

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: _____)

ATARI, INC., *et al.*,)

Debtors.¹)

) Chapter 11

) Case No. 13-10176 (JMP)

) (Jointly Administered)

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361,
362, 364 AND 507 (I) AUTHORIZING THE DEBTORS TO
INCUR POSTPETITION SECURED INDEBTEDNESS,
(II) GRANTING LIENS AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE
PROTECTION, (IV) MODIFYING AUTOMATIC STAY,
AND (V) SCHEDULING A FINAL HEARING**

Upon the (Corrected) Motion of the Debtors and Debtors-in-Possession Pursuant to 11 U.S.C. §§ 105, 361, 362, 364 and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 for Entry of Interim and Final Orders (I) Authorizing the Debtors to Incur Post-Petition Secured Indebtedness, (II) Granting First Priority Priming Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying Automatic Stay, and (V) Scheduling a Final Hearing (the “**Motion**”) [ECF No. 17] filed by Atari, Inc., Atari Interactive, Inc., California US Holding, Inc. and Humongous, Inc., as debtors and debtors in possession (each, a “**Debtor**,” and collectively, the “**Debtors**”) in their Chapter 11 bankruptcy cases (each, a “**Case**,” and collectively, the “**Cases**”), pursuant to Sections 105, 361, 362, 364 and 507 of Title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the “**Local Rules**”); and a hearing having been held on January 24, 2013 to consider the relief requested in the Motion (the “**Interim Hearing**”); and counsel to the

¹ The other Debtors are Atari Interactive, Inc., Humongous, Inc., and California U.S. Holdings, Inc.

Debtors having announced to the Court on the record of the Interim Hearing the Debtors were not seeking approval of the post-petition, secured financing facility identified and described in the Motion but instead were seeking entry of this interim order (the “**Interim Order**”) *inter alia*:

(i) authorizing the Debtors to enter into the term sheet attached hereto as **Exhibit A** (as amended, supplemented or otherwise modified from time to time, the “**DIP Term Sheet**”), between the Debtors, on the one hand, and by one or more of Alden Global Distressed Opportunities Master Fund, L.P., Alden Global Value Recovery Master Fund, L.P., and Turnpike Limited (collectively, “**Alden**” or the “**DIP Lenders**”), on the other hand, to obtain, subject to (x) the entry of an order not subject to appeal, reconsideration or review in form and substance acceptable to the DIP Lenders approving the DIP Facility (as defined below) and DIP Credit Documents (as defined below) on a final basis (the “**Final Order**”), (y) the delivery and execution of a post-petition financing credit agreement (the “**DIP Credit Agreement**”) and other post-petition financing documents ancillary thereto, referenced in the DIP Term Sheet or this Interim Order, or requested by the DIP Lenders (collectively, and together with the DIP Credit Agreement, the “**DIP Credit Documents**”), each consistent with the DIP Term Sheet and in form and substance satisfactory to the DIP Lenders, and (z) the satisfaction of each of the terms and conditions (including the “**Conditions Precedent**” set forth in the DIP Term Sheet) set forth in the DIP Term Sheet, this Interim Order and the DIP Credit Documents (collectively, the “**DIP Financing Conditions**”), superpriority secured postpetition financing, consisting of up to \$5.0 million, of which \$2.0 million shall be available on an interim basis in accordance with the terms of the DIP Term Sheet and this Interim Order (the “**DIP Facility**”);²

² The Court’s approval of the DIP Facility pursuant to this Interim Order shall be limited to the terms of the DIP Term Sheet and this Interim Order. The Debtors are not seeking approval of the DIP Credit Documents, or authority to draw on the DIP Facility *in toto* until the DIP Financing Conditions have been satisfied. The Debtors shall file the DIP Credit Documents in advance of the Final Hearing (as defined below).

(ii) authorizing the Debtors to execute and deliver the DIP Credit Agreement and the other DIP Credit Documents, and to perform such other acts as may be necessary or desirable to the DIP Lenders in connection with the DIP Credit Agreement and the other DIP Credit Documents, all of which shall be subject to the Court's approval at the Final Hearing;

(iii) subject to the satisfaction of the DIP Financing Conditions, authorizing the Debtors to grant the DIP Facility and all indebtedness, obligations and liabilities owing to the DIP Lenders under the DIP Term Sheet, DIP Facility, DIP Credit Documents, this Interim Order and the Final Order (collectively, the "**DIP Obligations**"), allowed superpriority administrative expense claim status in the Cases and any Successor Cases (as defined below), and authorizing the Debtors to grant to the DIP Lenders automatically perfected security interests in and liens on all of the Collateral (as defined below);

(iv) vacating and modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order, the DIP Term Sheet and, subject to the satisfaction of the DIP Financing Conditions, the DIP Credit Documents; and

(v) scheduling a final hearing (the "**Final Hearing**") to consider the relief requested in the Motion and this Interim Order, and approving the form of notice with respect to the Final Hearing.

The Court having considered the Motion, the Declaration of Robert A. Mattes, the Debtors' Chief Financial Officer, in support of the Chapter 11 petitions and first day motions, including the Motion, the exhibits attached thereto, the DIP Term Sheet, the DIP Facility and the evidence submitted or adduced and the arguments of counsel made at the Interim Hearing; and the Court having states on the record of the Interim Hearing that there was sufficient

cause to treat the Motion as having been amended to request approval of the DIP Facility; and notice of the Interim Hearing having been given in accordance with the Bankruptcy Rules and Local Rules; and all objections, responses, or reservations of rights, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court on the record of the Interim Hearing; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm, loss or damage to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equityholders, and is essential for the continued operation of the Debtors' business; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ADJUDGED AND DECREED AS FOLLOWS:

A. Petition Date. On January 21, 2013 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court commencing the Cases.

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

C. Jurisdiction and Venue. This Court has jurisdiction over these proceedings, and over the persons, entities and assets affected hereby pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Committee Formation. As of the date hereof, the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) has not yet appointed any official committee in these Cases pursuant to Section 1102 of the Bankruptcy Code (each, a “Statutory Committee”).

THE COURT IS SATISFIED WITH THE FOLLOWING DEBTOR REPRESENTATIONS:

A. Prepetition Receivable. As of the Petition Date, the Debtors’ French parent company Atari, S.A. (the “**Parent**”) owed California U.S. Holdings, Inc. approximately \$11 million as an intercompany receivable.

