services, LLC at 3232 S. Sherwood Forest Boulevard, Baton Rouge, Louisiana 70816, Attention of Thomas J. Sandeman (Fax No. (225) 296-8332) with a copy to Louis Phillips of Gordon, Arata, McCollam, Duplantis & Eagan, LLC, One American Place, 301 Main Street, Suite 1600, Baton Rouge, Louisiana 70801-1916 (Fax No. (225) 336-9763;

(b) if to the DIP Agent, to Atalaya Administrative LLC at 780 Third Avenue, 27th Floor, New York, NY 10017 Attention of Rana Mitra (Fax No. (917-464-7350), with a copy to Brent R. McIlwain of Patton Boggs, LLP at 2000 McKinney, suite 1700, Dallas, TX 75201-8001 (Fax No. (214)-758-1550) and David F. Waguespack of Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C. at 1100 Poydras Street, Suite 3100, New Orleans, LA 70163 (Fax No. (504) 585-3801);

(c) if to a DIP Lender, to it at its address (or fax number) set forth on its signature page to this Stipulation.

All notices and other communications given to any party hereto in accordance with the provisions of this Stipulation shall be deemed to have been given on the date of receipt

if delivered by hand or overnight courier service or sent by fax or on the date five (5) Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section or in accordance with the latest unrevoked direction from such party given in accordance with this Section. As agreed to among the Borrowers, the DIP Agent and the applicable DIP Lenders from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable Person provided from time to time by such Person.

Section 17.01 **Survival of Agreement.** All covenants, agreements, representations and warranties made by each of the Borrowers herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Stipulation or any other DIP Loan Document shall be considered to have been relied upon by the DIP Lenders and shall survive the making by the DIP Lenders of the DIP Loans, regardless of any investigation made by the DIP Lenders or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any DIP Loan or any fee or any other amount payable under this Stipulation or any other DIP Loan Document is outstanding and unpaid and so long as the DIP Commitments have not been terminated. The provisions of Section 17.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Stipulation, the consummation of the DIP Transactions, the repayment of any of the DIP Loans, the expiration of the DIP Commitments, the invalidity or unenforceability of any term or provision of this Stipulation or any other DIP Loan Document, or any investigation made by or on behalf of the DIP Agent or any DIP Lender.

Section 17.02 **Binding Effect.** This Stipulation shall become effective when (i) it shall have been executed by the DIP Loan Parties and the DIP Agent and when the DIP Agent shall have received counterparts hereof which, when taken together, bear the

signatures of each of the other parties hereto and (ii) the Interim Order shall have been entered.

Section 17.03 Successors and Assigns.

(a) Whenever in this Stipulation any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party, including, in the case of any DIP Loan Party, any Chapter 7 or Chapter 11 Trustee that might be appointed in its Case, and all covenants, promises and agreements by or on behalf of any of the DIP Loan Parties, the DIP Agent or the DIP Lenders that are contained in this Stipulation shall bind and inure to the benefit of their respective permitted successors and assigns.

(b) Each DIP Lender may assign to one or more assignees all or a portion of its interests, rights and obligations under this Stipulation (including all or a portion of its DIP Commitments and the DIP Loans at the time owing to it), provided that such DIP Lender and such assignee enter into any documentation reasonably requested by the DIP Agent to evidence such assignment.

Section 17.04 Expenses; Indemnity.

(a) The DIP Loan Parties agree, jointly and severally, to pay all reasonable out-of-pocket expenses incurred by the DIP Agent and the DIP Lenders in connection with the preparation and administration of this Stipulation and the other DIP Loan Documents or in connection with any amendments, modifications or waivers of the provisions hereof or thereof or incurred by the DIP Agent or any DIP Lender in connection with the enforcement or protection of its rights in connection with this Stipulation and the other DIP Loan Documents or in connection with the DIP Loans made hereunder, including reasonable out-of-pocket expenses relating to field audits and appraisals in connection with the Collateral and the reasonable fees, charges and disbursements of counsel for the DIP Agent (or any sub-agent thereof), and any local counsel, and, in connection with any such enforcement or protection, the reasonable fees, charges and disbursements of any other counsel for the DIP Agent (or any sub-agent thereof) or any DIP Lender. All of the expenses payable to the DIP Agent and/or the DIP Lenders under this Section 17.05(a) shall be due and payable within 15 days of written demand (including

documentation reasonably supporting such claim; provided that legal invoices shall be in summary form, redacted for privilege and work product and listing only attorney names, hours worked and billing rates).

