

In re:)	
)	
ACR MANAGEMENT, L.L.C., <u>et al.</u> , ¹)	Case No. 04-027848-MBM
)	
)	Chapter 11
)	
Debtors.)	(Jointly Administered)
)	
ACR MANAGEMENT, L.L.C., et al.,)	
)	
Movants,)	Related to Document Nos. 20 & 56
)	
v.)	Hearing Date & Time: 7/13/04, 3:00 pm
)	
NO RESPONDENT.)	
)	

ANTHONY CRANE RENTAL, L.P., a Pennsylvania limited partnership (the “Company” or the “Borrower”), ANTHONY CRANE RENTAL HOLDINGS, L.P., a Pennsylvania limited partnership (“Holdings”), ACR MANAGEMENT LLC (“ACR Management”), ANTHONY CRANE HOLDINGS CAPITAL CORPORATION (“Holdings Capital”), SACRAMENTO VALLEY CRANE SERVICE, INC. (“Sacramento Valley”), MAXIM CRANE WORKS, L.L.C. (“Maxim”), THE CRANE AND RIGGING COMPANY,

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LLC (“Crane and Rigging”), THOMPSON & RICH CRANE SERVICE, INC. (“Thompson & Rich”), HUSKY CRANE, INC. (“Husky”), ANTHONY SALES & LEASING CORPORATION (“Sales & Leasing Corp.”), CARLISLE GP, L.L.C. (“Carlisle”), CARLISLE EQUIPMENT GROUP, L.P. (“Carlisle Equipment”), ANTHONY CRANE CAPITAL CORPORATION (“Anthony Capital”), ACR/DUNN ACQUISITION INC. (“ACR/DUNN”), ANTHONY INTERNATIONAL EQUIPMENT SERVICES CORPORATION (“Anthony International Equipment”), ANTHONY CRANE SALES & LEASING, L.P. (“Sales and Leasing L.P.”) and ANTHONY CRANE INTERNATIONAL, L.P. (“Anthony International”), each as a debtor and debtor-in-possession (each a “Debtor” and collectively the “Debtors”) in these chapter 11 cases (the “Cases”), having filed with this Court voluntary petitions (each a “Petition,” and collectively the “Petitions”) for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Western District of Pennsylvania on June 14, 2004 (the “Petition Date”); having filed a Motion (the “Motion”) on June 14, 2004 pursuant to 11 U.S.C. §§ 363, 364(c) and (d), Fed. R. Bankr. P. 2002, 4001 and 9014, LR 4001-1, 4001-2 and 4001-3, seeking entry of an order, inter alia:

- (1) Authorizing the Borrower to borrow up to \$70,000,000 (the “DIP Facility”) from certain Prepetition Senior Lenders (as defined below) (collectively, the “DIP Lenders”), on a secured revolving credit basis, including a letter of credit subfacility in a principal amount not to exceed \$35,000,000, pursuant to the terms of this Order and a certain third amendment to the Prepetition Senior Credit Agreement (as defined below) in the form of Exhibit 1 hereto (including Annex 1 thereto, the “Third Amendment,” and the Prepetition Senior Credit Agreement, as amended by the Third Amendment, the “DIP Loan Amendment,” which is incorporated by reference herein²);
- (2) Authorizing execution of the Third Amendment, by and among the Company, Holdings, Fleet National Bank (“Fleet”), as administrative agent and collateral agent for the DIP Lenders (in such capacity, the “DIP Agent”), co-DIP arranger

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the DIP Loan Amendment.

and a DIP Lender, Goldman Sachs Credit Partners L.P. (“Goldman”), as co-DIP arranger (in such capacity, together with Fleet in its capacity as co-DIP arranger under the DIP Facility, the “DIP Arrangers”) and a DIP Lender, the DIP Lenders, the Prepetition Senior Agents (as defined below), and the Prepetition Senior Lenders (as defined below), and any related documents required to be delivered by or in connection with the DIP Loan Amendment (collectively with the DIP Loan Amendment, the “DIP Loan Documents”);

- (3) Authorizing the obligations of the Borrower and any of the other Debtors under or in connection with the DIP Facility, including, without limitation, all principal, accrued interest, unpaid costs, fees and expenses, and all other amounts due from time to time under the DIP Loan Documents, (i) to have priority pursuant to sections 364(c) and (d) of the Bankruptcy Code over any and all administrative expenses of the kind specified in or created or awarded pursuant to, inter alia, sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726 or any other provisions of the Bankruptcy Code, subject only to the Carve-Out (as defined below) and (ii) to be secured by fully perfected liens as set forth in this Order, provided, however, that there shall be no such liens on any Avoidance Actions (as defined below) or proceeds therefrom;
- (4) Authorizing all of the Debtors other than the Borrower to guarantee the DIP Obligations (as defined in paragraph 2(iv) below) on a senior, secured basis to the same extent and at the same level of priority as set forth in the immediately preceding clause;
- (5) Authorizing and directing the Debtors to execute and deliver, from time to time, all such other documents, instruments and agreements and perform all such other acts as may be required in connection with the DIP Loan Amendment;
- (6) Authorizing the Debtors to use Cash Collateral (as defined below) solely on the terms and conditions set forth herein and granting adequate protection to the Prepetition Senior Lenders and the Prepetition Term B Facility Lenders (each as defined below), as set forth herein;
- (7) Lifting the automatic stay imposed by section 362 of the Bankruptcy Code to the extent reasonably necessary to permit the DIP Agent, the DIP Lenders and the Debtors to implement the terms of this Order;
- (8) Authorizing the Debtors, after an interim hearing on the Motion (the “Interim Hearing”), to use Cash Collateral and the Company to borrow funds and obtain letters of credit up to the interim maximum amounts set forth in paragraph 2(vi) of the Interim Order (as defined below), and to otherwise enable the Debtors to pay the expenses set forth in the Budgets (as defined below), all under the same terms and conditions as set forth herein and in the DIP Loan Documents pending a final hearing on the Motion (the “Final Hearing”) in accordance with Fed. R. Bankr. P. 4001(b) and (c);

- (9) Requesting that this Court (i) schedule the Final Hearing to consider entry of a final order authorizing the balance of the financing and use of Cash Collateral contemplated by the DIP Loan Amendment, as set forth in the Motion and the loan documentation filed with or presented to this Court and (ii) establish notice procedures in respect of the Final Hearing; and
- (10) Granting the Debtors such other and further relief as the Court deems necessary, appropriate, equitable, proper, and consistent with the terms of this Order;

and it appearing that the Debtors, having requested in the Motion, pursuant to Fed. R. Bankr. P. 4001, the Local Rules and the Court's Procedures Manual, that the Court consider the proposed financing requested in the Motion; and pursuant to Fed. R. Bankr. P. 4001(c), the Local Rules and the Court's Procedures Manual, it appearing that sufficient notice of the Final Hearing has been duly provided; and upon the record of the hearing held this day before this Court; and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A. Jurisdiction. This Court has jurisdiction over the Debtors' Cases and the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

B. After the Interim Hearing held on June 16, 2004, the Court entered an interim order (i) Approving Postpetition Financing and Authorizing the Use of Cash Collateral; (ii) Granting Liens and Super-Priority Administrative Expense Status Pursuant to 11 U.S.C. §§ 364(c) and (d); (iii) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 363, 364 and 507(b); (iv) Modifying the Automatic Stay; (v) Approving Notice Thereof; and (vi) Scheduling a Final Hearing (the "Interim Order").

C. On June 24, 2004, the Office of the United States Trustee appointed an official committee of unsecured creditors (the "Committee") pursuant to section 1102 of the Bankruptcy Code, and the Committee has since retained counsel.

D. At a hearing held on July 1, 2004, the Court authorized the issuance of the following three standby letters of credit by the DIP Lenders on behalf of the Debtors, pursuant to the terms and conditions of the Interim Order and the DIP Loan Amendment, to the following parties in the following amounts with expiration dates of no later than February 22, 2005: (i) Travelers Casualty in an amount not to exceed \$1,300,000; (ii) Zurich in an amount not to exceed \$4,000,000; and (iii) Liberty Surplus in an amount not to exceed \$500,000.

E. Notice. In accordance with paragraph 9(viii) of the Interim Order, the Debtors have provided a copy of the Interim Order and written notice of the Final Hearing to consider objections, if any, to the Debtors' use of Cash Collateral and postpetition financing pursuant to the terms of this Order (and any modifications thereto) and the DIP Loan Amendment, to: (a) the United States Trustee; (b) those parties listed on the Consolidated List of Creditors Holding Largest Twenty Unsecured Claims Against The Debtors, as identified in their chapter 11 petitions; (c) counsel to the DIP Agent; (d) counsel to the Prepetition Senior Agent; (e) counsel to the Term B Lenders; (f) counsel to the Term C Lender; (g) the Indenture Trustee for the New Senior Notes; (h) the Indenture Trustee for the New Debentures; (i) the DIP Agent and the DIP Arrangers; (j) the DIP Lenders; (k) the Prepetition Senior Lenders; (l) the Prepetition Term B Facility Lenders; (m) the Debtors' other secured creditors of record; (n) counsel for the ad hoc committee of certain holders of New Senior Notes and New Debentures (as defined in the affidavits supporting the Motion) and (o) counsel for the Committee within three (3) business days of appointment of the Committee by the U.S. Trustee. The foregoing notice was appropriate and sufficient under the circumstances pursuant to Sections 102(1), 364(c) and 364(d) of the Bankruptcy Code, Fed. R. Bankr. P. 2002 and 4001(c), and the Local Rules.