B. Prepetition Debt. As of the Petition Date, Atari Europe SAS, the Debtors’ French affiliate company (“**Atari Europe**”), had outstanding debt (the “**Blue Bay Debt**”) owed to Blue Bay Value Recovery (Master) Fund Limited (“**Blue Bay**”) and guaranteed by the Parent (together with Blue Bay, the “**Prepetition Secured Parties**”). Prior to the Petition Date, Blue Bay filed a financing statement (the “**Blue Bay Lien**”) against certain assets of Atari, Inc. (the “**Blue Bay Collateral**”). Further, prior to the Petition Date, the Parent had provided Atari Interactive Inc. with approximately \$252 million in intercompany loans, and had provided Atari Inc. with approximately \$13 million in intercompany loans (together, the “**Parent Intercompany Loans**”). In addition, Atari Europe had provided Atari Inc. with approximately \$22 million in intercompany loans (the “**Atari Europe Intercompany Loans**,” and with the Parent Intercompany Loans, the “**Intercompany Loans**”). The Parent also filed a financing statement reflecting a blanket lien (the “**Parent Lien**,” and with the Bluebay Lien, the “**Prepetition Liens**”) on all assets of Debtor Atari, Inc., except for certain intellectual property assets (the “**Parent**

Collateral,” and with the Blue Bay Collateral, the “**Prepetition Collateral**”). Subject to the Committee Investigation Rights (defined below) and the assignment of the Blue Bay Debt to the DIP Lenders, if any, the Debtors each hereby irrevocably waive, for themselves and their subsidiaries and affiliates, any right to challenge or contest in any way the Blue Bay Debt, the Prepetition Liens, and the Intercompany Loans (collectively, the “**Waived Claims**”) or the validity or enforceability of the Waived Claims.

C. Findings Regarding Postpetition Financing.

(i) *Request for Postpetition Financing.* The Debtors seek authority to enter into the DIP Term Sheet. The Court’s approval of the DIP Facility pursuant to this Interim Order shall be limited to the terms of the DIP Term Sheet and this Interim Order. The DIP Lenders shall have no obligation to make loans or advances under the DIP Facility (other than as set forth in this Interim Order or in the DIP Term Sheet) until the DIP Financing Conditions have been satisfied.

(ii) *Need for Postpetition Financing.* The Debtors’ need to obtain credit as set forth in the DIP Term Sheet is immediate and critical in order to enable the Debtors to continue their operations, and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, maintain business relationships, pay their employees, protect the value of their assets and otherwise finance their operations requires the availability of working capital from the credit as set forth in the DIP Term Sheet, the absence of which would immediately and irreparably harm the Debtors, their estates, their creditors and equityholders, and the possibility for a successful reorganization of the Debtors. The Debtors do not have sufficient available sources of working capital or financing to operate their business or to maintain

their assets in the ordinary course of business without the authorized use of credit as set forth in the DIP Term Sheet.

(iii) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangement and capital structure, the Debtors are unable to obtain postpetition financing from sources other than the DIP Lenders on terms more favorable than those set forth in the DIP Term Sheet. The Debtors have been unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain credit: (a) having priority over that of administrative expenses of the kind specified in Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code, (b) secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Lenders (1) perfected security interests in and liens on all of the Debtors' existing and after-acquired assets with the priorities set forth herein, (2) superpriority claims, and (3) the other protections set forth in this Interim Order and in the Final Order.

(iv) *Use of Proceeds.* As a condition to the authorization to obtain credit as set forth in this Interim Order and the DIP Term Sheet, the DIP Lenders require, and the Debtors have agreed, that any financing provided pursuant to this Interim Order and the DIP Term Sheet shall be used in accordance with the DIP Budget³ (as defined in the DIP Term Sheet, as the same may be modified from time to time with the prior written consent of the DIP Lenders), solely for the Permitted Expenditures (as defined in the DIP Term Sheet).

³ The initial DIP Budget is attached hereto as **Exhibit B**.

D. Section 506(c). In light of the DIP Lenders' agreement to subordinate the DIP Liens and DIP Superpriority Claim (as defined below) to the Carveout pursuant to the terms of the DIP Term Sheet and this Interim Order, upon entry of the Final Order the DIP Lenders are entitled to a waiver of the provisions of Section 506(c) of the Bankruptcy Code.

E. Good Faith of the DIP Lenders.

(i) *Willingness to Provide Financing*. The DIP Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) the entry of this Interim Order; (b) the satisfaction of the DIP Financing Conditions; (c) Court approval of the terms and conditions of the DIP Term Sheet; and (d) entry of findings by this Court that such financing is essential to the Debtors' estates, that the DIP Lenders are extending credit to the Debtors as set forth in the DIP Term Sheet in good faith, and that the DIP Lenders' claims, superpriority claims, security interests, liens, protections, rights and remedies will have the protections provided in Section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, stay, vacatur, amendment, reargument or reconsideration of this Interim Order or any other order.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. The terms and conditions of the DIP Term Sheet are fair, reasonable, and the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Term Sheet was negotiated in good faith and at arms' length among the Debtors and the DIP Lenders. Any credit to be extended by the DIP Lenders as set forth in the DIP Term Sheet shall be deemed to have been so allowed, advanced, made, used or extended in "good faith" as such term is used in Section 364(e) of the Bankruptcy Code, for valid business

purposes and uses, within the meaning of Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections set forth herein, and the DIP Lenders are therefore entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, modified on appeal, or otherwise.

F. Notice. Notice of the DIP Term Sheet, this Interim Order, the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors by facsimile (where facsimile numbers were available), email (where email addresses were available), and overnight courier or hand delivery to: (i) the U.S. Trustee; (ii) the Internal Revenue Service; (iii) the parties included on the Debtors' list of 30 largest unsecured creditors; (iv) counsel to Atari, S.A.; (v) counsel to Blue Bay; (vi) counsel to the DIP Lenders; (vii) all parties in interest that have filed a request for notices pursuant to Bankruptcy Rule 2002, and (viii) counsel for any Statutory Committee. The Debtors have made reasonable efforts to afford notice that was, in the Debtors' belief, the best notice available under the circumstances, and such notice is proper and sufficient to permit the relief set forth in this Interim Order, and no other or further notice is or shall be required.