(b) The DIP Loan Parties agree, jointly and severally, to indemnify the DIP Agent, each DIP Lender and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Stipulation or any other DIP Loan Document or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the DIP Transactions and the other transactions contemplated thereby, (ii) the use of the proceeds of the DIP Loans, (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, or (iv) any actual or alleged presence or release of Hazardous Materials on any property currently or formerly owned or operated by either of the Borrowers or any Subsidiary, or any Environmental Liabilities and Costs related in any way to either of the Borrowers or the Subsidiaries; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or its Related Party. All of the amounts payable by the DIP Loan Parties pursuant to this Section 17.05(b) shall be payable within thirty (30) days of written demand (including documentation reasonably supporting such claim).

(c) To the extent that any DIP Loan Party fails to pay any amount required to be paid by them to the DIP Agent (or any sub-agent thereof) under paragraph (a) or (b) of this Section, each DIP Lender severally agrees to pay to the DIP Agent such DIP Lender’s pro rata share (determined, in the manner provided below, as of the time that the applicable unreimbursed

expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the DIP Agent in its capacity as such. For purposes hereof, a DIP Lender's "pro rata share" shall be determined based upon its share of the sum of the total DIP Loans and unused DIP Commitments at the time.

(d) To the extent permitted by applicable law none of the DIP Loan Parties shall assert, and each of them hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Stipulation or any agreement or instrument contemplated hereby, the DIP Transactions, any DIP Loan or the use of the proceeds thereof.

(e) The provisions of this Section shall remain operative and in full force and effect regardless of the expiration of the term of this Stipulation, the consummation of the DIP Transactions, the repayment of any of the DIP Loans, the expiration of the DIP Commitments, the invalidity or unenforceability of any term or provision of this Stipulation or any other DIP Loan Document, or any investigation made by or on behalf of the DIP Agent or any DIP Lender.

Section 17.05 **Right of Setoff.** If an Event of Default shall have occurred and be continuing, each DIP Lender is hereby authorized at any time and from time to time, except to the extent prohibited by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such DIP Lender to or for the credit or the account of either Borrower against any of and all the obligations of the Borrowers now or hereafter existing under this Stipulation and other DIP Loan Documents held by such DIP Lender, irrespective of whether or not such DIP Lender shall have made any demand under this Stipulation or such other DIP Loan Document and although such obligations may be unmatured. The rights of each DIP Lender under this Section are in addition

to other rights and remedies (including other rights of setoff) which such DIP Lender may have.

Section 17.06 **Applicable Law.** THIS STIPULATION AND THE OTHER LOAN DOCUMENTS (EXCEPT AS EXPRESSLY SET FORTH IN SUCH OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

Section 17.07 **Waivers; Amendment.**

(a) No failure or delay of the DIP Agent or any DIP Lender in exercising any power or right hereunder or under any other DIP Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the DIP Agent and the DIP Lenders hereunder and under the other DIP Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Stipulation or any other DIP Loan Document or consent to any departure by either Borrower or any other DIP Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a DIP Loan shall not be construed as a waiver of any Default or Event of Default regardless of whether the DIP Agent or any DIP Lender may have had notice or knowledge of such Default or Event of Default at the time. No notice or demand on either Borrower in any case shall entitle either Borrower to any other or further notice or demand in similar or other circumstances.

(b) Neither this Stipulation nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the

Borrowers and the Required DIP Lenders.

Section 17.08 **Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any DIP Loan, together with all fees, charges and other amounts which are treated as interest on such DIP Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the DIP Lender holding such DIP Loan in accordance with applicable law, the rate of interest payable in respect of such Loan, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such DIP Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such DIP Lender in respect of other DIP Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate (as published in the Wall Street Journal or other publication selected by the DIP Agent) to the date of repayment, shall have been received by such DIP Lender.

Section 17.09 **Entire Agreement.** This Stipulation and the other DIP Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Stipulation and the other DIP Loan Documents. Nothing in this Stipulation or in the other DIP Loan Documents, expressed or implied, is intended to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder and, to the extent expressly contemplated hereby, the Related Parties of each of the DIP Agent and the DIP Lenders) any rights, remedies, obligations or liabilities

under or by reason of this Stipulation or the other DIP Loan Document.