F. Stipulations Concerning Prepetition Indebtedness. Each of the Debtors

and the DIP Lenders hereby stipulates that:

- (1) The Prepetition Senior Loan Obligations. On or about March 31, 2002, the Company, Holdings, the financial institutions party thereto (each, a “Prepetition Senior Lender” and, collectively, the “Prepetition Senior Lenders”), Goldman, as lead arranger and syndication agent (in such capacity, the “Prepetition Syndication Agent”), and Fleet, as administrative agent and collateral agent for the Prepetition Senior Lenders (in such capacities, the “Prepetition Senior Agent” and together with the Prepetition Syndication Agent, the “Prepetition Senior Agents”) entered into that certain Second Amended and Restated Credit Agreement dated as of March 31, 2002, as amended by that certain First Amendment to Second Amended and Restated Credit Agreement dated as of March 31, 2003, and that certain Second Amendment to Second Amended and Restated Credit Agreement dated as of January 7, 2004 (as so amended, the “Prepetition Senior Credit Agreement”), pursuant to which the Prepetition Senior Lenders agreed to make loans and other financial accommodations to the Company as more specifically described therein. A true and correct copy of the Prepetition Senior Credit Agreement is included as Exhibit A to that certain Compilation of Exhibits Relating to DIP Financing (the “Compilation”), the index to which is attached hereto as Exhibit 2. The Compilation is too voluminous to be appended to the Motion or filed with the Court but will be made available to counsel to any Committee and other parties in interest upon reasonable request to counsel for the Debtors. The Prepetition Senior Credit Agreement along with any instruments, security agreements, guaranties and other documents executed in connection therewith are referred to herein as the “Prepetition Senior Credit Documents.” All obligations, liabilities and indebtedness of every nature of each of the Debtors owed to the Prepetition Senior Agents or the Prepetition Senior Lenders under the Prepetition Senior Credit Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable, including, without limitation, all interest, fees, costs and expenses accrued or incurred after the Petition Date are referred to herein as the “Prepetition Senior Loan Obligations.”
- (2) The Prepetition Term B Facility Obligations. On or about July 22, 1998, the Company, Holdings, the various financial institutions parties thereto (the “Prepetition Term B Facility Lenders”), DLJ Capital Funding, Inc., as documentation agent, Goldman, as arranger and syndication agent, and Fleet, as administrative agent (in such capacity, together with Wells Fargo Bank, National Association (“Wells Fargo”), in its capacity as successor administrative agent, the “Prepetition Term B Facility Agent”) and as collateral agent entered into that certain Term Loan Credit Agreement, as amended by that certain First

Amendment to Term Loan Credit Agreement dated as of June 30, 1999, that certain Second Amendment to Term Loan Credit Agreement dated as of March 31, 2002, and that certain Third Amendment to Term Loan Credit Agreement dated as of March 31, 2003 (as amended, supplemented or otherwise modified from time to time through the Petition Date, the “Prepetition Term B Facility Credit Agreement,” a true and correct copy of which is attached to the Compilation as Exhibit B thereto), pursuant to which the Prepetition Term B Facility Lenders agreed to make loans and other financial accommodations to the Company as more specifically described therein. The Prepetition Term B Facility Credit Agreement along with any instruments, security agreements, guaranties and other documents executed in connection therewith are referred to herein as the “Prepetition Term B Facility Credit Documents.” On or about June 11, 2004, the Company, Holdings, Goldman, as arranger and syndication agent under the Prepetition Term B Facility Credit Agreement, the Prepetition Term B Facility Lenders, Fleet, as administrative agent and collateral agent under the Prepetition Term B Facility Credit Agreement, and Wells Fargo, as successor administrative agent under the Prepetition Term B Credit Agreement, entered into that certain Waiver and Consent, pursuant to which the parties, among other things, (i) consented to Fleet resigning as administrative agent under the Prepetition Term B Facility Credit Agreement, and (ii) agreed to the appointment of Wells Fargo as successor administrative agent under the Prepetition Term B Facility Credit Agreement. All obligations, liabilities and indebtedness of every nature of each of the Debtors owed to the Prepetition Term B Facility Agent or the Prepetition Term B Facility Lenders under the Prepetition Term B Facility Credit Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable, including, without limitation, all interest, fees, costs and expenses accrued or incurred after the Petition Date are referred to herein as the “Prepetition Term B Facility Obligations.”

- (3) Prepetition Holdings Guaranty. On or about July 22, 1998, Holdings and ACR Management (collectively, the “Prepetition Holdings Guarantors” and together with the Prepetition Subsidiary Guarantors (defined below), the “Prepetition Guarantors”) entered into that certain Holdings Guaranty in favor and for the benefit of Fleet, as collateral agent for and representative of the Secured Parties (as defined therein), including the Prepetition Senior Agents, the Prepetition Senior Lenders, the Prepetition Term B Facility Agent and the Prepetition Term B Facility Lenders (the “Prepetition Holdings Guaranty,” a true and correct copy of which is attached to the Compilation as Exhibit C thereto). Under the Prepetition Holdings Guaranty each of the Prepetition Holdings Guarantors, on a joint and several basis, irrevocably and unconditionally guaranteed, as primary obligors and not merely as sureties, the due and punctual payment in full of the Company’s obligations and each Loan Party’s (as defined in the Prepetition Senior Credit Agreement) obligations under the Prepetition Senior Credit Agreement and the

Company's obligations and each Loan Party's (as defined in the Prepetition Term B Facility Credit Agreement) obligations under the Prepetition Term B Facility Credit Agreement when the same shall become due.

- (4) Prepetition Subsidiary Debtor Guarantees. On or about July 22, 1998, Anthony International, Sales and Leasing L.P., Anthony Capital and Holdings Capital (collectively, together with the Additional Prepetition Subsidiary Guarantors (defined below), the "Prepetition Subsidiary Guarantors") entered into that certain Subsidiary Guaranty in favor and for the benefit of Fleet, as collateral agent for and representative of the Secured Parties (as defined therein), including the Prepetition Senior Agents, the Prepetition Senior Lenders, the Prepetition Term B Facility Agent and the Prepetition Term B Facility Lenders (as amended, modified or supplemented from time to time through the Petition Date, the "Prepetition Subsidiary Guaranty," a true and correct copy of which is attached to the Compilation as Exhibit D thereto). On or about July 1, 1999, Carlisle Equipment, Carlisle, ACR/Dunn, Husky, Sales & Leasing Corp. and Anthony International Equipment executed a counterpart to the Prepetition Subsidiary Guaranty; on or about January 27, 2000, Sacramento Valley executed a counterpart to the Prepetition Subsidiary Guaranty; on or about June 30, 2000, Maxim executed a counterpart to the Prepetition Subsidiary Guaranty; on or about December 28, 2001, Thompson & Rich executed a counterpart to the Prepetition Subsidiary Guaranty; and on or about July 10, 2002, Crane and Rigging executed a counterpart to the Prepetition Subsidiary Guaranty (collectively, the "Additional Prepetition Subsidiary Guarantors") such that each Additional Prepetition Subsidiary Guarantor became a party to the Prepetition Subsidiary Guaranty. Under the Prepetition Subsidiary Guaranty, each of the Prepetition Subsidiary Guarantors, on a joint and several basis, irrevocably and unconditionally guaranteed, as primary obligors and not merely as sureties, the due and punctual payment in full of the Company's obligations and each Loan Party's (as defined in the Prepetition Senior Credit Agreement) obligations under the Prepetition Senior Credit Agreement and the Company's obligations and each Loan Party's (as defined in the Prepetition Term B Facility Credit Agreement) obligations under the Prepetition Term B Facility Credit Agreement when the same shall become due.
- (5) Prepetition Liens in Favor of Prepetition Lenders. On or about July 22, 1998, the Company, Holdings, Anthony International, Sales and Leasing L.P., Anthony Capital, Holdings Capital, ACR Management, (collectively, together with the Additional Prepetition Grantors (defined below), the "Prepetition Grantors") and Fleet, as collateral agent (in such capacity, the "Prepetition Collateral Agent") for the Secured Parties (as defined therein), including the Prepetition Senior Agents, the Prepetition Senior Lenders, the Prepetition Term B Facility Agent and the Prepetition Term B Facility Lenders, entered into that certain Pledge and Security Agreement (as amended, modified or supplemented from time to time through the Petition Date, the "Prepetition Pledge and Security Agreement," a true and correct copy of which is attached to the Compilation as Exhibit E thereto) pursuant to

which the Prepetition Grantors granted (i) senior security interests, in favor of Fleet as collateral agent therein, on behalf of and for the benefit of the Secured Parties (as defined therein), including the Prepetition Senior Lenders (as now fully described in the Prepetition Pledge and Security Agreement collectively, and together with any other liens or security interests granted for the benefit of the Prepetition Senior Lenders under any of the Prepetition Senior Credit Documents, the “Prepetition Senior Lenders’ Liens”), in substantially all of the Prepetition Grantors’ respective assets (as now fully described in the Prepetition Pledge and Security Agreement collectively, and together with any other collateral granted to the Prepetition Senior Lenders pursuant to any of the Prepetition Senior Credit Documents, the “Prepetition Senior Collateral”) to secure the Prepetition Grantors’ obligations under the Prepetition Senior Credit Agreement and the Prepetition Holdings Guaranty or the Prepetition Subsidiary Guaranty, as applicable, with respect to the Prepetition Senior Loan Obligations, and (ii) junior security interests, in favor of Fleet as collateral agent therein, on behalf of and for the benefit of the Prepetition Term B Facility Lenders (the “Prepetition Second Priority Liens”), in substantially all of the Prepetition Grantors’ respective assets (collectively, the “Prepetition Term B Facility Collateral”) to secure the Prepetition Grantors’ obligations under the Prepetition Term B Facility Credit Agreement and the Prepetition Holdings Guaranty or the Prepetition Subsidiary Guaranty, as applicable, with respect to the Prepetition Term B Facility Obligations. Counterparts to the Prepetition Pledge and Security Agreement were executed on or about July 1, 1999, by ACR/Dunn, Husky, Carlisle, Carlisle Equipment, Sales & Leasing Corp., Anthony International Equipment, on or about January 27, 2000, by Sacramento Valley, on or about June 30, 2000, by Maxim, on or about December 28, 2001, by Thompson & Rich and on or about July 10, 2002, by Crane and Rigging (collectively, the “Additional Prepetition Grantors”), which counterparts made the Additional Prepetition Grantors parties to the Prepetition Pledge and Security Agreement. The security interests granted under the Prepetition Pledge and Security Agreement are subject to that certain Master Reaffirmation and Amendment Agreement dated as of March 31, 2003, by and among the Company, Holdings and the other Prepetition Grantors, and acknowledged by Fleet (as the same may be amended, restated, supplemented or otherwise modified from time to time through the Petition Date, the “Prepetition Pledge and Security Agreement Reaffirmation,” a true and correct copy of which is attached to the Compilation as Exhibit F thereto).