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

IT IS HEREBY ORDERED that:

1. DIP Term Sheet Approved. The Motion is GRANTED and the DIP Term Sheet is APPROVED. The Debtors are expressly and immediately authorized, empowered and directed to execute and deliver the DIP Term Sheet, to incur and to perform thereunder, and to deliver all instruments and documents that may be necessary or required for performance by the Debtors

under the DIP Term Sheet and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Term Sheet. Each term and provision of the DIP Term Sheet is valid, binding and enforceable as though set forth in this Interim Order. The failure to specifically include or reference any particular term or provision of the DIP Term Sheet in this Interim Order shall not diminish or impair the effectiveness of such term or provision, it being the intent of this Court that the DIP Term Sheet be approved in its entirety.

2. Objections Overruled. All objections, responses or reservations of rights to the Motion or DIP Term Sheet that have not been withdrawn or otherwise resolved, are overruled on their merits.

3. DIP Obligations. Upon execution and delivery, and subject to the satisfaction of the DIP Financing Conditions, the DIP Credit Documents shall represent valid and binding obligations of the Debtors, enforceable against the Debtors, their estates and any successors or assigns thereto, including, but not limited to, any trustee or other estate representative appointed in a Case or any case under Chapter 7 of the Bankruptcy Code upon the conversion of a Case (a “**Successor Case**”). The “**DIP Obligations**” include, but are not limited to, all loans and any other indebtedness or obligations, contingent or absolute, which may from time to time be owing by the Debtors to the DIP Lenders under the DIP Term Sheet or DIP Credit Documents, including, but not limited to, all principal, interest, costs, fees, expenses and other amounts owed pursuant to the DIP Term Sheet or DIP Credit Documents.

4. DIP Liens and Collateral.

(a) *DIP Liens.* To secure the prompt and complete payment and performance of the DIP Loans and other liabilities and obligations of the Borrowers to the DIP Lenders under or in connection with the DIP Term Sheet, the DIP Loan Documentation and this Interim Order,

effective and perfected upon the entry of this Interim Order and without the necessity of (x) execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or similar documents, or (y) the possession or control by the DIP Lenders of any property of the Debtors, the following security interests and liens (collectively the “**DIP Liens**”) are hereby granted on the following property:

- (i) pursuant to section 364(c)(2) of the Bankruptcy Code, secured by a perfected first-priority lien on the Collateral, subject only to (i) valid, perfected and non-avoidable liens as of the Petition Date and (ii) the Carveout (the “**First Priority DIP Liens**”);
- (ii) pursuant to section 364(c)(3) of the Bankruptcy Code, secured by a perfected second priority lien on the Collateral, to the extent that such Collateral is subject to valid, perfected and non-avoidable liens in favor of third parties in existence as of the Petition Date or to valid liens in existence as of the Petition Date that are perfected subsequent to such date as permitted by section 546(b) of the Bankruptcy Code, and to the extent such liens are expressly permitted in writing by the DIP Lenders in their sole and absolute discretion, subject only to the Carveout (the “**Second Priority DIP Liens**”); and
- (iii) pursuant to section 364(d) of the Bankruptcy Code, secured by a perfected first priority, priming and senior security interest and lien granted to the DIP Lenders on the Collateral to the extent that such Collateral is subject to any lien or security interest as of the Petition Date, subject only to the Carveout (the “**Priming DIP Liens**”); *provided* that, until entry of the Final Order, such Priming DIP Liens will not prime any lien in favor of (a) The Bluebay Value Recovery (Master) Fund Limited pursuant to the Credit Facility Agreement dated April 21, 2006 as amended, restated, supplemented or otherwise modified as of the date hereof and (b) Atari S.A. to the extent such liens are determined to be valid and enforceable, and all rights are reserved with respect to the entry of the Final Order.

Except as otherwise provided herein, the DIP Term Sheet, the DIP Loan Documentation or the Final Order, the DIP Liens shall not be subject to or *pari passu* with any security, mortgage, collateral interest, lien or claim heretofore or hereinafter granted in a Case or any Successor Case.

(b) *Treatment of DIP Liens.* The DIP Liens shall be valid and enforceable against the Debtors, the Collateral, any trustee or other estate representative appointed in a Case or any Successor Case, upon the conversion of any of a Case to a case under Chapter 7 of the

Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of a Case or a Successor Case. The DIP Liens shall not be subject to challenge, including, but not limited to, under Sections 510, 549, or 550 of the Bankruptcy Code. Except as otherwise provided herein, the DIP Term Sheet, the DIP Loan Documentation or the Final Order, no security, mortgage, collateral interest, lien, claim, or interest avoided and preserved for the benefit of the Debtors' estates shall be *pari passu* with or senior to the DIP Liens.

5. DIP Budget. The Debtors' use of the credit extended under this Interim Order and the DIP Term Sheet is on an interim basis, shall at all times be in compliance with the DIP Budget, and may be utilized until the earlier of (x) 180 days after the Petition Date, subject to entry of the Final Order, (y) the date of written notice from the DIP Lenders of the occurrence of an Event of Default (as defined in the DIP Term Sheet), or (z) the date of sale of any Debtor's assets outside the ordinary course of business or any Debtor's emergence from Chapter 11 pursuant to a plan of reorganization (the "**Termination Date**"). Nothing in this Interim Order shall authorize the Debtors' disposition of any of their assets or the assets of their estates outside the ordinary course of business (which shall be subject to further orders of this Court), or the Debtors' use of any proceeds resulting therefrom, except as permitted in this Interim Order and in accordance with the DIP Budget. Any modification to, or amendment or update of, the DIP Budget shall be in form and substance acceptable to the DIP Lenders.

6. DIP Superpriority Claim.

(a) *Superpriority Claim of DIP Lenders.* The DIP Lenders are hereby granted, pursuant to Section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Cases and any Successor Case for all DIP Obligations (the "**DIP Superpriority Claim**"). The DIP Superpriority Claim shall be subordinate only to the Carveout,

and shall otherwise have priority over any and all Chapter 11 administrative expenses, whether heretofore or hereafter incurred, of the kinds specified in or ordered pursuant to Sections 503(b) and 507(b) of the Bankruptcy Code.