Section 17.10 **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS STIPULATION OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, DIP AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS STIPULATION AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 17.11 **Severability.** In the event any one or more of the provisions contained in this Stipulation or in any other DIP Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdictions shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 17.12 **Counterparts.** This Stipulation and each of the other DIP

Loan Documents may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 17.03. Delivery of an executed signature page to this Stipulation by facsimile transmission or Adobe PDF file (or similar electronic transmission) shall be as effective as delivery of a manually signed counterpart of this Stipulation.

Section 17.13 **Headings.** Article and Section headings used herein are for convenience of reference only, are not part of this Stipulation, and are not to affect the construction of, or to be taken into consideration in interpreting, this Stipulation.

Section 17.14 **Jurisdiction;** Consent to Service of Process. (a) Each party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, and the Bankruptcy Court for the Western District of Louisiana and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Stipulation or the other DIP Loan Documents or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court or the Bankruptcy Court for the Western District of Louisiana. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Stipulation shall affect any right that the DIP Agent or any DIP Lender may otherwise have to bring any action or proceeding relating to this Stipulation or the other DIP Loan Documents against either Borrower

or its properties in the courts of any jurisdiction.

(b) Each party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Stipulation or the other DIP Loan Documents in any New York State or Federal court or the Bankruptcy Court for the Western District of Louisiana. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Notwithstanding the foregoing, each of the DIP Agent, the DIP Lenders, the other DIP Secured Parties (if any), and their Related Parties do not consent, and shall not be deemed to have consented, to jurisdiction before the Bankruptcy Court for the Western District of Louisiana for any action, litigation, claim or proceeding that may be brought by or against them and that (i) arises from any alleged conduct, action or inaction that occurred prior to the Filing Date, (ii) is deemed non-core or (iii) is a core proceeding in which any of them has a right to trial by jury.

(c) Each party to this Stipulation irrevocably consents to service of process in the manner provided for notices in Section 17.01. Nothing in this Stipulation will affect the right of any party to this Stipulation to serve process in any other manner permitted by law.

Section 17.15 Confidentiality. Each of the DIP Agent and the DIP Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' officers, directors, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority or quasi-regulatory authority (such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable laws or regulations or by any

subpoena or similar legal process, (iv) in connection with the exercise of any remedies hereunder or under the other DIP Loan Documents or any suit, action or proceeding relating to the enforcement of its rights hereunder or thereunder, (v) subject to an agreement containing provisions substantially the same as those of this Section, to any actual or prospective assignee of or participant in any of its rights or obligations under this Stipulation and the other DIP Loan Documents or (vi) with the consent of the Borrowers or (vii) to the extent such Information becomes publicly available other than as a result of a breach of this Section; provided, however, the DIP Agent and the DIP Lenders agree to use commercially reasonable efforts to give prior notice to the Borrowers of any information pursuant to (ii) or to (iii). For the purposes of this Section, "Information" shall mean all information received from the Borrowers or any of the Borrowers' agents, advisors, employees, officers or directors and designated as confidential and related to the Borrowers or their business, other than any such information that was available to the DIP Agent or any DIP Lender on a non-confidential basis prior to its disclosure by the Borrowers or any of the Borrowers' agents, advisors, employees, officers or directors.

Section 17.16 USA Patriot Act Notice. Each DIP Lender and the DIP Agent (for itself and not on behalf of any DIP Lender) hereby notifies the Borrowers that pursuant to any obligations it may have under the USA Patriot Act, it may be required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of such Borrower and other information that will allow such DIP Lender or the DIP Agent, as applicable, to identify such Borrower in accordance with the USA Patriot Act.