- (6) Perfection of Prepetition Lenders’ Liens. The Prepetition Senior Agent, for the benefit of the Prepetition Senior Lenders, and the Prepetition Term B Facility Agent, for the benefit of the Prepetition Term B Facility Lenders, have duly perfected the Prepetition Senior Lenders’ Liens and the Prepetition Second Priority Liens, respectively, by, among other things, filing appropriate financing statements, fixture filings or mortgages in the relevant filing offices and jurisdictions, and, where required by applicable law, by possession of relevant certificates of title, share certificates, instruments, or other property. Subsequent

to the enactment of and in accordance with Revised Article 9 of the Uniform Commercial Code (the “UCC”), the Prepetition Senior Agent, for the benefit of the Prepetition Senior Lenders, and the Prepetition Term B Facility Agent, for the benefit of the Prepetition Term B Facility Lenders, filed certain in-lieu financing statements in the office of the secretary of state of each of the respective jurisdictions in which each Debtor was formed in order to continue the duly perfected liens of the Prepetition Senior Lenders and the Prepetition Term B Facility Lenders, respectively. Additionally, the foregoing financing statements, in-lieu financing statements, continuation statements and fixture filings have been continued as required in accordance with the UCC. All of the financing statements, fixture filings, mortgages and other instruments described in this paragraph were validly executed or authorized (as the case may be) by authorized representatives of the Debtors. True and correct copies of those financing statements, fixture filings, mortgages and other instruments that are described in this paragraph and relate to the Prepetition Senior Lenders’ Liens are attached to the Compilation as Exhibit G thereto.

- (7) Term Facility Intercreditor Agreement. The Prepetition Second Priority Liens are subject to that certain Intercreditor Agreement, dated as of July 22, 1998, as amended by that certain Intercreditor Affirmation and Modification Agreement dated as of March 31, 2002, and that certain Intercreditor Affirmation Agreement dated as of March 31, 2003, by and among Fleet as administrative agent for the Prepetition Senior Lenders, Fleet as the Prepetition Term B Facility Agent and Fleet, as collateral agent for the Prepetition Senior Lenders and the Prepetition Term B Facility Lenders (as the same may be amended, restated, supplemented or otherwise modified from time to time through the Petition Date, the “Term Facility Intercreditor Agreement,” a true and correct copy of which is attached to the Compilation as Exhibit H).
- (8) Prepetition Third Party Priority Liens. On or about June 4, 2002, the Company and Bain/ACR, L.L.C. (“Bain/ACR”) entered into that certain Note Purchase Agreement dated as of June 4, 2002, in connection with which the Company and certain Guarantors as defined therein granted certain liens in favor of Bain/ACR on certain property (collectively, the “Prepetition Third Priority Liens”), which Prepetition Third Priority Liens are junior in priority to the Prepetition Senior Lenders’ Liens and the Prepetition Second Priority Liens. The Prepetition Third Priority Liens are subject to that certain Intercreditor Agreement, dated as of June 4, 2002, as amended by that certain Bain Intercreditor Affirmation and Modification Agreement dated as of March 31, 2003, by and among Bain/ACR, Bain Capital Fund VI, L.P., Fleet, as Revolving Credit Administrative Agent (as defined therein), Fleet, as Fleet Collateral Agent (as defined therein), Fleet, as Perfection Agent (as defined therein), and the Company (the “Bain Intercreditor Agreement,” a true and correct copy of which is attached to the Compilation as Exhibit I).

- (9) New Senior Notes. On or about July 31, 2003, the Company issued 9-3/8% Senior Secured Notes (the “New Senior Notes”) due 2008 in connection with that certain Indenture (as amended or extended from time to time through the Petition Date, the “Indenture”), dated as of July 31, 2003, among the Company, Anthony Capital and U.S. Bank National Association, as trustee (the “Trustee”), on behalf of the holders of the New Senior Notes. Pursuant to the Indenture and under that certain Pledge and Security Agreement dated as of July 31, 2003, by and among the Company, Anthony Capital, certain other grantors and the Trustee on behalf of the holders of the New Senior Notes, the holders of the New Senior Notes were granted certain liens (collectively, the “Prepetition Fourth Priority Liens”), which Prepetition Fourth Priority Liens are junior in priority to the Prepetition Senior Lenders’ Liens, the Prepetition Second Priority Liens and the Prepetition Third Priority Liens. The Prepetition Fourth Priority Liens are subject to that certain Intercreditor Agreement, dated as of July 31, 2003, by and among U.S. Bank National Association, in its capacity as trustee under the Indenture (as defined therein), Fleet, as Fleet Collateral Agent (as defined therein) for the Senior Secured Parties (as defined therein), Fleet, as Perfection Agent (as defined therein), the Company and Anthony Capital (the “Noteholder Intercreditor Agreement,” a true and correct copy of which is attached to the Compilation as Exhibit J).
- (10) Cash Management. As set forth more fully in the Debtors’ Motion for Order Under 11 U.S.C. §§ 363, 364, 1107 and 1108 (A) Authorizing (i) Maintenance of Existing Bank Accounts, (ii) Continued Use of Existing Business Forms, (iii) Continued Use of Existing Cash Management System, (iv) Continued Performance Under Intercompany Agreements and (B) Granting Superpriority Status to Postpetition Intercompany Claims, and Supporting Memorandum of Law, (the “Cash Management Motion”) filed contemporaneously with the DIP Motion, prior to the Petition Date, the Debtors maintained a number of Branch Accounts and Regional Disbursements Accounts (each as defined in the Prepetition Senior Credit Agreement) and one principal operating account, Acct. No. 9415845022 (at Fleet National Bank) (the “Borrower’s Prepetition Operating Account”). The Debtors generally deposited into the Borrower’s Prepetition Operating Account all available amounts in excess of \$50,000 in any Branch Account or Regional Disbursement Account. The foregoing cash management and accounts system of the Debtors, as in existence immediately preceding the Petition Date and as described in the Cash Management Motion, is referred to hereinafter as the “Prepetition Cash Management System”. The Prepetition Cash Management System includes, without limitation, the blocked accounts established by the Company pursuant to section 4.2E(iv) of the Prepetition Senior Credit Agreement, which grants sole dominion and control of the accounts (and the cash proceeds therein) to Fleet as the Collateral Agent (as defined therein).
- (11) No Dispute by the Debtors of Validity of Prepetition Senior Credit Documents. Each of the Prepetition Senior Credit Documents is valid and enforceable by the Prepetition Senior Agents and the Prepetition Senior Lenders against the Debtors,

subject to the limitations set forth in paragraph 9(vii)(a). Moreover, the Debtors shall not dispute the validity, extent or enforceability of any of the Prepetition Senior Credit Documents or any of the Debtors' obligations thereunder, or the validity, priority, enforceability, scope or extent of any charge, lien, security interest or any other encumbrance of the Prepetition Senior Agents or the Prepetition Senior Lenders in, on or against any of the Prepetition Senior Collateral in the Cases or in any other judicial, administrative or other proceeding.

- (12) No Dispute by the Debtors of Validity of Prepetition Term B Documents. Each of the Prepetition Term B Facility Credit Documents is valid and enforceable by the Prepetition Term B Facility Agent and the Prepetition Term B Facility Lenders against the Debtors, subject to the limitations set forth in paragraph 9(vii)(b). Moreover, the Debtors shall not dispute the validity, extent or enforceability of the Prepetition Term B Facility Credit Agreement or any of the Debtors' obligations thereunder, or the validity, priority, enforceability, scope or extent of any charge, lien, security interest or any other encumbrance of the Prepetition Term B Facility Agent or the Prepetition Term B Facility Lenders in, on or against any of the collateral securing the obligations under the Prepetition Term B Facility Credit Agreement in the Cases or in any other judicial, administrative or other proceeding.
- (13) Validity of Senior Loan Obligations. The Debtors shall not challenge or dispute the validity or extent of any of the obligations under the Prepetition Senior Credit Documents and hereby acknowledge that, as of May 31, 2004, the Debtors were liable, without defense, counterclaims or offset of any kind, to the Prepetition Senior Agents and the Prepetition Senior Lenders (A) in the aggregate principal amount outstanding as of May 31, 2004, of \$230,268,960 on account of the Senior Secured Term Loan (including PIK interest), \$234,962,236 on account of the Senior Secured Revolving Loan (including PIK interest and Letters of Credit outstanding as of May 31, 2004), \$5,426,008 on account of the 2002 PIK success fee for the Senior Secured Term Loan and Senior Secured Revolving Loan, and \$3,207,557 on account of the 2003 PIK success fee for the Senior Secured Term Loan and the Senior Secured Revolving Loan, and (B) for accrued and unpaid interest thereon, plus fees, costs and expenses incurred in connection with the obligations under the Prepetition Senior Credit Agreement as provided in the Prepetition Senior Credit Documents.
- (14) Validity of Term B Obligations. The Debtors shall not challenge or dispute the validity or extent of any of the obligations under the Prepetition Term B Facility Credit Agreement and acknowledge that, as of May 31, 2004 the Debtors were liable, without defense, counterclaims or offset of any kind, to the Prepetition Term B Facility Agent and the Prepetition Term B Facility Lenders in the aggregate principal amount of \$50,000,000 plus accrued, but unpaid interest of approximately \$211,805 pursuant to the Prepetition Term B Facility Credit Agreement, plus \$489,645 on account of the 2002 PIK success fee and \$321,794 on account of the 2003 PIK success fee.

- (15) Validity of Prepetition Senior Lenders' Liens. By reason of the Prepetition Senior Credit Documents, the Prepetition Senior Loan Obligations are secured by non-avoidable, perfected, valid and enforceable liens on and security interests in the Prepetition Senior Collateral and cash and non-cash proceeds thereof (subject only to the Carve-Out, the DIP Liens (each as defined below) and those Permitted Encumbrances (as defined in the Prepetition Senior Credit Agreement) that are senior in priority to the Prepetition Senior Lenders' Liens as of the Petition Date, if any), subject to paragraph 9(vii)(a) below. Moreover, based on all of the documents, information and data currently available to them, the Debtors acknowledge that the Prepetition Senior Lenders' Liens are first-priority liens and security interests, subject only to the Carve-Out, the DIP Liens (each as defined below) and those Permitted Encumbrances (as defined in the Prepetition Senior Credit Agreement) that are valid, perfected, enforceable, non-avoidable and senior in priority to the Prepetition Senior Lenders' Liens as of the Petition Date, if any.
- (16) Validity of Prepetition Second Priority Liens. By reason of the Prepetition Term B Facility Credit Documents, the Prepetition Term B Facility Obligations are secured by non-avoidable, perfected, valid and enforceable liens on and security interests in the Prepetition Term B Collateral and cash and non-cash proceeds thereof (subject only to the Carve-Out, the DIP Liens, the Prepetition Senior Lenders' Liens and those Permitted Encumbrances (as defined in the Prepetition Term B Facility Credit Agreement) that are senior in priority to the Prepetition Second Priority Liens as of the Petition Date), subject to paragraph 9(vii)(b) below.