(b) *Priority of DIP Superpriority Claim.* The DIP Superpriority Claim shall be payable from and have recourse to all pre- and postpetition assets of the Debtors and their estate, and all proceeds thereof, subject only to the Carveout. Upon entry of the Final Order, the DIP Superpriority Claim shall be payable from or have recourse to any and all claims and causes of action under Chapter 5 of the Bankruptcy Code.

7. No Obligation to Extend Credit. The DIP Lenders shall have no obligation to make loans or advances under the DIP Facility until the DIP Financing Conditions have been satisfied and the conditions precedent to the making of such extension of credit under the DIP Credit Documents have been satisfied in full, in each case in the sole discretion of the DIP Lender.

8. Adequate Protection.

(a) *Adequate Protection Lien.* Upon entry of the Final Order, to the extent of the diminution in value of the Prepetition Secured Parties' interests in their respective Prepetition Collateral, from and after the Petition Date, resulting from the use, sale or lease by the Debtors of the Prepetition Collateral, the subordination of the Prepetition Secured Parties' respective liens in the Prepetition Collateral to the Carve-Out and, subject to the entry of the Final Order, the DIP Liens, and the imposition or enforcement of the automatic stay of section 362(a) (collectively, the "**Diminution in Value**"), (1) Blue Bay is hereby granted (i) a valid and perfected replacement security interest in, and lien on the Blue Bay Collateral, subordinate and subject only to (a) the DIP Liens and (b) the Carve-Out, and (ii) a valid and perfected priority security interest in, all other Collateral, subject to and subordinate to the First Priority DIP Liens

and the Second Priority DIP Liens, as applicable and (2) the Parent is hereby granted (i) a valid and perfected replacement security interest in, and lien on the Parent Collateral, subordinate and subject only to (a) the DIP Liens and (b) the Carve-Out, and (ii) a valid and perfected priority security interest in, all other Collateral, subject to and subordinate to the First Priority DIP Liens and the Second Priority DIP Liens, as applicable (collectively, the "**Adequate Protection Liens**").

(b) *Adequate Protection Superpriority Claim.* Upon entry of the Final Order, to the extent the Adequate Protection Liens are insufficient to adequately protect against the Diminution in Value of the Prepetition Secured Parties' interests in their respective Prepetition Collateral, the Prepetition Secured Parties shall also have priority in payment afforded by section 507(b) of the Bankruptcy Code in an amount equal to the amount by which such diminution exceeds the value of the Adequate Protection Liens (the "**Adequate Protection Superpriority Claim**"). Notwithstanding anything to the contrary contained herein or otherwise, the Adequate Protection Superpriority Claims shall be junior and subordinate in all respects to the DIP Liens, DIP Superpriority Claim, the Carveout, and Adequate Protection Lien, but shall otherwise have priority over administrative expenses of the kinds specified in or ordered pursuant to Section 503(b) and 507(b) of the Bankruptcy Code.

9. Modification of Automatic Stay. The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order and the DIP Term Sheet, including, but not limited to, to permit the Debtors to grant the DIP Liens, the DIP Superpriority Claim, and upon entry of the Final Order, the Adequate Protection Lien and the Adequate Protection Superpriority Claim.

10. Credit Bid. The DIP Lenders shall have the unqualified right to credit bid up to the full amount of the outstanding DIP Obligations in any sale of any Collateral under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

11. Automatic Perfection of Liens. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein, including the DIP Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under any law or regulation of any jurisdiction or the taking of any other action to validate or perfect (including, but not limited to, in accordance with applicable non-bankruptcy law) the DIP Liens, and to entitle the DIP Lenders to the priorities granted herein.

12. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in a Case or any Successor Case shall obtain credit or incur debt pursuant to Section 364(b, c, or d) of the Bankruptcy Code at any time prior to the repayment in full in cash of all DIP Obligations, including subsequent to the confirmation of any plan of reorganization or liquidation with respect to a Debtor or Debtor's estate, then all the proceeds derived from such credit or debt shall immediately be turned over to the DIP Lenders to be applied to the DIP Obligations.

13. Financial Information and Reporting Requests. The Debtors shall allow the DIP Lenders reasonable access during business hours to the premises, books and records, officers, employees, auditors, appraisers, legal advisors and financial advisors of the Debtors, upon

reasonable advance notice in order to conduct appraisals, analyses and/or audits of the Collateral and the Debtors' financial affairs, and shall otherwise cooperate in providing any other financial information reasonably requested by the DIP Lenders, each at the cost and expense of the Debtors. The Debtors shall deliver to the DIP Lenders by 12:00 p.m. (ET) on Wednesday of each week, a reconciliation for (a) the most recent Saturday through Friday period (a "Weekly Report"), (b) the prior four-week operating period (if less than four weeks have elapsed since the Petition Date, such shorter period), and (c) the cumulative period from the Petition Date to the date of determination, as to each, of the Debtors' actual cash receipts and disbursements as compared to the DIP Budget, with a breakdown by line-item in the same format as the DIP Budget for such periods; (ii) a copy of each monthly operating report as and when submitted to the U.S. Trustee; (iii) monthly, no later than the thirtieth (30th) day of each month, the prior month's income statement, cashflow statement, and balance sheet for the Debtors; (iv) a Weekly Report of accounts payable and accounts receivable agings; and (v) such other reports and information as reasonably requested by the DIP Lenders.

14. Disposition of Collateral; Rights of DIP Lender. Unless otherwise authorized by the Court, the Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Collateral. Nothing provided herein shall limit the rights of the DIP Lenders to object to any proposed disposition of the Collateral.

15. Termination Date. All of the DIP Obligations are due and payable in full in cash upon the occurrence of a Termination Event (as defined below) or the Termination Date, and the DIP Lenders may thereafter exercise any rights and remedies provided in this Interim Order or the DIP Term Sheet, at law or equity, including all rights and remedies provided under the Bankruptcy Code.