Section 17.17 No Surcharge. No action, inaction or acquiescence by any of the DIP Agent and/or the DIP Lenders, including funding the Debtors' ongoing operations under this Stipulation, shall be deemed to be, or shall be considered as evidence of, any alleged

consent by any of the DIP Agent or to a charge against the Collateral pursuant to Bankruptcy Code sections 105(a) (subject to entry of a Final Order), 506(c) (subject to entry of a Final Order) and 552(b), and no such costs, fees or expenses shall be so charged against the Collateral without the prior written consent of the DIP Agent, such consent to be granted or withheld in the DIP Agent's sole and absolute discretion. The DIP Agent and the DIP Lenders shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

Section 17.18 **Conversion or Dismissal.** Unless otherwise agreed by the DIP Agent, neither the Debtors nor any trustee will file a motion seeking a sale of all or substantially all of the assets of the Debtors under Bankruptcy Code section 363 unless (i) the proceeds of such sale are used to indefeasibly pay in full and completely satisfy in cash the DIP Obligations and (ii) the DIP Commitments are terminated in accordance herewith on the closing date of such sale. If any of the Cases are dismissed, converted, otherwise superseded or substantively consolidated, DIP Lenders' rights and remedies under this Stipulation, the DIP Orders and the DIP Loan Documents shall be and remain in full force and effect as if such case had not been filed or such case had not been dismissed, converted, superseded or substantively consolidated. Furthermore, notwithstanding any such dismissal, conversion, supersession or substantive consolidation, all of the terms and conditions of this Stipulation, including the DIP Liens, the Superpriority Claims and the priorities granted hereunder, shall remain in full force and effect. In furtherance (and not in limitation) of the foregoing, if an order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, (i) the Superpriority Claims and DIP Liens granted pursuant to this Stipulation and the DIP Orders to or for the benefit of the DIP Agent, the DIP Lenders and the other DIP Secured Parties shall

continue in full force and effect and shall maintain their priorities as provided in this Stipulation and the DIP Orders until all DIP Obligations shall have been indefeasibly paid in full in cash (and that such claims and liens shall, notwithstanding such dismissal, remain binding on all parties in interest), and (ii) the Bankruptcy Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such Superpriority Claims and DIP Liens. The provisions set forth in clauses (i) and (ii) of the preceding sentence shall be deemed (in accordance with sections 104 and 349(b) of the Bankruptcy Code) to be incorporated by this reference in any order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise, unless such provisions are expressly set forth therein.

Section 17.19 Effect of Modification, Vacation or Stay. After entry of the Interim Order, if any or all of the provisions of this Stipulation are modified, vacated or stayed by subsequent order of the Bankruptcy Court or any other court, such modification, vacation or stay shall not affect the validity of (a) any indebtedness to the DIP Lenders incurred pursuant to this Stipulation prior to the effective date of such modification, vacation or stay, or (b) the validity and enforceability of DIP Lien or priority authorized hereby. Moreover, notwithstanding such modification, vacation or stay, any advances of funds made pursuant to this Stipulation by the DIP Lenders prior to the effective date of such modification, vacation or stay, to or for the benefit of the DIP Loan Parties shall be governed in all respects by the original provisions of this Stipulation and the DIP Agent and the DIP Lenders shall be entitled to all the rights, privileges and benefits, including the DIP Liens granted herein, with respect to all such advances.

Section 17.20 Further Actions. To further evidence the DIP Obligations, the creation of the DIP Liens and the other terms and conditions of the financing arrangement

contemplated hereby, the DIP Loan Parties are authorized to (but at the DIP Lenders' option need not) execute and deliver to the DIP Agent and the DIP Lenders the following DIP Loan Documents, in form and substance satisfactory to the DIP Agent and at the DIP Loan Parties' sole expense:

(a) All such financing statements, notices, schedules, security agreements, mortgages, assignments, consents, agreements, instruments and documents necessary or required to evidence the DIP Obligation, to consummate the terms and provisions of this Stipulation and the other DIP Loan Documents and to perfect the Liens to be given to the DIP Agent, for and on behalf of the DIP Lenders, pursuant hereto and thereto;

(b) Copy of the resolutions of the Boards of Directors, Boards of Managers or Members, as applicable, of the DIP Loan Parties authorizing the execution, delivery and performance of this Stipulation, the DIP Loan Documents, and the other matters contemplated hereby, in each case certified by an officer of such DIP Loan Parties;

(c) At any DIP Lender's written request, a promissory note, in a form reasonably satisfactory to such DIP Lender, evidencing the DIP Loans made from time to time by such DIP Lender; and

(d) Such other agreements, instruments and documents from any DIP Loan Party or any other Person as the DIP Agent or its counsel shall reasonably require and such other orders of the Bankruptcy Court and other courts, with respect to the Debtors or any other Person, as the DIP Agent or any DIP Lender or its counsel shall reasonably require, in each case, in connection with this Stipulation and each party's performance of its obligations hereunder.