G. Based on the record, the Court finds that the use of Cash Collateral alone would be insufficient to meet the Debtors' postpetition liquidity needs, and that the Debtors are presently unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or unsecured credit allowable under sections 364(a) or 364(b) of the Bankruptcy Code. The only source of secured credit available to the Debtors, other than the use of Cash Collateral, is the DIP Facility. The Debtors require both financing under the DIP Facility and the continued use of Cash Collateral. The DIP Agent and the DIP Lenders are willing to provide the Debtors with certain financing commitments but solely on the terms and conditions set forth in this Order and the DIP Loan Documents. The Debtors have concluded, in the exercise of their best and reasonable business judgment, and this Court finds, based upon the

record, that the financing to be provided by the DIP Lenders and continued use of Cash Collateral under the terms of this Order and the DIP Loan Documents represents the best financing available to the Debtors.

H. The Debtors and the DIP Lenders assert that either (i) the security interests and liens granted in this Order to the DIP Agent, for the ratable benefit of the DIP Lenders, including the priming liens granted hereunder, do not impair the valid, perfected, prepetition security interests and liens, if any, of any holder of such a security interest or lien in the property of the estates created by the filing of the Petitions (taking into account, among other things, the adequate protection granted hereunder) or (ii) the holders of such valid, perfected, prepetition security interests and liens have consented to the security interests and liens granted in this Order to the DIP Agent, for the ratable benefit of the DIP Lenders, or both clauses (i) and (ii) are true.

I. Good cause has been shown for immediate entry of this Order pursuant to Fed. R. Bankr. P. 4001(c)(2). In particular, the permission granted herein to use Cash Collateral and to obtain financing on the terms and conditions described herein and in the DIP Loan Amendment is necessary to avoid immediate and irreparable harm to the Debtors and their businesses. Entry of this Order is in the best interest of the Debtors and their creditors and estates. The terms of the postpetition financing pursuant to the DIP Facility and in accordance with the DIP Loan Documents and use of Cash Collateral authorized hereby are fair and reasonable under the circumstances.

J. The Debtors have demonstrated good cause for granting, among other things, the DIP Liens, the DIP Administrative Claim, the Adequate Protection Liens, and the Adequate Protection Priority Claims (each as defined below) with the respective priorities set forth herein, consistent with sections 363(e) and 364(d) of the Bankruptcy Code.

K. As set forth in the Motion and based upon the record of this proceeding, the Prepetition Senior Agents, the Prepetition Senior Lenders, the DIP Agent, the DIP Lenders and the Debtors have negotiated the terms and conditions of the postpetition financing pursuant to the DIP Facility, the use of Cash Collateral, the DIP Loan Amendment and this Order in good faith and at arm's-length, and any credit extended, loans made and consent to use Cash Collateral granted to the Debtors hereunder shall be and hereby are, deemed to have been extended, issued, made or granted, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code. The Court further finds that, in providing the postpetition financing under the DIP Facility and consenting to the use of Cash Collateral hereunder, each of the Prepetition Senior Agents, the Prepetition Senior Lenders, the DIP Agent and the DIP Lenders has relied upon the terms and conditions of this Order.

L. The Debtors have therefore requested the immediate entry of this Order pursuant to Fed. R. Bankr. P. 4001(b)(2) and 4001(c)(2). Absent entry of this Order, the Debtors believe, and this Court finds based upon the record, that the Debtors' estates would be irreparably harmed.

BASED ON THE FOREGOING, IT IS HEREBY ADJUDGED, ORDERED AND DECREED:

1. The Debtors' Motion shall be, and hereby is, approved, subject to the terms and conditions set forth in this Order.

2. Authorization to Use Cash Collateral, Enter into Postpetition Financing and Deliver Documents.

- (i) Cash Collateral. For purposes of this Order, the term "Cash Collateral" shall be deemed to include, without limitation, all "Cash Collateral" as defined by section 363 of the Bankruptcy Code, all deposits subject to setoff and cash arising from the collection or other conversion to cash of property of the Debtors in which the Prepetition Senior Lenders, the Prepetition Term B Facility Lenders or the DIP Lenders have a security

interest, lien or mortgage, including all cash in the Debtors' accounts and the Prepetition Cash Management System, whether such security interests, liens, or mortgages existed as of the commencement of these cases or arise thereafter pursuant to this Order, and whether the property converted to cash existed as of the commencement of these Cases or arose or was generated thereafter.

- (ii) Authorization to Deliver Documents. Subject to the terms and conditions contained in this Order, the Debtors are hereby expressly authorized and directed to execute and deliver to the DIP Agent and the DIP Lenders the DIP Loan Documents, including, without limitation, the DIP Loan Amendment and any non-material amendments or modifications to the DIP Loan Amendment that may, from time to time, be necessary, and such additional documents, instruments, and agreements that may be reasonably required by the DIP Agent to implement the terms or effectuate the purposes of this Order. The terms and conditions of the DIP Loan Documents, including, without limitation, the DIP Loan Amendment, are hereby approved and ratified, and each of the Debtors is authorized and directed to implement, comply with and perform all of the terms and conditions of, and shall be bound by all of the obligations set forth in, the DIP Loan Amendment, the other DIP Loan Documents and this Order. In addition, the DIP Lenders are hereby authorized to provide debtor-in-possession financing to the Debtors under the DIP Facility on the terms and conditions set forth in the DIP Loan Amendment, the other DIP Loan Documents and this Order, and the DIP Agent, the DIP Arrangers and the DIP Lenders are authorized to implement, comply with and perform all of the terms and conditions of the DIP Loan Amendment, the other DIP Loan Documents and this Order. The failure to reference or discuss any particular provision of the DIP Loan Amendment or any of the other DIP Loan Documents in this Order shall not affect the validity or enforceability of any such provision as applied consistent with the terms of this Order. In the event of a conflict between this Order and the DIP Loan Amendment or any of the other DIP Loan Documents, the terms and conditions of this Order shall govern.
- (iii) Authorization to Pay Fees and Other Amounts. In addition, the Debtors are hereby authorized and required to pay promptly upon written demand all reasonable fees, expenses and other amounts which may be required or necessary under the terms of the DIP Loan Amendment or this Order when due and payable, including, without limitation, the Commitment Fee, Up-Front DIP Fees (comprising the DIP Lender Fee and the DIP Arranger Fee) and DIP Agency Fee, and all reasonable costs and expenses of the DIP Agent, the DIP Arrangers and the DIP Lenders (including reasonable fees and expenses of their respective legal and financial advisors), to the extent provided for under the DIP Loan Amendment, including the reasonable costs and expenses of the DIP Agent and the DIP Arrangers

relating to the negotiation, documentation and administration of the DIP Loan Amendment and the other DIP Loan Documents and the enforcement of the DIP Agent's and the DIP Lenders' rights and remedies under and in connection with the DIP Loan Amendment and the other DIP Loan Documents.

- (iv) DIP Obligations. All DIP Loans (as defined below) made and DIP L/C's (as defined below) issued to the Borrower on or after the Petition Date under the DIP Loan Amendment and all interest thereon, and all fees, costs, expenses, indebtedness, liabilities and other obligations of the Borrower and any of the other Debtors arising or incurred on or after the Petition Date and owing by any of the Debtors to the DIP Lenders under the DIP Loan Amendment, the DIP Loan Documents, or this Order shall hereinafter be collectively referred to as the "DIP Obligations." The DIP Obligations (i) shall be evidenced by the books and records of the DIP Agent in accordance with the DIP Loan Amendment; (ii) shall bear interest (which shall be payable in cash, monthly in arrears) at the rate set forth in the DIP Loan Amendment, which rate shall be the DIP Default Rate (as defined in the DIP Loan Amendment) after the occurrence of a DIP Event of Default (as defined in paragraph 5 below); (iii) shall be secured in the manner specified in paragraph 3 below; (iv) shall be payable in accordance with the terms of the DIP Loan Amendment; and (v) shall comply with and otherwise be governed by the terms set forth herein and in the DIP Loan Amendment.
- (v) Use of DIP Proceeds. The proceeds of the DIP Facility, all cash receipts received by the Debtors and all other Cash Collateral shall be exclusively used by the Debtors, in accordance with the terms of the DIP Loan Amendment, (i) to fund general corporate and working capital requirements of the Debtors in accordance with, and to the extent provided in, the Budgets, (ii) for any other purposes specifically allowed under the DIP Loan Amendment and (iii) to pay (a) all fees as provided under the DIP Loan Amendment, and (b) all reasonable professional fees and expenses (including legal, financial advisor, appraisal and valuation-related fees and expenses) incurred by the DIP Agent and the DIP Arrangers, including those incurred in connection with the preparation, negotiation, documentation and enforcement of the DIP Loan Amendment (whether incurred before or after the Petition Date).
- (vi) DIP Facility Capacity. The overall maximum principal amount under the DIP Facility shall be \$70,000,000 (the "Maximum Amount") consisting of loans (the "DIP Loans") in the maximum principal amount of \$35,000,000 (the "DIP Loan Sublimit") and letters of credit (the "DIP L/C's") in the maximum principal amount of \$35,000,000 (the "DIP L/C Sublimit"); provided, however, that the Maximum Amount shall be permanently reduced from time to time as and when provided under this Order and the

DIP Loan Amendment; provided further, however, that DIP Loans under the DIP Facility shall be subject to the DIP Availability limitations as defined in paragraph 2(ix) below and in the DIP Loan Amendment. The DIP Obligations shall constitute, and shall be deemed to constitute, “Obligations” under the Prepetition Senior Credit Agreement; provided, however, that Obligations under the Prepetition Senior Credit Agreement shall not constitute DIP Obligations, and the DIP Collateral shall not secure Obligations under the Prepetition Senior Credit Agreement.

- (vii) The DIP L/C’s shall include those insurance letters of credit and other letters of credit set forth on Schedule I-4 to the DIP Loan Amendment (the “Qualifying L/C’s”) and such other letters of credit as are reasonably satisfactory to the DIP Agent and the DIP Arrangers (the “Non-Qualifying L/C’s”). All DIP L/C’s shall bear interest and shall be subject to fees as provided for Letters of Credit under the Prepetition Senior Credit Agreement. In addition to the interest and fees provided in the immediately preceding sentence, with respect to each Non-Qualifying L/C, the Borrower shall pay in cash a letter of credit fee, payable to the DIP Agent for the benefit of the DIP Lenders, equal to the product of (x) 3.50% and (y) the daily amount available to be drawn under such Non-Qualifying L/C, each such fee to be payable in cash in arrears on and to (but excluding) each March 15, June 15, September 15 and December 15, and computed on the basis of a 360-day year for the actual number of days elapsed.
- (viii) Budget Reporting Requirements. Subject to and in accordance with the terms of the DIP Loan Amendment, the Borrower shall from time to time prepare and provide to the DIP Agent and the DIP Arrangers a detailed weekly cash flow budget for each month, which budget shall (i) be in form and substance reasonably satisfactory to the DIP Agent and the DIP Arrangers and (ii) be in substantially the same form as Exhibit I-F to the DIP Loan Amendment (each, a “Budget” and, collectively, the “Budgets”). The Debtors shall have delivered to the DIP Agent and the DIP Arrangers an initial Budget covering the time period from June 14 through July 31, 2004 in form and substance reasonably satisfactory to the DIP Agent and the DIP Arrangers (the “Initial Budget” which shall be deemed to be a Budget for purposes of this Order). Appended hereto as Exhibit 3 is an abbreviated version of the Initial Budget. Commencing on July 26, 2004, and on or before the fifth business day preceding the first day of each month thereafter, the Borrower shall prepare and provide to the DIP Agent and the DIP Arrangers a proposed Budget for the immediately succeeding month, and the Borrower shall obtain the approval of the DIP Agent (which shall not be unreasonably withheld) of the form and substance of such Budget on or before the second business day preceding the first day of such month. The Budgets shall reflect the Debtors’ projected receipts and disbursements on a weekly basis, and the Borrower and the other

Debtors may use the DIP Loans exclusively in the amounts and for the purposes set forth in the Budgets during the specified time period; provided, however, that the actual aggregate cash disbursements of the Debtors during any calendar month may exceed the aggregate projected cash disbursements reflected in the Budget for such month by up to 10%; provided further, however, that individual line item variances are permitted to the extent that the actual aggregate cash disbursements of the Debtors during any calendar month do not exceed the aggregate projected cash disbursements reflected in the Budget for such month by more than 10% (for purposes of this Order, the foregoing two provisos shall be referred to collectively as the “Budget Compliance Test”). On or before the third business day of each week, the Borrower shall submit to the DIP Agent and the DIP Arrangers a copy of a variance report (the “Weekly Variance Report”) reflecting on a line-item basis the actual cash receipts, cash disbursements and DIP L/C’s for the preceding week and the percentage variance of such actual results from those reflected in the applicable Budget for the preceding week. On or before the third business day of each month, the Borrower shall submit to the DIP Agent and the DIP Arrangers a copy of a variance report (the “Monthly Variance Report”) reflecting on a line-item basis the actual cash receipts, cash disbursements and DIP L/C’s for the preceding month and the percentage variance of such actual results from those reflected in the Budget for the preceding month. Notwithstanding anything herein to the contrary, the Budget Compliance Test shall be measured commencing with the delivery of the Monthly Variance Report on August 4, 2004, and shall be measured monthly thereafter on the third business day of each applicable month. Notwithstanding anything contained herein to the contrary, after approval of each Budget, any modification or change to such Budget shall require the prior consent of the Requisite DIP Lenders (as defined in the DIP Loan Amendment).

- (ix) DIP Availability. With respect to any date of determination in any given month, DIP Loans may be available to the Borrower prior to the Termination Date (as defined in paragraph 6(vi) below) (the “DIP Availability”) in an aggregate amount not to exceed the lesser of: (a) the DIP Loan Sublimit; and (b) the sum of (i) the principal amount of the DIP Loans outstanding as of the first day of such month (without giving effect to any DIP Loans made on such first day) plus (ii) the Remaining Budgeted Disbursement Amount (as defined below) for such month as reflected in the Approved DIP Budget for such month; provided further, however, that the “Remaining Budgeted Disbursement Amount” shall mean, with respect to any month, (i) the aggregate amount of all cash disbursements projected to be made during such month as set forth in the applicable Budget minus (ii) the aggregate amount of all cash receipts

projected to be received during such month as set forth in any such Budget.

3. Authorization of Liens and Adequate Protection.

- (i) DIP Liens. As security for the full and timely payment of the DIP Obligations, the DIP Agent, for the ratable benefit of the DIP Lenders, is hereby granted pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code valid, perfected, and enforceable security interests in and liens and mortgages (collectively, the “DIP Liens”) upon all prepetition and postpetition assets and interests in property of the Debtors whatsoever, whether now existing or hereafter acquired or arising, including all capital stock of their respective subsidiaries and all intercompany notes receivable (collectively, the “DIP Collateral”); provided, however, the DIP Collateral shall not include any avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, the “Avoidance Actions”) or proceeds therefrom. Subject to the Carve-Out, the DIP Liens shall:
 - (a) pursuant to section 364(c)(2) of the Bankruptcy Code, constitute first priority liens in and to all DIP Collateral that is not otherwise subject to any valid, perfected, enforceable and non-avoidable lien in existence as of the Petition Date;
 - (b) pursuant to section 364(d)(1) of the Bankruptcy Code, be senior and prior to the Prepetition Senior Lenders’ Liens;
 - (c) pursuant to sections 364(d)(1) and 510(a) of the Bankruptcy Code, be senior and prior to the Prepetition Second Priority Liens, which Prepetition Second Priority Liens are subject to the Term Facility Intercreditor Agreement;
 - (d) pursuant to sections 364(d)(1) and 510(a) of the Bankruptcy Code, be senior and prior to the Prepetition Third Priority Liens, which Prepetition Third Priority Liens are subject to the Bain Intercreditor Agreement;
 - (e) pursuant to sections 364(d)(1) and 510(a) of the Bankruptcy Code, be senior and prior to the Prepetition Fourth Priority Liens, which Prepetition Fourth Priority Liens are subject to the Noteholder Intercreditor Agreement;
 - (f) pursuant to section 364(d)(1) of the Bankruptcy Code, be senior and prior to all Adequate Protection Liens (as defined in paragraph 4(vi)C below); and

- (g) pursuant to section 364(c)(3) of the Bankruptcy Code, be immediately junior in priority to any and all valid, perfected, enforceable and non-avoidable liens in existence as of the Petition Date other than the Prepetition Senior Lenders' Liens, the Prepetition Second Priority Liens, the Prepetition Third Priority Liens and the Prepetition Fourth Priority Liens, without prejudice, however, to the rights of the Company, the DIP Agent and the DIP Lenders to seek the entry of an order providing that, pursuant to section 364(d)(1) of the Bankruptcy Code, the DIP Liens shall be senior and prior to any of the foregoing other valid, perfected, enforceable and non-avoidable liens in existence as of the Petition Date.
- (ii) In addition to the security interests and liens granted to the DIP Agent, for the ratable benefit of the DIP Lenders, in the preceding paragraph, the following shall be applicable:
 - (a) any and all intercompany claims payable by and liens in respect of any intercompany claims held by any of the Debtors shall be and hereby are subordinated to the prior payment in full in cash of the DIP Obligations and the liens securing the DIP Obligations; and
 - (b) the Debtors shall be jointly and severally liable with respect to the obligations under the DIP Facility and all other DIP Obligations.
- (iii) The security interests and liens in the Debtors' properties herein granted to secure the repayment of the DIP Obligations are and shall be valid, perfected, enforceable, non-avoidable and effective by operation of law as of the Petition Date without any further action by the Debtors, the DIP Agent, or the DIP Lenders and without the execution, filing, or recordation of any financing statements, security agreements, vehicle lien applications, mortgages or other documents. All DIP Collateral shall be free and clear of other liens, claims and encumbrances, with the sole exception of (a) the Carve-Out and (b) any valid, perfected, enforceable and unavoidable liens in existence as of the Petition Date, the Adequate Protection Liens and any other liens and encumbrances acceptable to DIP Agent and the DIP Lenders as set forth in the DIP Loan Amendment. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the DIP Agent to hereafter request that the Debtors execute and deliver to the DIP Agent financing statements, security agreements, collateral assignments, mortgages, certificates of title, or other instruments or documents considered by the DIP Agent to be reasonably necessary or desirable to further evidence the perfection of the liens and security interests granted in this Order; provided further, that the Debtors are hereby authorized and directed to execute and deliver such requested financing statements, security agreements,

mortgages, collateral assignments, certificates of title, instruments, and documents, and the DIP Agent is hereby authorized to file or record, in its sole discretion, such documents; provided further, that all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Order.

- (iv) Super-Priority DIP Administrative Claim. In addition to (and regardless of the priority of) the DIP Liens granted to the DIP Agent for the ratable benefit of the DIP Lenders pursuant to this Order all of the DIP Obligations are hereby granted superpriority administrative expense status, in accordance with section 364(c)(1) of the Bankruptcy Code, with priority over any and all other costs and expenses of the Debtors, whether heretofore or hereafter incurred, of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b) or 726 or any other provisions of the Bankruptcy Code (the “DIP Administrative Claim”), except as to proceeds of Avoidance Actions, with respect to which the DIP Obligations will enjoy superpriority status to the extent the Carve-Out (as defined below) is utilized; provided, however, that such superpriority administrative expense status shall, only to the extent unencumbered funds are not available to pay in full administrative expenses, be subject and subordinate only to the Carve-Out (as defined below).

- (v) Carve-Out for Fees and Expenses of Retained Professionals.

- (a) As set forth in paragraph 3(iv) above, the DIP Administrative Claim shall, only to the extent unencumbered funds are not available to pay in full administrative expenses, be subject and subordinate only to a carve-out (the “Carve-Out”) for the payment of (i) (a) following the occurrence of the Termination Date, any professional fees and expenses incurred by professionals (other than ordinary course professionals) retained (the “Retained Professionals”), pursuant to sections 327, 328 or 1103(a) of the Bankruptcy Code, by the Debtors or any statutory committees, trustee, examiner or other representative appointed in the Cases, solely to the extent incurred after the Termination Date and allowed by order of the Bankruptcy Court, in an aggregate amount not to exceed \$4,000,000, (b) plus any and all such unpaid professional fees and disbursements accrued or incurred prior to the Termination Date (to the extent such fees and disbursements are ultimately allowed by order of the Bankruptcy Court), (c) less the aggregate amount of any retainers or advance payments to or held by the Retained Professionals for professional fees that are unapplied as of the Termination Date (the “Unapplied Retainer Amount”), and (ii) quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the Clerk of this

Court; provided, however, that in the event that the amount of any retainer or advance payment held by or available to a Retained Professional as of the Termination Date exceeds the amount of such Retained Professional's unpaid professional fees and disbursements as of the Termination Date (such excess, the "Excess Retainer Amount"), then the Unapplied Retainer Amount shall be deemed to be reduced by the aggregate of the Excess Retainer Amount, if any, for each Retained Professional as of the Termination Date (the "Aggregate Excess Retainer Amount"); provided further, however, that for purposes of calculating the Unapplied Retainer Amount, the Aggregate Excess Retainer Amount shall in no event exceed \$300,000; provided further, however, that each such Retained Professional shall exhaust any available retainer or advance payment before such Retained Professional may access the Carve-Out; provided further, however, that no portion of the Carve-Out and no disbursement set forth in any of the Budgets shall be utilized for the payment of professional fees, disbursements, costs or expenses incurred in connection with asserting any claims or causes of action against the Prepetition Senior Agents, the Prepetition Senior Lenders, the Prepetition Term B Facility Agent, the Prepetition Term B Facility Lenders, the DIP Agent, the DIP Arrangers or the DIP Lenders, and/or challenging or raising any defenses to the Prepetition Senior Loan Obligations, the Prepetition Term B Facility Obligations, the DIP Obligations or the liens or security interests of the Prepetition Senior Agents, the Prepetition Senior Lenders, the Prepetition Term B Facility Agent, the Prepetition Term B Facility Lenders, the DIP Agent, the DIP Arrangers or the DIP Lenders. Any amounts held in the DIP Cash Collateral Account (as defined in the DIP Loan Amendment) as of the Termination Date shall not be subject to the Carve-Out.

- (b) It is understood that so long as the Termination Date has not occurred, the Borrower and the other Debtors shall be permitted to pay compensation and reimburse fees and expenses that are payable under sections 330 and 331 of the Bankruptcy Code and any orders of this Court, as and when the same may be due and payable in accordance with the applicable Budgets, provided, however, that any such payments made pursuant to this sentence shall not reduce the Carve-Out. Subject to the other terms and conditions herein applicable to the Carve-Out, the DIP Agent and the DIP Lenders agree that, in the event of the liquidation of the Borrower's and other Debtors' estates after the Termination Date, the amount of the Carve-Out (less the Unapplied Retainer Amount) shall be funded into a segregated account exclusively from Cash

Collateral received by the DIP Agent subsequent to the Termination Date prior to the distribution of any such Cash Collateral to any other parties in interest.

- (vi) No Senior or *Pari Passu* Priority for Other Claims. Except as otherwise provided herein, no other claims, costs or expenses that have been or may be incurred in these proceedings, or in any conversion of these proceedings pursuant to section 1112 of the Bankruptcy Code, or in any other proceeding related thereto: (i) shall be granted a priority senior to or *pari passu* with (x) the claims of the DIP Lenders against the Debtors or any successor Debtors or trustees, or (y) the security interests and liens of the DIP Agent, for the ratable benefit of the DIP Lenders, upon the DIP Collateral; or (ii) shall be imposed against the DIP Agent, the DIP Lenders, their claims, or the DIP Collateral, while any portion of the DIP Obligations remain outstanding unless first consented to in writing by the Requisite DIP Lenders.

4. Other DIP-Related Provisions.

- (i) Cash Management System. Pursuant to the terms of an order of this Court approving the Cash Management Motion, the Debtors shall maintain and continue the Prepetition Cash Management System during the pendency of these Cases (except that the DIP Agent shall receive confirmation that funds are available for payroll payments prior to any transfer into any payroll account). Without limiting the foregoing, all cash and proceeds from the Debtors' cash management and accounts system (other than those petty cash accounts set forth on Schedule I-18 to the DIP Loan Amendment), and all other Cash Collateral received by any of the Debtors, shall be deposited after the Petition Date into the Borrower's Prepetition Operating Account (the "DIP Deposit Account"), which DIP Deposit Account (and the proceeds therein) shall (i) constitute DIP Collateral for purposes of this Order, (ii) be subject to the first priority lien of the DIP Agent for the ratable benefit of the DIP Lenders, and (iii) be subject to the authorization of the DIP Agent to terminate the Debtors' access to such proceeds and apply such proceeds against the DIP Obligations in the event of a DIP Event of Default in accordance with paragraph 5 below and the DIP Loan Amendment. If on the last business day of any week, the aggregate amount of funds in all of the Debtors' bank accounts exceeds \$3,000,000 (determined on a weekly basis), the amount in excess of \$3,000,000 shall be promptly remitted to the DIP Agent and applied to the prepayment of the outstanding DIP Loans without any corresponding commitment reduction (provided that the DIP Facility has not been terminated in accordance with paragraph 9(vi) below).
- (ii) Authorization of DIP Agent's Powers. The DIP Agent is authorized to collect upon, convert to cash, and enforce checks, drafts, instruments, and

other forms of payment now or hereafter coming into its possession as collateral or proceeds of collection of the DIP Collateral and to apply all proceeds of collections of collateral now or hereafter coming into the DIP Agent's possession in accordance with the DIP Loan Amendment. The automatic stay is hereby vacated as against the DIP Agent, the DIP Lenders and, to the extent applicable, the Prepetition Senior Agent and the Prepetition Senior Lenders, to permit such parties to effectuate the provisions of this paragraph 4(ii).

- (iii) Application of Net DIP Asset Sale Proceeds (other than Dirt/Excavation Proceeds). Any Net DIP Asset Sale Proceeds (as defined in the DIP Loan Amendment) other than Dirt/Excavation Proceeds (as defined in the DIP Loan Amendment) received or realized by the DIP Agent shall be applied as follows: first, to the payment of fees, expenses, indemnities and reimbursements owing to the DIP Agent and the DIP Arrangers; second, to the payment of fees, expenses, indemnities and reimbursements owing to the DIP Lenders (other than reimbursement with respect to DIP L/C's); third, to the payment of accrued interest owing with respect to the DIP Loans; fourth, to the payment of the outstanding principal amount of the DIP Loans, without any corresponding reduction in the DIP Commitments, up to the aggregate amount of (i) \$6,000,000 including the aggregate amount of all prior payments made pursuant to this clause fourth, plus (ii) the amount of Net DIP Asset Sale Proceeds from the sale of obsolete, uneconomical, negligible, worn out or surplus property and de minimis items (such as compressors, small tools and other similar items) in an amount of up to \$2,000,000; fifth, to the payment of the outstanding principal amount of the Prepetition Senior Loans up to an aggregate amount of \$10,000,000 including the aggregate amount of all prior payments made pursuant to this clause fifth; sixth, to the payment of the outstanding principal amount of the DIP Loans, with a corresponding permanent reduction in the DIP Commitments; seventh, to the reimbursement of amounts drawn under the DIP L/C's and due and owing to the DIP Issuing Lender of such DIP L/C's or to the DIP Agent for the benefit of the DIP Lenders to the extent that the DIP Lenders shall have reimbursed such DIP Issuing Lender with respect to any such drawn amounts; eighth, to be deposited into the DIP Cash Collateral Account (as defined in the DIP Loan Amendment) to secure the DIP Obligations; and ninth, upon the occurrence of the Termination Date and the payment in full of the DIP Obligations, to the payment of the outstanding Prepetition Senior Loan Obligations on a ratable basis.
- (iv) Application of Dirt/Excavation Proceeds. Any Dirt/Excavation Proceeds (as defined in the DIP Loan Amendment) received or realized by the DIP Agent shall be applied as follows: first, to the payment of fees, expenses, indemnities and reimbursements owing to the Prepetition Senior Agents; second, to the payment of accrued interest owing in respect of the

Prepetition Senior Loans (as defined in the DIP Loan Amendment), on a pro rata basis; and third, to the payment of the outstanding principal amount of the Prepetition Senior Loans, on a pro rata basis.

- (v) Application of Other Proceeds. Any payment or proceeds received or realized by the DIP Agent pursuant to paragraph 2.07(b) of the DIP Loan Amendment other than Net DIP Asset Sale Proceeds and Dirt/Excavation Proceeds, or any Cash Collateral or other proceeds received by the DIP Agent realized through any enforcement or realization of any rights or remedies of the DIP Agent or otherwise after a DIP Event of Default, shall be applied as follows: first, to the payment of fees, expenses, indemnities and reimbursements owing to the DIP Agent and the DIP Arrangers; second, to the payment of fees, expenses, indemnities and reimbursements owing to the DIP Lenders (other than reimbursement with respect to DIP L/C's); third, to the payment of accrued interest owing with respect to the DIP Loans; fourth, to reimbursement of amounts drawn under DIP L/C's and owing to the DIP Issuing Lender of such DIP L/C's or to the DIP Agent for the benefit of the DIP Lenders to the extent that the DIP Lenders shall have reimbursed such DIP Issuing Lender with respect to any such drawn amounts; fifth, to the repayment of the outstanding principal amount of the DIP Loans without any corresponding reduction in the DIP Commitments (provided that the DIP Facility has not been terminated in accordance with paragraph 9(vi) below); sixth, to be deposited into the DIP Cash Collateral Account to secure the DIP Obligations; and seventh, upon the occurrence of the Termination Date and the payment in full of the DIP Obligations, to the payment of the Prepetition Senior Loan Obligations on a ratable basis.
- (vi) The proceeds of the DIP Facility and Cash Collateral shall be used by the Debtors in accordance with the applicable Budgets and the DIP Loan Amendment, and shall be subject to the terms and conditions herein. In consideration for the financial accommodations provided under the DIP Facility and authorized use of Cash Collateral, the Debtors waive the right to (i) seek the use of Cash Collateral other than on the terms hereof for so long as the authorization to borrow under the DIP Facility and to use Cash Collateral remains in effect, and (ii) seek the use of Cash Collateral on any terms less favorable to the DIP Lenders, the Prepetition Senior Lenders and the Prepetition Term B Facility Lenders than the terms set forth in this Order (without the consent of such DIP Lenders, Prepetition Senior Lenders and Prepetition Term B Facility Lenders) for so long as any amounts remain outstanding under the DIP Facility or any commitments to make loans or issue letters of credit in connection therewith remain in effect.
- (vii) Adequate Protection.

- (a) Adequate Protection for Prepetition Senior Collateral. As protection for any diminution in the value of the Prepetition Senior Collateral resulting from (i) the use by the Debtors of such collateral and cash constituting proceeds of such collateral, (ii) the DIP Liens, and (iii) the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, the Prepetition Senior Agent, for the benefit of the Prepetition Senior Lenders, shall be granted, subject only to the Carve-Out, the DIP Liens and the DIP Administrative Claim, (1) replacement security interests in and liens and mortgages upon all property of the Debtors and their estates, whether now existing or hereafter acquired or arising (the “Senior Adequate Protection Liens”) and (2) superpriority administrative expense status under section 507(b) of the Bankruptcy Code, which priority claim shall be junior only to the DIP Administrative Claim and shall apply to proceeds of Avoidance Actions only to the extent the Carve-Out is utilized (the “Senior Adequate Protection Priority Claim”). The Senior Adequate Protection Liens shall be accorded the same relative priority with respect to other valid, perfected, enforceable and unavoidable liens in existence as of the Petition Date (including, without limitation, the Prepetition Second Priority Liens, the Prepetition Third Priority Liens and the Prepetition Fourth Priority Liens) as held by the Prepetition Senior Lenders’ Liens prior to the filing of the Cases, but shall be junior to the DIP Liens and subject to the Carve-Out.
- (b) Additional Adequate Protection for Prepetition Senior Collateral. As additional protection for any diminution in the value of the Prepetition Senior Collateral during the Cases, the Prepetition Senior Agents and the Prepetition Senior Lenders shall be entitled to payments in an amount equal to the interest calculated under the Prepetition Senior Credit Documents at the non-default rate in cash (payable monthly in arrears at the same rate, time and amount as provided for under the Prepetition Senior Credit Agreement and subject to the rights of parties in interest, if any, with respect to allowance under section 506(b) of the Bankruptcy Code) and fees payable under the Prepetition Senior Credit Documents, and the Prepetition Senior Agents, the members of the Steering Committee (as defined in the DIP Loan Amendment), and the Prepetition Senior Lenders shall be entitled to the payment of their costs and expenses to the extent provided for in the Prepetition Senior Credit Agreement. Nothing herein shall preclude the Prepetition Senior Agent or the Prepetition Senior Lenders from seeking (i) additional adequate protection or modification thereof at any time or (ii) the

termination of the use of Cash Collateral upon a DIP Event of Default that has not been waived.

- (c) Adequate Protection for Prepetition Term B Facility Lenders' Collateral. As protection for any diminution in the value of the Prepetition Term B Facility Collateral resulting from (i) the use by the Debtors of such collateral and cash constituting proceeds of such collateral, (ii) the DIP Liens, and (iii) the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, the Prepetition Term B Facility Agent, for the benefit of the Prepetition Term B Facility Lenders, shall be granted adequate protection, subject to the Carve-Out, the DIP Liens, the DIP Administrative Claim, the Senior Adequate Protection Liens and the Senior Adequate Protection Priority Claim, in the form of (1) replacement security interests in and liens and mortgages upon all property of the Debtors and their estates, whether now existing or hereafter acquired or arising (the "Junior Adequate Protection Liens," together with the Senior Adequate Protection Liens, the "Adequate Protection Liens") and (2) superpriority administrative expense status under section 507(b) of the Bankruptcy Code, which priority claim shall be junior to the DIP Administrative Claim and the Senior Adequate Protection Priority Claim (the "Junior Adequate Protection Priority Claim," together with the Senior Adequate Protection Priority Claim, the "Adequate Protection Priority Claim"). The Junior Adequate Protection Liens shall be accorded the same relative priority with respect to other valid, perfected, enforceable and unavoidable liens in existence as of the Petition Date (including, without limitation, the Prepetition Third Priority Liens and the Prepetition Fourth Priority Liens) as held by the Prepetition Second Priority Liens prior to the filing of the Cases, but shall be junior to the DIP Liens and the Senior Adequate Protection Liens and shall in all respects be subject to the terms of the Term Facility Intercreditor Agreement.
- (d) Additional Adequate Protection for Prepetition Term B Facility Collateral. As additional adequate protection for any diminution in the value of the Prepetition Term B Facility Collateral during the Cases, the Prepetition Term B Facility Lenders shall be entitled to payments in an amount equal to the interest calculated under the Prepetition Term B Facility Credit Agreement at the non-default rate in cash (payable monthly in arrears at the same rate, time and amount as provided for under the Prepetition Term B Facility Credit Agreement and subject to the rights of parties in interest, if any, with respect to allowance under section 506(b) of the Bankruptcy Code) and fees, and the Prepetition Term B Facility Agent and the Prepetition Term B Facility Lenders shall be entitled

to the payment of their costs and expenses to the extent provided for under the Prepetition Term B Facility Credit Agreement, including but not limited to the fees and expenses of Milbank, Tweed, Hadley & McCloy LLP, as counsel to certain of the Prepetition Term B Facility Lenders, and Cohen & Grigsby, P.C., as local counsel to certain of the Prepetition Term B Facility Lenders.

5. DIP Events of Default. “DIP Events of Default” shall have the meaning ascribed to that term in the DIP Loan Amendment and shall include, from and after the Petition Date, without limitation, the following:

- (i) Dismissal or Conversion by Bankruptcy Court; Appointment of Trustee; Order for Superpriority Status. Any of the Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; or a trustee under Chapter 11 of the Bankruptcy Code, shall have been appointed in the Cases; or any other superpriority claim (other than the Carve-Out) which is pari passu with or senior to the claims of DIP Agent and the DIP Lenders shall be granted in any of the Cases;
- (ii) Order Staying, Reversing, Vacating or Otherwise Modifying the Third Amendment. An order of a court of competent jurisdiction shall have been entered revoking, reversing, staying, vacating or rescinding the DIP Loan Amendment, the Interim Order or this Order; or an order of a court of competent jurisdiction shall have been entered amending, supplementing or otherwise modifying the Interim Order, this Order or the DIP Loan Amendment or any of the other DIP Loan Documents without the written consent of DIP Agent and the Requisite DIP Lenders;
- (iii) Appointment of Examiner. An order of a court of competent jurisdiction in connection with any of the Cases shall have been entered appointing an examiner having enlarged powers beyond those set forth under sections 1106(a)(3) and (4) of the Bankruptcy Code;
- (iv) Failure to Make Payments When Due. Failure by Borrower (or, to the extent applicable, any of the other Debtors) to pay any principal of any DIP Loan when due, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; failure by Borrower to pay when due any amount payable to an DIP Issuing Lender in reimbursement of any drawing under a DIP L/C; or, within three Business Days after the date due, failure by Borrower to pay any interest on any DIP Loan or any fee required under the DIP Facility or any other amount due under the DIP Facility;

- (v) Material Adverse Effect. A Material Adverse Effect (as defined in the DIP Loan Amendment) shall occur;
- (vi) Relief from Automatic Stay. The Bankruptcy Court shall have entered an order granting relief from the automatic stay to the holder or holders of any Lien (as defined in the DIP Loan Amendment) to permit foreclosure on any assets or property of Borrower or any Debtor having a value exceeding \$2,000,000 singularly or \$3,000,000 in the aggregate;
- (vii) Certain Pleadings. Any Debtor shall file any pleadings with the Bankruptcy Court seeking to do any of those items contemplated in clauses (i), (ii), (iii) or (vi) under the Bankruptcy Code or any other applicable federal, state or foreign bankruptcy or other similar law, which pleading are not withdrawn, dismissed or denied within thirty days of such filing;
- (viii) Final Order. The Bankruptcy Court shall not have entered a Final Order within thirty days following the entry of the Interim Order;
- (ix) Filing of Certain Plans of Reorganization. Any Debtor shall file a plan of reorganization in any of the Cases which does not provide for payment in full in cash of all of the DIP Obligations on or before the effective date of such plan;
- (x) Assertion under section 506(c) of the Bankruptcy Code. Any Debtor shall file any pleadings with the Bankruptcy Court asserting claims arising under section 506(c) of the Bankruptcy Code against any of the DIP Lenders or the commencement of other actions adverse to any of the DIP Lenders or their respective rights and remedies under the DIP Loans in the Interim Order, this Order or any other Bankruptcy Court order;
- (xi) Delivery of Budget. The Borrower shall fail to deliver a Budget when due;
- (xii) Failure to Observe DIP Financing Orders. The Borrower or any Debtor shall fail or neglect to perform, keep or observe any of the provisions in the DIP Financing Orders;
- (xiii) CRO. (i) The Bankruptcy Court shall not have entered a final order (that has not been reversed, stayed, modified, vacated, amended or appealed) approving the appointment of the CRO (as defined in the DIP Loan Amendment) pursuant to the CRO Motion (as defined in the DIP Loan Amendment) within forty (40) days after the Petition Date (unless otherwise consented to in writing by the Steering Committee); or (ii) once appointed, the CRO shall resign or be terminated and the Steering Committee shall not have consented in writing to such resignation or

termination within five (5) days following such resignation or termination;
and

- (xiv) The occurrence of any other DIP Event of Default as defined in the DIP Loan Amendment.

6. Modification of the Automatic Stay. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to (i) permit the DIP Agent and the DIP Lenders to exercise all rights and remedies provided for in this Order, the DIP Loan Amendment, and applicable law, (ii) permit the Prepetition Senior Agents and the Steering Committee to take all actions provided for under section 7.01(d) of the DIP Loan Amendment, and (iii) otherwise effectuate the provisions of this Order, without the need for filing further pleadings or application to or order of this Court. Upon the occurrence and during the continuance of any DIP Event of Default, the Requisite DIP Lenders shall be, and hereby are, authorized to exercise any or all of their rights and remedies and to take any or all of the following actions without further modification of the automatic stay pursuant to section 362 of the Bankruptcy Code or further order of or application to this Court: (a) terminate the DIP Facility and cease to make any DIP Loans or issue DIP L/C's and enjoin or prohibit the Debtors from using any Cash Collateral (other than to pay any DIP Obligations); (b) declare all DIP Obligations immediately due and payable; (c) set off immediately any and all amounts in accounts maintained by the Debtors with the DIP Agent or any of the DIP Lenders, or otherwise enforce rights against DIP Collateral in the possession of the DIP Agent or any of the DIP Lenders, including, without limitation, any amounts in the DIP Deposit Account; and (d) take any other actions or exercise any other rights or remedies (including, without limitation, with respect to the liens in favor of the DIP Agent and the DIP Lenders) permitted it under this Order, the DIP

Loan Amendment or applicable law, provided that the DIP Agent shall provide five (5) business days written notice (by facsimile, telecopy or otherwise) to counsel for the Debtors, counsel for the Committee (if any), and prior to the formation of any such Committee, to counsel for the ad hoc committee of certain holders of New Senior Notes and New Debentures (as defined in the affidavits supporting the Motion), and the United States Trustee prior to exercising any lien enforcement rights or remedies in respect of the DIP Collateral. Upon entry of this Order, no party in interest shall have the right to contest the enforcement of the remedies set forth in this Order or the DIP Loan Amendment on any basis other than the fact that a DIP Event of Default has not occurred, and, except with respect to an objection to the existence of a DIP Event of Default, no party in interest shall have the right to seek injunctive relief against such enforcement under section 105 of the Bankruptcy Code or otherwise, or to seek injunctive relief in conflict with the provisions of this Order or the DIP Loan Amendment.

7. No Other Procurement of Priming Credit. None of the Debtors shall seek, and it shall constitute a DIP Event of Default should there be entered, any order in any of the Cases or any subsequent case under Chapter 7 of the Bankruptcy Code, which authorizes under any section of the Bankruptcy Code (including without limitation, sections 105, 363, 364 or 506(c)) the procurement of credit or the incurring of indebtedness secured by a lien, or entitled to superpriority administrative status, which is equal or superior to the DIP Liens or the DIP Administrative Claim granted to the DIP Agent and the DIP Lenders herein, unless in each instance (i) the DIP Agent shall have given its prior written consent thereto, or (ii) such order requires that the DIP Loans and all other DIP Obligations be paid in full in cash (including the termination of all outstanding DIP L/C's) and that the DIP Facility be terminated. Without limiting the foregoing, the Debtors, for themselves and their estates, successors and assigns,

waive and shall not assert any claim under sections 105, 506(c), 507, 510, 544-551, 552(b) and 553 of the Bankruptcy Code for, among other things, any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Agent, the DIP Lenders, the Prepetition Senior Agent or the Prepetition Senior Lenders upon, the DIP Collateral or the Prepetition Senior Collateral.

8. Payment in Full of DIP Obligations. None of the Debtors shall seek, and it shall constitute a DIP Event of Default should there be entered, any order confirming a plan of reorganization in any of the Cases unless such order provides for payment in full in cash of all of the DIP Obligations on or before the effective date of the plan of reorganization that is the subject of such order; and provided further that, in any event, unless the DIP Obligations have been indefeasibly paid in full in cash (including the termination of all outstanding DIP L/C's), the DIP Obligations shall not be discharged by the entry of any order confirming any plan of reorganization in any of the Cases of any Debtor or pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors having waived such discharge.

9. Authorization of Other Terms.

- (i) Signatures. The signature of the Chief Executive Officer, the Chief Financial Officer, or any other persons designated in writing by the ACR Management Board of Managers or similar governing authority of the respective Debtor, whether by letter to the DIP Agent or appearing on any one or more of the agreements, certificates, instruments, or documents contemplated by or referenced in this Order, shall bind the Debtors with respect to documents executed and other actions taken pursuant to this Order.
- (ii) Survival of Priority. The priority of the DIP Liens, the priority of the DIP Administrative Claim, and all rights of the DIP Agent and the DIP Lenders and all obligations of the Debtors created hereunder or arising pursuant hereto or to the DIP Loan Amendment on or after the Petition Date (including, without limitation, the DIP Obligations), shall continue in the Debtors' Cases and in any superseding chapter 7 case under the

Bankruptcy Code and shall survive any subsequent dismissal of these Cases, and such claims, liens and security interests shall maintain their priority as provided by this Order until satisfied and discharged in accordance with the terms of the DIP Loan Amendment.

- (iii) Validity of Obligations. Consistent with section 364(e) of the Bankruptcy Code, if any or all of the provisions of this Order are hereafter modified, vacated or stayed: (a) such stay, modification or vacation shall not affect the validity of any obligation, indebtedness, liability, security interest or lien granted or incurred by the Debtors to the DIP Agent or the DIP Lenders on or after the Petition Date and prior to the effective date of such stay, modification or vacation, or the validity and enforceability of any security interest, lien, priority or right authorized or created hereby or pursuant to the DIP Loan Amendment; and (b) any indebtedness, obligation or liability incurred by the Debtors to the DIP Agent or the DIP Lenders on or after the Petition Date and prior to the effective date of such stay, modification or vacation shall be governed in all respects by the provisions of this Order, and the DIP Agent and the DIP Lenders shall be entitled to all the rights, remedies, privileges and benefits, including the priority, security interests and liens granted herein and pursuant to the DIP Loan Amendment, with respect to any such indebtedness, obligation or liability.
- (iv) Order Binding. The provisions of this Order shall be binding upon and inure to the benefit of the DIP Agent, the DIP Lenders and each of the Debtors and their respective successors and assigns (including, without limitation, any chapter 11 trustee, chapter 7 trustee or other fiduciary hereafter appointed for or on behalf of the Debtors or with respect to any of the Debtors' property in the Debtors' Cases or otherwise).
- (v) Rights and Remedies. The rights and remedies of the DIP Agent and the DIP Lenders specified herein are cumulative and not exclusive of any rights or remedies that they may have under the DIP Loan Documents or otherwise. The Debtors and the DIP Agent (subject, to the extent required by the DIP Loan Amendment, to the consent of the Requisite DIP Lenders or other DIP Lenders) are hereby authorized, without further order of this Court, (i) to implement, in accordance with the terms of the DIP Loan Amendment, any non-material modifications (including, without limitation, any change in the number or composition of the DIP Lenders) to the DIP Loan Amendment or to make any modifications to the DIP Loan Amendment necessary to conform the DIP Loan Amendment to this Order; and (ii) to agree upon and enter into any written amendments or modifications to the Budget; provided, however, the Budget shall not be modified or otherwise amended without the consent of the Requisite DIP Lenders.

- (vi) Termination. The commitment of the DIP Lenders shall terminate and all amounts owing under the DIP Facility shall be due and payable (and, with respect to any DIP L/C's then outstanding, cash in an amount equal to 105% of the face amount of such DIP L/C's shall be deposited with the DIP Agent), on the earliest to occur of the following (the "Termination Date"): (1) March 1, 2005, (2) the effective date of a plan of reorganization, (3) the occurrence of a DIP Event of Default and a determination by the Requisite DIP Lenders to terminate the commitments, and (4) the payment in full in cash of all of the DIP Obligations and the termination of commitments under the DIP Facility.
- (vii) Findings Set Forth in this Order Are Binding.
- (a) The findings contained in recital paragraphs F(1) through F(16) regarding, among other things, the amount, validity, enforceability, perfection and priority of the Prepetition Senior Loan Obligations and the Prepetition Senior Lenders' Liens shall be binding upon all parties in interest, including without limitation the Debtors, the Debtors' estates, any Committee and their respective successors and assigns, unless (a) the Committee has properly filed an adversary proceeding or commenced a contested matter (subject to the limitations set forth in paragraph 3(iv)) challenging the amount, validity, enforceability, perfection or priority of the Prepetition Senior Loan Obligations or the Prepetition Senior Lenders' Liens in respect thereof, or otherwise asserting any claims or causes of action against the Prepetition Senior Agents or the Prepetition Senior Lenders relating to the Prepetition Senior Loan Obligations on behalf of the Debtors' estates, no later than 120 days after the commencement of the meeting of creditors in these Cases pursuant to section 341 of the Bankruptcy Code, and (b) the Court enters a final order on the merits in favor of the Committee in any such timely and properly filed adversary proceeding or contested matter. If no such adversary proceeding or contested matter is properly commenced as of such date, (i) the Prepetition Senior Loan Obligations shall constitute allowed claims, not subject to subordination and otherwise unavoidable, for all purposes in these Cases and any subsequent Chapter 7 case, (ii) the Prepetition Senior Lenders' Liens shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim, offset of any kind, subordination and otherwise unavoidable, and junior only to the DIP Liens, and (iii) the Prepetition Senior Agents, the Prepetition Senior Lenders, the Prepetition Senior Loan Obligations and the Prepetition Senior Lenders' Liens shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto. If any such adversary proceeding or contested

matter is properly commenced as of such date, the findings contained in paragraphs F(1) through F(16) shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) except to the extent that such findings were expressly challenged in such adversary proceeding or contested matter.

- (b) The findings contained in recital paragraphs F(1) through F(16) regarding, among other things, the amount, validity, enforceability, perfection or priority of the Prepetition Term B Facility Obligations and the Prepetition Second Priority Liens shall be binding upon all parties in interest, including without limitation the Debtors, the Debtors' estates, any Committee and their respective successors and assigns, unless (a) the Committee has properly filed an adversary proceeding or commenced a contested matter (subject to the limitations set forth in paragraph 3(iv)) challenging the amount, validity, enforceability, perfection or priority of the Prepetition Term B Facility Obligations or the Prepetition Second Priority Liens in respect thereof, or otherwise asserting any claims or causes of action against the Prepetition Term B Facility Agent or the Prepetition Term B Facility Lenders relating to the Prepetition Term B Facility Obligations on behalf of the Debtors' estates, no later than 120 days after the appointment of the Committee by the United States Trustee, and (b) the Court enters a final order on the merits in favor of the Committee in any such timely and properly filed adversary proceeding or contested matter. If no such adversary proceeding or contested matter is properly commenced as of such date, (i) the Prepetition Term B Facility Obligations shall constitute allowed claims, not subject to subordination (other than pursuant to the Term Facility Intercreditor Agreement) and otherwise unavoidable, for all purposes in these Cases and any subsequent Chapter 7 case, (ii) the Prepetition Second Priority Liens shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim, offset of any kind, subordination (other than pursuant to the Term Facility Intercreditor Agreement) and otherwise unavoidable, and junior only to the DIP Liens and the Prepetition Senior Lenders' Liens, and (iii) the Prepetition Term B Facility Agent, the Prepetition Term B Facility Lenders, the Prepetition Term B Facility Obligations and the Prepetition Second Priority Liens shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto. If any such adversary proceeding or contested matter is properly commenced as of such date, the findings contained in paragraphs F(1) through F(16) shall nonetheless remain binding

and preclusive (as provided in the second sentence of this paragraph) except to the extent that such findings were expressly challenged in such adversary proceeding or contested matter.

- (viii) Headings. Headings and captions to paragraphs and subparagraphs of this Order are inserted for convenience of reference only and are not intended to be part of this Order and shall not affect the interpretation of this Order.
- (ix) Immediately Effective. This Order is and shall be immediately applicable and valid and fully effective upon its entry by the Court.

Dated: July 13, 2004.

United States Bankruptcy Judge

EXHIBIT 1

DIP Loan Amendment

EXHIBIT 2

**Index to Compilation of Exhibits
Relating to DIP Financing**

EXHIBIT 3

Interim Budget