16. Termination Event. The occurrence of any of the following, unless waived by the DIP Lenders, shall constitute a “**Termination Event**”:

- (a) the occurrence of any Event of Default (as defined in the DIP Term Sheet);
- (b) the Debtors shall, without the DIP Lenders’ prior written consent, file a motion with the Court seeking the authority to liquidate, transfer, or dispose of any of the Debtors’ or their estates’ assets or capital stock unless the transactions that are the subject of the motions will result in immediate payment in full in cash of the DIP Obligations;
- (c) other than in connection with the payment in full in cash of the DIP Obligations, the bringing of a motion, taking of any action or the filing of any plan of reorganization or liquidation (or disclosure statement) by or on behalf of a Debtor in a Case: (A) to obtain financing under Section 364(c or d) of the Bankruptcy Code (other than in connection with the DIP Facility), (B) to grant any lien or security interest other than the DIP Liens upon or affecting the Collateral, (C) that seeks to prohibit the DIP Lenders from credit bidding on any or all of the Debtors’ assets during the pendency of a Case, or (D) any other action or actions materially adverse to the DIP Lenders or their rights and remedies under this Interim Order or the DIP Term Sheet, or their interest in any Collateral;
- (d) other than in connection with the payment in full in cash of the DIP Obligations, (i) the filing of any plan of reorganization or liquidation (or disclosure statement), or any direct or indirect amendment to such plan or disclosure statement, by the Debtors or any other person, entity, or Statutory Committee to which the DIP Lenders have not consented or otherwise agreed to the treatment of their claims, or (ii) the entry of any order terminating, or the expiration of, a Debtor’s exclusive right to file a plan of reorganization or liquidation;

(e) the entry of an order in a Case confirming a plan of reorganization or liquidation that (i) is not in form and substance acceptable to the DIP Lenders, and (ii) does not contain a provision for repayment in full in cash of all of the DIP Obligations on or before the effective date of such plan and the Termination Date;

(f) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the DIP Term Sheet, the DIP Credit Documents, this Interim Order, the Final Order or the Debtors' "first-day" cash management order without the written consent of the DIP Lenders;

(g) the DIP Term Sheet, any of the DIP Credit Documents, this Interim Order, the Final Order, or the Debtors' "first-day" cash management order is not in full force and effect;

(h) the Final Order is not entered within 45 days of the date on which the "Conditions Precedent to the Interim Loan" (as set forth in the "Conditions Precedent" section of the DIP Term Sheet) are satisfied or waived in accordance with the DIP Term Sheet (the "**Interim Closing Date**");

(i) the payment of, or application for authority to pay, any prepetition indebtedness or prepetition claim without the DIP Lenders' prior written consent unless otherwise approved in the Budget;

(j) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the DIP Lenders or any of the Collateral;

(k) the appointment of an interim or permanent trustee in any Case, or the appointment of a receiver or an examiner in any Case with expanded powers to operate or manage the financial affairs, the business, or reorganization or liquidation of a Debtor;

(l) the sale of (or the filing of a motion to sell) any Debtor's assets without the DIP Lenders' consent, either pursuant to Section 363 of the Bankruptcy Code, a confirmed plan of reorganization or liquidation, or otherwise, that does not provide for payment in full in cash of the DIP Obligations;

(m) the dismissal of any Case, the conversion of any Case from Chapter 11 to Chapter 7 of the Bankruptcy Code, or the filing of a motion or other pleading seeking such relief;

(n) the entry of an order (other than this Interim Order or the Final Order) by the Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code

(i) to allow any creditor to execute upon or enforce a lien on any Collateral having a value of \$25,000 or more, or (ii) with respect to any lien of or the granting of any lien on any Collateral to any state or local environmental or regulatory agency or authority;

(o) the commencement of a suit or action against any of the DIP Lenders by or on behalf of a Debtor or its estate;

(p) the entry of an order in any Case avoiding or permitting recovery of any portion of the payments made on account of the DIP Obligations;

(q) the failure of any Debtor to perform any of its obligations under the DIP Term Sheet, the DIP Credit Documents, this Interim Order, the Final Order, the "first-day" cash management order, or any of a Debtor's material obligations under any other order of the Court, which is not cured within 3 business days' written notice to the Debtor(s);

(r) (1) the failure of the Debtors to, within 60 days after the Petition Date, obtain an order that is not subject to appeal, reconsideration or review extending the Debtors' time period to assume or reject unexpired leases of real property to a date that is not less than one hundred twenty (120) days after the Petition Date, or (2) if such date has been extended by

order of the Court, the failure of the Court to, within 5 days prior to such extended deadline, grant an order that is not subject to appeal, reconsideration or review further extending the Debtors' time period to assume or reject unexpired leases of real property; or

(s) the entry of an order in any Case granting any other superpriority administrative claim or lien equal or superior in priority or priority of payment to that granted to the DIP Lenders.

17. Rights and Remedies Following Termination Event.

(a) *Termination.* Immediately upon the occurrence and during the continuance of a Termination Event, the DIP Lenders may provide the Debtor(s) written notice as set forth in Paragraph 19(b) of this Interim Order (such notice, a "**Termination Notice**"). Three (3) business days after the issuance of a Termination Notice, subject to the Remedies Notice Period (as defined below), the DIP Lenders may exercise all rights and remedies set forth in the DIP Term Sheet, the DIP Credit Documents, this Interim Order or the Final Order, or under applicable law, without further order of or application to the Court notwithstanding section 362 of the Bankruptcy Code. Without limiting the foregoing, the DIP Lenders may, subject to the Remedies Notice Period, enter onto the premises of the Debtors in connection with an orderly liquidation of the Collateral. Upon the issuance of a Termination Notice, and following the termination of any applicable Remedies Notice Period, the Debtors agree to and shall cooperate with the DIP Lenders in a "friendly foreclosure" by the DIP Lenders on the Collateral, the DIP Lenders may require the Debtors to seek authority from the Court to retain an advisor or liquidator for the purpose of conducting a sale or liquidation of the Collateral and, if the Debtor(s) refuses to seek such authority, the DIP Lenders shall be entitled to seek such authority directly.