Section 17.21 **Conflicts.** To the extent there exists any conflict between the terms of this Stipulation, any other DIP Loan Document or the DIP Financing Motion, this Stipulation shall govern.

Dated: September 14, 2012

PICCADILLY RESTAURANTS, LLC,
as a Borrower

 /s/
Name:
Title:

PICCADILLY FOOD SERVICE, LLC,
as a Borrower

 /s/
Name:
Title:

PICCADILLY INVESTMENTS, LLC,
as a Guarantor

 /s/
Name:
Title:

Dated: September 14, 2012

ATALAYA ADMINISTRATIVE LLC,
as DIP Agent

\s\ _____
Name:
Title:

Dated: September 14, 2012

Atalaya Special Opportunities Fund IV LP
(Tranche B)
as a DIP Lender

\s\ _____
Name:
Title:

Address:
Atalaya Special Opportunities Fund IV LP
(Tranche B)
c/o Rana Mitra
780 Third Avenue, 27th Floor
New York, NY 10017
Fax: 917-464-7350

With a copy to:

Patton Boggs LLP
c/o Brent McIlwain
2000 McKinney Ave, Suite 1700
Dallas, TX 75201
Fax: 214-758-1550

SCHEDULE 1

Commitments

| Name of DIP Lender | Initial DIP Commitment | | |
|--|-------------------------------|--|--|
| Atalaya Special Opportunities Fund IV LP (Tranche B) | \$500,000 | | |

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE:

PICCADILLY RESTAURANTS, LLC, *et al.*,

DEBTORS

CASE NO. 12-51127

(JOINTLY ADMINISTERED)²

CHAPTER 11

CHIEF JUDGE ROBERT SUMMERHAYS

ORDER

THIS COURT having considered the Emergency Motion for an Order (I) Authorizing the Debtors to Obtain Post-Petition Financing Pursuance to 11 §§ 364(c) and 364(d), (II) Authorizing the Debtors' Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c); (III) Granting Adequate Protection Pursuant to 11 U.S.C. § 361; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(c) (the "Motion") and Stipulation and Order (A) Authorizing Post-Petition Financing, (B) Granting Superpriority Security Interests and

² Joint administration requested with *In re Piccadilly Food Services, LLC*, 12-51128 (Bankr. W.D. La.) and *In re Piccadilly Investments LLC*, 12-51129 (Bankr. W.D. La.).

Administrative Claims Pursuant to 11 U.S.C. § 365, (C) Granting Adequate Protection to Pre-Petition Lenders; (D) Granting Limited Relief from the Automatic Stay and (E) Granting Related Relief (Docket# __) (the "Stipulation")³, and after due deliberation and consideration and sufficient cause appearing therefor, IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

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

2. Under the circumstances, the notice given by the Debtors of the Motion and the hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001(c);

3. The Motion is hereby GRANTED on an interim basis as modified by consent of the parties and reflected in the Stipulation;

4. The Stipulation is hereby APPROVED in its entirety, on an interim basis, including, without limitation, the DIP Liens and Superpriority Claim granted therein to the Secured Parties;

5. Good cause has been shown for the entry of this Order. The recitals set forth in Article II of the Stipulation are hereby incorporated herein by reference and such recitals shall constitute findings of fact and conclusions of law, as appropriate;

6. The Debtors are hereby authorized to use the Pre-Petition Lenders' Cash Collateral, if any, in accordance with the Stipulation and this Order;

7. The Debtors are hereby authorized to perform all acts, to make, execute and deliver all instruments and documents, and to pay all fees that may be reasonably required or necessary for the Debtors' performance of their obligations under the Stipulation;

8. This Order and the Stipulation, including all findings herein and therein,

³ Capitalized terms used herein without definition shall have the meanings given to them in the Stipulation.

shall be binding upon all parties in interest in these Cases, including, without limitation, any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors; *provided, however*, that the DIP Secured Parties shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors;

9. The DIP Liens granted to the DIP Agent, for and on behalf of itself and the DIP Lenders, in the Stipulation and this Order or as provided in the other DIP Loan Documents are perfected by operation of law upon execution of this Order by this Court, notwithstanding any subsequent dismissal of any of the Cases. The DIP Agent and the DIP Lenders shall not be required to file financing statements or other documents in any jurisdiction or to take any other action in order to validate or perfect the Liens granted hereunder. This Order shall be deemed sufficient and conclusive evidence of the Liens granted hereunder and under the Stipulation and the perfection thereof. The Debtors irrevocably authorize the filing of photostatic copies of the Stipulation and this Order as financing statements and deeds of trust and agree that it shall be deemed as such. Such photostatic copies may be filed in any county or jurisdiction, and any recording officer is authorized and directed to record such copies. If the DIP Agent, in its sole discretion, chooses to file financing statements, mortgages, or other documents or otherwise confirm perfection of such Liens, the DIP Agent and the DIP Lenders are hereby authorized to effect such filings and recordations, and all such financing statements, mortgages, or similar documents shall be deemed to have been filed and recorded as of the date on which this Order is entered.

10. There shall not be any plan of reorganization or liquidation filed or confirmed in these Cases if such plan is inconsistent with any of the terms or provisions of the Stipulation or this Order, unless the DIP Secured Parties shall have consented thereto in writing, and this Order shall survive the confirmation of any such plan;

11. Without the Required DIP Lenders' written consent (which consent may be withheld or granted in the Required DIP Lenders' sole and absolute discretion), there shall be

no further order of the Court, including any order confirming a plan of reorganization or liquidation (unless such confirmation order provides for the immediate and indefeasible payment of all DIP Obligations in full and the termination of the DIP Commitments), that authorizes (a) the use of cash collateral, including without limitation, accounts receivable, inventory and proceeds, of the DIP Loan Parties in which the DIP Secured Parties have an interest, (b) the obtaining of credit or the incurring of indebtedness secured by a Lien which is equal or senior to the DIP Lien or which is entitled to priority administrative status equal or superior to that granted to the DIP Secured Parties hereunder or (c) altering or modifying the DIP Facility, the Stipulation, this Order or the treatment of the DIP Secured Parties under the Stipulation or this Order;

12. The DIP Agent and the DIP Lenders shall not be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§9601 *et seq.* as amended, or any similar federal or state statute);

13. This Order is entered pursuant to Bankruptcy Code section 364 and Bankruptcy Rules 4001(b) and (c), granting the DIP Agent, the DIP Lenders and the other DIP Secured Parties all protections afforded by Bankruptcy Code section 364(e). If any or all of the provisions of this Order or the Stipulation are hereafter reversed, modified, vacated or stayed (whether on appeal or otherwise), that action will not affect (i) the validity of any obligation, indebtedness or liability incurred under the Stipulation and/or hereunder by the Debtors to the DIP Agent, the DIP Lenders and the other DIP Secured Parties, as applicable, prior to the date of receipt by the DIP Agent, the DIP Lenders and the other DIP Secured Parties of written notice of the effective date of such action, (ii) any fees, costs, expenses and other amounts earned by and/or paid to the DIP Agent and the DIP Lenders pursuant to the Stipulation, the DIP Loan Documents and/or this Interim Order prior to the date of receipt by the DIP Agent and the DIP Lenders of written notice of the effective date of such action, (iii) the validity and enforceability

of any lien, claim or priority authorized or created under the Stipulation and/or this Interim Order, or (iv) the ability to enforce any rights or remedies contained herein. Notwithstanding any such reversal, stay, modification or vacatur, any postpetition indebtedness, obligation or liability incurred by the Debtors to any of the DIP Agent, the DIP Lenders or the other DIP Secured Parties prior to written notice to the DIP Agent, the DIP Lenders and the other DIP Secured Parties of the effective date of such action, shall be governed in all respects by the original provisions of the Stipulation, the DIP Loan Documents and this Order, as applicable, and the DIP Agent, the DIP Lenders and the other DIP Secured Parties shall be entitled to all the rights, remedies, privileges, and benefits granted herein and in the Stipulation and the other DIP Loan Documents with respect to all such indebtedness, obligations or liability.

14. A hearing to consider final and permanent approval of the Motion shall be held before the above-captioned Court on October 23, 2012, at 10:00 a.m., prevailing Central time.

15. This Order shall be effective as of the date of the filing of the petitions initiating these jointly administered cases, notwithstanding anything to the contrary contained in the Bankruptcy Rules.

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ORDER SUBMITTED BY

GORDON, ARATA, MCCOLLAM,
DUPLANTIS & EAGAN, LLC

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