(b) *Notice of Termination.* Any Termination Notice shall be given by facsimile (or other electronic means) to counsel to the Debtor(s), counsel to any Statutory Committee, and the U.S. Trustee (the earliest date any such Termination Notice is sent shall be referred to herein as the “**Termination Notice Date**”). The DIP Lenders shall not be required to extend credit under the DIP Facility, or otherwise, on and after the Termination Notice Date, and all of the DIP Obligations shall be due and payable in full in cash on the Termination Notice Date. Any automatic stay otherwise applicable to the DIP Lenders is hereby modified so that 7 business days after the Termination Notice Date (the “**Remedies Notice Period**”), the DIP Lenders shall be entitled to exercise any and all of their rights and remedies against the Collateral in accordance with the DIP Term Sheet, the DIP Credit Documents, this Interim Order, or the Final Order, and shall be permitted to satisfy the DIP Superpriority Claim and the DIP Liens, subject only to the Carveout. During the Remedies Notice Period, the Debtor(s) shall be entitled to seek an emergency hearing with the Court for the sole purpose of contesting whether a Termination Event has occurred and/or is continuing. Unless the Court determines during the Remedies Notice Period that a Termination Event has not occurred, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order, and the DIP Lenders shall be permitted to exercise any and all rights and remedies set forth in the DIP Term Sheet, the DIP Credit Documents, this Interim Order, or the Final Order, without further order of or application or motion to the Court, and without restriction or restraint by any stay under Sections 105 or 362 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interests in the Collateral or any other rights and remedies granted to the DIP Lenders with respect thereto.

18. Good Faith Under Section 364 of the Bankruptcy Code; No Modification or Stay or this Interim Order. The Court is satisfied with the Debtors' representations that DIP Lenders have acted in good faith in connection with the DIP Term Sheet and this Interim Order; accordingly, the DIP Lenders' reliance on the terms and effectiveness of this Interim Order is in good faith. Based on the findings and Debtor representations set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with Section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by this Court or any other court, the DIP Lenders are entitled to the protections provided in Section 364(e) of the Bankruptcy Code. Any such modification, amendment, or vacatur of this Interim Order shall not affect the validity and enforceability of the DIP Term Sheet, the DIP Credit Documents, this Interim Order, the Final Order, any DIP Obligations, or any lien, claim or priority authorized or created in any of them, provided that this Interim Order was not stayed by court order after due notice to the DIP Lenders at the time such obligations were incurred or the liens, claims or priorities were authorized and/or created. The validity and enforceability of the DIP Term Sheet, the DIP Credit Documents, this Interim Order, the Final Order, any DIP Obligations, or any lien, claim or priority authorized or created in any of them prior to the effective date of any such modification, amendment or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including the DIP Lenders' entitlement to all rights, remedies, privileges and benefits granted herein, provided that the Interim Order was not stayed by court order after due notice had been given to the DIP Lenders at the time the obligations were incurred or the liens, claims or priorities were authorized and/or created.

19. Carveout.

(a) *Carveout*. As used in this Interim Order, the “**Carveout**” means: (i) all statutory fees required to be paid to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a), (ii) upon the occurrence of any Termination Event and delivery of a written notice by the DIP Lenders to lead counsel for the Debtors, any Statutory Committee, and the U.S. Trustee (a “**Carveout Trigger Notice**”), an aggregate amount equal to no more than \$200,000 to pay (A) outstanding and allowed fees and expenses of the Debtors’ and any Statutory Committee’s professionals retained by order of the Court not subject to appeal, reconsideration or review under Sections 327 or 1103(a) (collectively, the “Case Professionals”) of the Bankruptcy Code (collectively, the “**Professional Fees**”) and (B) the reimbursement of out-of-pocket expenses outstanding and allowed by the Court incurred by the Statutory Committee members in the performance of their duties (but excluding fees and expenses of professionals employed by such members) (collectively, the “**Committee Expenses**”), and (iii) upon the conversion of the Debtors’ cases to cases under Chapter 7 of the Bankruptcy Code, an amount not to exceed \$50,000 (payable only to the extent the original \$200,000 was exhausted prior to conversion) in each case, incurred after the delivery of a Carveout Trigger Notice. The Carveout shall be funded solely with the Debtors’ cash on hand, cash collateral, and with the first proceeds of the Collateral. No portion of the Carveout may be used in violation of this Interim Order or the DIP Term Sheet. So long as the Carveout Trigger Notice has not been delivered, the Debtors shall be permitted to pay, as the same becomes allowed by the Court, due and payable Professional Fees provided for in the DIP Budget, and the same shall not reduce the Carveout amount. Notwithstanding anything to the contrary herein, no portion of the Carve-Out, proceeds of the DIP Facility, the Collateral, Prepetition Collateral or Cash Collateral shall include, apply to, or be available for any fees, costs, or expenses incurred by an party including

the Debtors or any Statutory Committee or any Case Professionals, in connection with (x) the initiation or prosecution of any claims, causes of action, adversary proceedings or litigation against the DIP Lenders, including, without limitation, (a) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the DIP Obligations, DIP Superpriority Claims or DIP Liens or (b) challenging the amount, validity, extent, perfection, priority or enforceability of, or asserting any defense, counterclaim or offset to the Waived Claims; provided, further, that up to \$50,000 shall be made available to any Statutory Committee for investigation costs in respect of the Waived Claims.

(b) *No Direct Obligation to Pay Professional Fees or Committee Expenses.* The DIP Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Case Professionals or any Committee Expenses incurred in connection with a Case or any Successor Case. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lenders in any way to pay compensation to or to reimburse expenses of any of the Case Professionals (including any Professional Fees or Committee Expenses), or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Nothing in this Interim Order or otherwise shall be construed to increase the Carveout if actual Professional Fees or Committee Expenses are higher in fact than the estimated fees and disbursements reflected in the DIP Budget.

(c) *Payment of Carveout After Carveout Trigger Notice.* Any payment or reimbursement made on or after the delivery of the Carveout Trigger Notice in respect of any Professional Fees (exclusive of the application of any retainers by any of the Case Professionals), and/or Committee Expenses shall permanently reduce the Carveout amount on a dollar-for-dollar basis.

20. Committee Investigation Rights. The Statutory Committee shall have until sixty (60) days from the appointment of the Statutory Committee (the “**Investigation Termination Date**”) to investigate the validity, perfect, and enforceability of the Waived Claims or to assert any other claims or cause of action with respect to the Waived Claims. If any Statutory Committee, subject to having obtained the requisite standing, determines that there may be a challenge to the Waived Claims by the Investigation Termination date, then upon three (3) days’ written notice to the Debtors and the DIP Lenders, such Statutory Committee hereafter vested with authority by this Court shall be permitted to file and prosecute an objection or claim related thereto (each, a “**Challenge**”), and shall have until the applicable Investigation Termination Date to file such objection or otherwise initiate an appropriate action on behalf of the Debtors’ estates setting forth the basis of any such challenge, claim or cause of action; provided, however, that nothing contained in the DIP Term Sheet, the DIP Loan Documents, or this Interim Order, shall be deemed to confer standing on any Statutory Committee or any other party in interest to commence a Challenge. If a Challenge is not filed on or before the Investigation Termination Date, then without further action by any party or any further order of this Court, the Debtors’ waiver of the Waived Claims shall be deemed to be immediately and irrevocable binding on the Debtors and the Debtors’ estates, the Statutory Committee and any other party-in-interest and any and all successors-in-interest thereto, shall thereafter be forever barred from bringing any Challenge. Notwithstanding anything to the contrary herein: (a) if any such Challenge is timely commenced, the Debtors’ waiver of the Waived Claims shall nonetheless remain binding and preclusive except to the extent of a successful Challenge and (b) DIP Lender reserve all of their rights to contest on any grounds any Challenge.

21. Prohibited Use of Cash Collateral, DIP Facility Proceeds, Carveout, Etc. The Debtors shall not, directly or indirectly, voluntarily purchase, redeem, defease, or prepay any principal, premium, interest or other amount payable in respect of any indebtedness prior to its scheduled maturity, other than the DIP Obligations and obligations authorized under the DIP Budget. Except for the Committee Investigation Rights, the DIP Facility, the Collateral and the Carveout may not be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) adverse to the interests of any DIP Lender or its rights and remedies under the DIP Term Sheet, the DIP Credit Documents, this Interim Order, or the Final Order, including, but not limited to, for the payment of any services rendered by the professionals retained by any Debtor or Statutory Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration or similar relief, (ii) invalidating, setting aside, avoiding or subordinating, in whole or in part, the DIP Obligations, (iii) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Waived Claims, (iv) for monetary, injunctive or other affirmative relief against any DIP Lender or the Collateral, (v) preventing, hindering or otherwise delaying the exercise by any DIP Lender of any rights and remedies under the DIP Term Sheet, the DIP Credit Documents, this Interim Order, the Final Order, or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Court, or otherwise) by any DIP Lender upon the Collateral, or (vi) to pursue litigation against any DIP Lender; (b) to make any distribution under a plan of reorganization or liquidation or any agreement regarding sale of a Debtor's assets in any Case; (c) to make any payment in settlement of any claim, action or proceeding before any court, arbitrator or

other governmental body without the prior written consent of the DIP Lenders unless otherwise ordered by this Court; (d) to pay any fees or similar amounts to any person or entity who has proposed or may propose to purchase interests in a Debtor without the prior written consent of the DIP Lenders; (e) objecting to, contesting, or interfering with, in any way, a DIP Lender's enforcement or realization upon any of the Collateral once a Termination Event has occurred, or seeking to prevent a DIP Lender from credit bidding in connection with any proposed plan of reorganization or liquidation, or any proposed transaction pursuant to Section 363 of the Bankruptcy Code; (f) using or seeking to use the DIP Facility in a manner inconsistent with the DIP Budget; (g) using or seeking to use any insurance proceeds (which constitute Collateral) without the consent of the DIP Lenders; (h) incurring any indebtedness, obligation or liability outside the ordinary course of business without the prior consent of the DIP Lenders, except as permitted under the DIP Credit Documents; (i) objecting to or challenging in any way the claims, liens, or interests held by or on behalf of a DIP Lender; (j) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, but not limited to, any actions under Chapter 5 of the Bankruptcy Code, against a DIP Lender; or (k) prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, or any other rights, remedies or interests of a DIP Lender.

22. Pleadings. The Debtors shall provide copies of all pleadings, orders and stipulations to the DIP Lenders no later than five (5) days before filing such documents with the Bankruptcy Court.

23. Payment of Compensation. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Case Professionals or shall affect the right

of the DIP Lenders to object to the allowance and payment of such fees and expenses. So long as no Termination Event has occurred and is continuing, the Debtors shall be permitted to pay fees and expenses allowed and payable by order (that has not been reversed, modified, vacated or stayed, unless the stay has been vacated) under Sections 330 and 331 of the Bankruptcy Code to the extent set forth in the DIP Budget.

24. Fees, Costs and Expenses. The Debtors are authorized and directed to pay all reasonable out-of-pocket fees, costs and expenses of a DIP Lender in connection with the DIP Term Sheet, the DIP Credit Documents, this Interim Order or the Final Order, whether or not the transactions contemplated by this Interim Order are consummated, including, but not limited to, legal, financial advisory, consulting, accounting, collateral examination, monitoring and appraisal fees, costs and expenses of a DIP Lender, and indemnification and reimbursement of such fees, costs and expenses shall be payable without need to comply with the U.S. Trustee fee guidelines.

25. No Third Party Rights. Except as explicitly provided for in this Interim Order, this Interim Order does not create any rights for the benefit of any third party, creditor (other than the DIP Lenders and Blue Bay), equityholder or any direct, indirect, or incidental beneficiary.

26. Section 506(c) Claims. Upon entry of the Final Order, no costs or expenses of administration which have been or may be incurred in any Case at any time shall be charged against the DIP Lenders or the Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Lenders, and no such consent shall be implied from any action, inaction, or acquiescence by any DIP Lender or its agent.

27. No Marshaling/Applications of Proceeds. Upon entry of the Final Order, the DIP Lenders shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Collateral.

28. Section 552(b). Subject to the entry of the Final Order, the “equities of the case” exception under Section 552(b) of the Bankruptcy Code shall not apply to the DIP Lenders with respect to proceeds, products, offspring or profits of any of the Collateral.

29. Discharge Waiver. The Debtors expressly stipulate that none of the DIP Obligations, the DIP Superpriority Claims or the DIP Liens shall be discharged by any order confirming any plan or reorganization or liquidation, or any plan of reorganization or liquidation, notwithstanding the provisions of Section 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been paid in full in cash on or before the effective date of a confirmed plan of reorganization or liquidation. The Debtors shall not propose or support any plan of reorganization or liquidation, sale of all or substantially all of any Debtor’s assets, or entry of any confirmation order or sale order that is not conditioned upon the payment in full in cash, on the effective date of such plan or closing of such sale, of all DIP Obligations. The DIP Superpriority Claims and the DIP Liens shall not be affected in any manner by the entry of an order confirming a plan of reorganization or liquidation in a Case or any Successor Case that is not conditioned upon the payment in full in cash, on the effective date of such plan or closing of such sale, of all DIP Obligations.

30. Rights Preserved. Notwithstanding anything in this Interim Order to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) any DIP Lender’s right to seek any other or supplemental relief in respect of a Debtor; (b) any of the rights of a DIP Lender under the Bankruptcy Code or other applicable law, including, but not limited to, the right to (i) request further modification of or relief from the automatic stay of Section 362 of the Bankruptcy Code, (ii) request dismissal of a Case or any Successor Case, conversion of a Case to a case under Chapter 7, or

appointment of a Chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans of reorganization or liquidation. Other than as expressly set forth in this Interim Order, any other rights, remedies, claims, causes of action, or privileges (whether legal, equitable, or otherwise) of each DIP Lender are reserved and preserved.

31. No Waiver by Failure to Seek Relief. The failure of a DIP Lender to seek relief or otherwise exercise its rights and remedies under the DIP Term Sheet, the DIP Credit Documents, this Interim Order, the Final Order, or applicable law shall not constitute a waiver of any of the rights or remedies hereunder, thereunder, or otherwise of a DIP Lender.

32. Binding Effect of Interim Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Lenders, all other creditors and equityholders of the Debtors, any Statutory Committee, any other committee appointed in the Case, all other parties in interest, and each of their successors and assigns, including any trustee, examiner or other fiduciary hereafter appointed in a Case, any Successor Case, or upon or after dismissal of the Case or any Successor Case.

33. No Modification of Interim Order. The Debtors irrevocably waive any right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Lenders (i) any modification, stay, vacatur or amendment to this Interim Order, or (ii) a priority claim for any administrative expense or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, but not limited to, any administrative expense of the kind specified in Sections 503(b), 507(a) or 507(b) of the Bankruptcy Code) equal or superior in priority or priority of payment to the DIP Superpriority

Claim, other than the Carveout; (b) without the prior written consent of the DIP Lenders, any order allowing use of the DIP Facility other than this Interim Order and the Final Order; and (c) without the prior written consent of the DIP Lenders, any lien on any of the Collateral equal or superior in priority or priority of payment to the DIP Liens. The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Interim Order that a DIP Lender reasonably believes is material or adverse to a DIP Lender without the prior written consent of the DIP Lenders, and no such consent shall be implied by any other action, inaction or acquiescence of a DIP Lender.

34. Interim Order Controls. In the event of any express inconsistency between the terms and conditions of the DIP Term Sheet, the Motion and this Interim Order, the provisions of this Interim Order shall govern and control.

35. Survival. The provisions of this Interim Order and any actions taken pursuant to this Interim Order shall survive entry of any order which may be entered: (a) confirming any plan of reorganization or liquidation in a Case, (b) converting a Case to a case under Chapter 7 of the Bankruptcy Code, (c) approving the sale of a Debtor's assets, (d) dismissing a Case or any Successor Case, or (e) pursuant to which this Court abstains from hearing a Case or any Successor Case; *provided, however*, that the DIP Superpriority Claims shall survive only to the extent permitted by applicable law. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the DIP Lenders pursuant to this Interim Order and/or the DIP Credit Documents shall continue in each Case, in any Successor Case, or following dismissal of any Case or any Successor Case, and shall maintain their priority as provided by this Interim Order until all DIP Obligations have been paid in full in cash.

36. Final Hearing. The Final Hearing to consider entry of the Final Order and approval of the DIP Facility on a final basis is scheduled for **February 14, 2013 at 10:00 a.m. (EST)** before The Honorable James M. Peck, United States Bankruptcy Judge, Courtroom 601, at the United States Bankruptcy Court for the Southern District of New York located at One Bowling Green, New York, New York 10004.

37. Notice of Final Hearing: Notice of the Final Hearing will be provided in accordance with this Interim Order. Within two (2) business days of the date this Interim Order is entered, the Debtors shall serve, by United States mail, first-class postage prepaid, a copy of this Interim Order upon: (i) the U.S. Trustee; (ii) the Internal Revenue Service; (iii) the parties included on the Debtors' list of 30 largest unsecured creditors; (iv) counsel to Atari, S.A.; (v) counsel to Blue Bay; (vi) counsel to the DIP Lenders; (vii) all parties in interest that have filed a request for notices pursuant to Bankruptcy Rule 2002, and (viii) counsel for any Statutory Committee.

38. Objection Deadline: Objections, responses or reservations of rights, if any, to the relief sought in the Motion or Final Order shall be in writing, shall set forth with particularity the grounds for such objection, response or reservation of rights, shall be filed with the Clerk of the Court, and shall be served upon (i) Hunton & Williams LLP, 200 Park Avenue, New York, New York 10166, Attn: Peter S. Partee, Esq. and Michael P. Richman, Esq., proposed counsel to the Debtors, (ii) the U.S. Trustee, (iii) counsel to any Statutory Committee, (iv) Bracewell & Giuliani LLP, 1251 Avenue of the Americas, New York, New York 10020, Attn: Robert G. Burns, Esq. and Goodwin Square, 225 Asylum Street, Suite 2600, Hartford, Connecticut, 06103, Attn: Kurt A. Mayr II, Esq., counsel to the DIP Lenders, and (v) counsel for Blue Bay, so that such objections,

responses or reservations of rights are filed with the Court and received by said parties on or before **February 11, 2013 at 5:00 p.m. (ET)**.

39. Effect of this Interim Order. This Interim Order shall take effect immediately, notwithstanding anything to the contrary under applicable law.

40. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order and the DIP Term Sheet according to their terms, including, without limitation, the DIP Lenders' rights and remedies contained in the DIP Term Sheet and granted by this Interim Order and the DIP Lenders' enforcement of such rights and remedies and, in accordance with this Interim Order and the DIP Term Sheet, foreclosure on the Collateral.

Dated: New York, New York
January 25, 2013

s/ James M. Peck
HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE