

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re

Levitz Home Furnishings, Inc., et al.,  
Debtors.

Chapter 11  
Case No. 05-45189 (BRL)  
Jointly Administered

**FINAL ORDER (1) APPROVING POST-PETITION FINANCING, (2) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (3) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO 11 U.S.C. §§ 363 AND 364, (4) AUTHORIZING DEBTORS TO REFINANCE AND REPAY IN FULL CERTAIN PRE-PETITION SECURED DEBT, AND (5) MODIFYING AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362**

THIS MATTER having come before the Court upon motion (the “**DIP Motion**”) by Levitz Furniture, LLC and Seaman Furniture Company, Inc. (each a “**Borrower**” and collectively, the “**Borrowers**”), Levitz Home Furnishings, Inc., (“**LHFI**”), Levitz Furniture Corporation (“**LFC**”), Levitz Furniture Company of the Midwest, Inc. (“**Levitz Midwest**”), Levitz Furniture Company of Washington, Inc. (“**Levitz Washington**”), Levitz Furniture Company of Delaware, Inc. (“**Levitz Delaware**”), John M. Smyth Corporation (“**Smyth**”), Levitz Shopping Service, Inc. (“**Levitz Shopping**”), Seaman Furniture Company of Union Square, Inc. (“**Union Square**”), Paralax Development Industries, Inc. (“**Paralax**”), RHM, Inc. (“**RHM**”), and Seaman Furniture Company of Pennsylvania, Inc. (“**Seaman Pennsylvania**”) (LHFI, LFC, Levitz Midwest, Levitz Washington, Levitz Delaware, Smyth, Levitz Shopping, Union Square, Paralax, RHM and Seaman Pennsylvania, each a “**Guarantor**” and collectively, the “**Guarantors**” and, together with the Borrowers, the “**Debtors**”), each as a debtor and

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debtor-in-possession in the above captioned chapter 11 cases (collectively, the ‘**Cases**’) seeking, among other things, entry of an order (this ‘**Final Order**’) authorizing the Debtors to:

(i) Obtain credit and incur debt, pursuant to sections 105, 363, 364(c) and 364(d) of chapter 11 of title 11 of the United States Code, as amended for cases unaffected by the amendments that became effective on October 17, 2005 (the ‘**Bankruptcy Code**’) and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the ‘**Bankruptcy Rules**’), up to the aggregate committed amount of \$80,000,000, in accordance with the terms and conditions set forth in the DIP Credit Agreement (as defined below) and secured by first priority, perfected, valid, enforceable and non-avoidable security interests in and liens (as defined in section 101(37) of the Bankruptcy Code, and referred to and defined in more detail herein as the ‘**DIP Liens**’) upon all of the Collateral (as defined below), and with priority, as to administrative expenses, as provided in section 364(c)(1) of the Bankruptcy Code;

(ii) (a) Establish on a final basis that financing arrangement (as amended, modified and in effect from time to time, the ‘**DIP Credit Facility**’) as provided for in that certain Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement dated as of October 12, 2005 (the ‘**Closing Date**’), attached hereto as Exhibit A (as amended, modified and in effect from time to time, and together with any and all other related documents and agreements entered into in connection with or related to the DIP Credit Facility, including, without limitation, any fee letters, the ‘**DIP Credit Agreement**’) by and among the Borrowers, the Guarantors, GECC Capital Markets Group, Inc., as Sole Lead Arranger and Book Runner, Prentice Capital Management, LP, as Tranche C Agent (the ‘**Tranche C Agent**’), and General Electric Capital Corporation, as Agent (the ‘**DIP Agent**’), for itself and the lenders party thereto (the ‘**DIP Lenders**’), and (b) incur the ‘**Obligations**’ under and as defined in the DIP Credit Agreement

(collectively, the “**DIP Obligations**”), which shall include, without limitation, the Cash Management Obligations (as defined below) and, as detailed in paragraph 20(o) of the Interim Order (as defined below), those certain early termination fees not waived;

(iii) Obtain final approval of the use of the proceeds of the DIP Credit Facility in accordance with the terms and conditions of the DIP Credit Agreement, subject to the rights of non-Debtor parties set forth in paragraph 7;

(iv) Grant, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, the DIP Agent (for the benefit of the DIP Lenders) first priority, perfected, valid, enforceable and non-avoidable security interests in and liens upon all of the Collateral, subject only to the Carve Out (as defined below), the Indenture Liens (as defined below) which have priority under the Intercreditor Agreement (as defined below) and the Prior Liens (as defined below), as contemplated by this Final Order, the DIP Credit Facility and the DIP Credit Agreement;

(v) Grant, pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Agent (for the benefit of the DIP Lenders) superpriority administrative claim status in respect of all DIP Obligations, subject only to the Carve Out, as provided herein;

(vi) Authorize the use of “cash collateral” as such term is defined in section 363 of the Bankruptcy Code (the “**Cash Collateral**”) in which the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent and the Senior Noteholders (each as defined below) have an interest;

(vii) Obtain final approval of the repayment in full of the Pre-Petition Debt (as defined below), and the simultaneous subordination of the Pre-Petition Credit Agreement Lenders’ liens, claims and encumbrances and the requirement of the Pre-Petition Credit Agreement Lenders to

release and terminate and/or assign such liens, claims and encumbrances on the date that this Final Order becomes final and non-appealable and the Challenge Period Termination Date (as defined below) has occurred, in accordance with the terms and conditions in this Final Order;

(viii) Grant, pursuant to sections 361 and 363 of the Bankruptcy Code, as adequate protection for priming of the liens of the Indenture Collateral Agent by the DIP Liens and for the use of Cash Collateral, in favor of the Indenture Collateral Agent (as defined below), for the benefit of the holders of the Senior Secured Notes (as defined below) (the “**Senior Noteholders**”), replacement liens on all of the Debtors’ currently owned or after-acquired property and proceeds thereof, junior only to the DIP Liens, the Credit Agreement Replacement Liens (as defined below) and the Pre-Petition Credit Agreement Junior Liens (as defined below) and subject to the Carve Out, which replacement liens will be subject to the terms and conditions contained in the Intercreditor Agreement (as defined below); and

(ix) Vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Credit Agreement and this Final Order.

The Court having considered the DIP Motion, the exhibits attached thereto, the DIP Credit Facility and the DIP Credit Agreement, and the evidence submitted at the interim hearing on the DIP Motion conducted on October 12, 2005 (the “**Interim Hearing**”); the Interim Order (as defined below) authorizing a portion of the DIP Facility entered by the Court on October 12, 2005; and the evidence submitted at the final hearing on the DIP Motion conducted on November 10, 2005 (the “**Final Hearing**”); in accordance with Rules 2002, 4001(b), (c), and (d), and 9014 of the Bankruptcy Rules, due and proper notice of the DIP Motion and the Final Hearing having been given; and it appearing that final approval of the DIP Motion is necessary

to avoid immediate and irreparable harm to the Debtors, is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and their equity holders, and is essential for the continued operation of the Debtors' businesses; and it further appearing that the Borrowers are unable to secure unsecured credit for money borrowed allowable as an administrative expense under Bankruptcy Code section 503(b)(1); and there is adequate protection of the interests of, or consent by, holders of liens on the property of the estates on which liens are to be granted; and all objections, if any, to the entry of this Final Order having been withdrawn, resolved or overruled by the Court; and upon all pleadings filed with this Court, all proceedings held before the Court, and the evidence adduced in connection therewith; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

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

A. Petition Date. On October 11, 2005 (the "**Petition Date**"), the Debtors each filed a voluntary petition under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (this "**Court**"). The Debtors' Cases have been administratively consolidated. The Debtors have continued in the management and operation of their business and property as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

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

C. Committee Formation. On October 20, 2005, the Office of the United States Trustee appointed an official committee of unsecured creditors (the “**Official Committee**”).

D. Notice. Notice of the DIP Motion, the Final Hearing and the relief requested in this Final Order, given by the Debtors to certain parties in interest, including (a) the parties having been given notice of the Interim Order; (b) any party which has filed prior to such date a request for notices with this Court; (c) the Office of the United States Trustee; (d) the Securities and Exchange Commission; (e) the Internal Revenue Service; (f) counsel to the Official Committee; (g) counsel to the *ad hoc* committee of Senior Noteholders (the “**Ad Hoc Committee**”); (h) any known holders of Prior Liens; and (i) all lessors of real property to the Debtors, including, without limitation, all landlords of the premises at which any of the Debtors’ inventory or other items of Collateral (as defined below) are located, constitutes due and sufficient notice thereof and complies with sections 102(1), 364(c) and 364(d) of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001(c) and (d).

E. Borrowers’ Acknowledgements and Agreements. After consultation with their attorneys and financial advisors, but without prejudice to the rights of parties in interest as set forth in paragraph 7 below, the Borrowers admit, stipulate, acknowledge and agree that (collectively, paragraphs E(i) through E(viii) hereof shall be referred to herein as the “**Borrowers’ Stipulations**”):

(i) Pre-Petition Credit Agreement. Prior to the commencement of the Cases, the Borrowers were borrowers under that certain Amended and Restated Credit Agreement dated as of May 20, 2005, as amended (together with all related documents and agreements, the “**Pre-Petition Credit Agreement**”), by and among the Borrowers, the Guarantors, the lenders and other financial institutions party thereto (each a “**Pre-Petition Credit Agreement Lender**” and, collectively, the “**Pre-Petition Credit Agreement Lenders**”), General Electric Capital Corporation as agent (in such capacity, the “**Pre-Petition Agent**” and, in its individual capacity, “**GE Capital**”) for the Pre-Petition Credit Agreement Lenders, Fleet Retail Group, LLC (successor in interest to Fleet Retail Group,

Inc.) as documentation agent for the Pre-Petition Credit Agreement Lenders, and Wells Fargo Retail Finance, LLC, as syndication agent for the Pre-Petition Credit Agreement Lenders.

(ii) Pre-Petition Debt Amount. As of the Petition Date, the Borrowers were indebted to the Pre-Petition Agent and the Pre-Petition Credit Agreement Lenders in the approximate amount of \$57,000,000 in revolving loans, term loans, advances and/or other financial accommodations provided to or for the benefit of the Borrowers (the “**Pre-Petition Revolving Loans**”), including, without limitation, approximately \$20,700,000 in letters of credit (the “**Pre-Petition Letters of Credit**” and together with the Pre-Petition Revolving Loans and any and all unpaid principal, accrued and unpaid interest, any early termination fees which have not been waived, unpaid fees and attorneys’ fees, treasury, cash management and derivative obligations, and other charges, amounts and costs owing, accrued, accruing or chargeable in respect of any of the Borrowers’ obligations pursuant to the Pre-Petition Credit Agreement, the “**Pre-Petition Debt**”).

(iii) Pre-Petition Senior Secured Indenture. Prior to the commencement of the Cases, LHFH entered into that certain Indenture dated as of November 9, 2004 (as amended or supplemented, the “**Senior Secured Indenture**”) among LHFH, guarantors named therein (the “**Senior Secured Indenture Subsidiary Guarantors**”) and U.S. Bank National Association (successor in interest to Wells Fargo Bank, National Association) as trustee and collateral agent (in such capacity, the “**Indenture Collateral Agent**”) pursuant to which LHFH issued 12% Senior Secured Class A Notes due 2011 and 15% Senior Secured Class B Notes due 2011 (collectively, the “**Senior Secured Notes**”).

(iv) Pre-Petition Note Obligations. As of the Petition Date, the outstanding aggregate principal amount of the Senior Secured Notes was \$130,000,000 (together with any and all unpaid principal, accrued and unpaid interest, make-whole premium, any early termination fees which have not been waived, unpaid fees and attorneys’ fees, and other charges, amounts and costs owing, accrued, accruing or chargeable in respect of any of the Borrowers’ obligations pursuant to the Senior Secured Indenture or Senior Secured Note Purchase Agreement (as defined below), the “**Pre-Petition Note Obligations**” and, together with the Pre-Petition Debt, the “**Pre-Petition Obligations**”).

(v) Pre-Petition Security Agreement and Intercreditor Agreement. The Borrowers, the Guarantors, Seaman Furniture Company of Union Square, Inc., Paralax Development Industries, Inc., RHM, Inc., Seaman Furniture Company of Pennsylvania, Inc. and the Pre-Petition Agent were party to that certain Security Agreement dated as of November 9, 2004 (the “**Pre-Petition Security Agreement**”) pursuant to which the Debtors granted the Pre-Petition Credit Liens (as defined below) in the Pre-Petition Credit Collateral (as defined below) to the Pre-Petition Agent for the benefit of the Pre-Petition Credit Agreement Lenders to secure the Pre-Petition Debt. The Pre-Petition Agent and Indenture Collateral

Agent are party to that certain Amended and Restated Intercreditor Agreement, dated as of May 20, 2005 (as amended, the “**Intercreditor Agreement**”), pursuant to which, *inter alia*, the priority of liens among the parties thereto was established.

(vi) Pre-Petition Senior Notes Security Agreement (in respect of the Pre-Petition Note Obligations). LHFI, the Senior Secured Indenture Subsidiary Guarantors, and the Indenture Collateral Agent are party to that certain Security Agreement, dated as of November 9, 2004, that certain Trademark Security Agreement (as defined in the Pre-Petition Senior Note Security Agreement) and certain other collateral agreements (collectively, the “**Pre-Petition Senior Note Security Agreement**”) pursuant to which the Debtors granted liens and security interests (the “**Indenture Liens**”) to the Indenture Collateral Agent for benefit of the Secured Parties (as defined in the Pre-Petition Senior Note Security Agreement) in and upon substantially all of the Debtors’ assets other than leasehold interests in real property (the “**Pre-Petition Indenture Collateral**”). The Pre-Petition Agent and the Indenture Collateral Agent are party to the Intercreditor Agreement, pursuant to which the priority of liens among them was established.

(vii) Pre-Petition Credit Liens. (a) As of the Petition Date, (i) the Pre-Petition Credit Liens (as defined below) are valid, binding, enforceable, and perfected first-priority liens in the Pre-Petition Credit Collateral subject only to the Prior Liens (as defined below) and are not subject to avoidance, recharacterization or subordination (except in accordance with the terms and conditions contained in the Intercreditor Agreement) pursuant to the Bankruptcy Code or applicable non-bankruptcy law, (ii) the Pre-Petition Debt constitutes legal, valid and binding obligations of the Debtors, enforceable in accordance with the terms thereof (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), no offsets, defenses or counterclaims to any of the Pre-Petition Debt exists, and no portion of the Pre-Petition Debt is subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, (iii) the Pre-Petition Debt constitutes allowed secured claims, (iv) the Indenture Liens are valid, binding, enforceable, and perfected second-priority liens in property of the Debtors that constitutes Pre-Petition Credit Collateral and valid, binding, enforceable, and perfected first-priority liens in the remainder of the Pre-Petition Indenture Collateral, subject only to the Prior Liens (as defined below), and are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (other than in accordance with the terms and conditions contained in the Intercreditor Agreement) (v) the Pre-Petition Note Obligations constitute legal, valid and binding obligations of the Debtors, enforceable in accordance with the terms thereof (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), no offsets, defenses or counterclaims to any of the Pre-Petition Note Obligations exist, and no portion of the Pre-Petition Note Obligations is subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (vi) the Pre-

Petition Note Obligations constitute allowed secured claims, subject to a determination, under section 506(a) of the Bankruptcy Code, of the extent of the value of the Pre-Petition Indenture Collateral in which the Indenture Collateral Agent holds Indenture Liens, and allowed unsecured claims for any deficiency thereof, and (b) on the date that the Interim Order was entered, the Debtors waived, discharged and released the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent and the Senior Noteholders, together with their affiliates, agents, attorneys, officers, directors and employees, of any right the Debtors or their estates may have (x) to challenge or object to any of the Pre-Petition Obligations, (y) to challenge or object to the security for the Pre-Petition Obligations, and (z) to bring or pursue any and all claims, objections, challenges, causes of action and/or choses in action arising out of, based upon or related to the Pre-Petition Credit Agreement, the Senior Secured Indenture, or otherwise.

(viii) Pre-Petition Credit Collateral. To secure the Pre-Petition Debt, the Borrowers granted, assigned and transferred security interests and liens (collectively referred to herein as the “**Pre-Petition Credit Liens**”) to the Pre-Petition Agent, for the benefit of the Pre-Petition Credit Agreement Lenders, as follows: a perfected first-priority security interest in and lien upon all the Borrowers’ right, title and interest in and to all Accounts, Inventory, Investment Property (other than the capital stock of the Debtors), Deposit Accounts (including all Blocked Accounts, Concentration Accounts, Disbursement Accounts, and all other bank accounts, lockboxes and all deposits therein) including all books and records relating to any of the foregoing, the Household Management Agreement and all Proceeds, customer prepayments or deposits, insurance claims and other rights to payments not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing (each as defined in the Pre-Petition Security Agreement) (collectively, the “**Pre-Petition Credit Collateral**,” and, together with the Pre-Petition Indenture Collateral, the “**Pre-Petition Collateral**”), with priority over all other liens except for those certain liens otherwise permitted by the Pre-Petition Credit Agreement (to the extent any such liens are valid, properly perfected, unavoidable, and senior, they are referred to as “**Prior Liens**”).<sup>1</sup>

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<sup>1</sup> Nothing herein shall constitute a finding or ruling by this Court that any of the Prior Liens are valid, senior, perfected and unavoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtors, the DIP Agent, the DIP Lenders, the Indenture Collateral Agent, the Senior Noteholders and the Official Committee to challenge the validity, priority, perfection and extent of any such lien and or security interest. For the avoidance of doubt, subject to the liens of the DIP Agent, as provided for herein, the Pre-Petition Credit Liens have priority over and above all other liens in the Pre-Petition Credit Collateral except for those liens which were valid, senior, perfected and otherwise unavoidable as of the Petition Date.

F. Findings Regarding the Post-Petition Financing.

(i) Need for Post-Petition Financing and Use of Cash Collateral. An immediate need exists for the Borrowers to obtain funds from the DIP Credit Facility and to use Cash Collateral in order to continue operations and to administer and preserve the value of their estates. The ability of the Borrowers to finance their operations requires the availability of working capital from the DIP Credit Facility and the use of Cash Collateral, the absence of which would immediately and irreparably harm the Borrowers, their estates, their creditors and equity holders and the possibility for a successful reorganization.

(ii) No Credit Available on More Favorable Terms. The Borrowers have been unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Borrowers also are unable to obtain secured credit, allowable only under Bankruptcy Code sections 364(c)(2), 364(c)(3), and 364(d) on more favorable terms and conditions than those provided in the DIP Credit Agreement and this Final Order. The Borrowers are unable to obtain credit for borrowed money without the Borrowers granting to the DIP Agent (i) liens on the assets of the Borrowers pursuant to Bankruptcy Code sections 364(c)(2), 364(c)(3) and 364(d), and (ii) superpriority administrative expense claim status pursuant to Bankruptcy Code sections 503(b) and 507(b) as provided in section 364(c)(1) of the Bankruptcy Code (such superpriority administrative expense claim having priority as provided by this Final Order).

G. The Interim Order. On October 12, 2005, the Court entered the *Interim Order* (1) *Approving Post-Petition Financing*, (2) *Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363*, (3) *Granting Liens and Providing Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 363 and 364*, (4) *Authorizing Debtors to Refinance and Repay in Full Certain Pre-Petition Secured Debt*, (5) *Modifying Automatic Stay Pursuant to 11 U.S.C. § 362 and* (6) *Scheduling a Final Hearing* (the “**Interim Order**”) (Docket No. 51). Pursuant to the Interim Order and Rule 4001 of the Bankruptcy Rules, the Debtors were authorized, empowered and directed to execute the DIP Credit Agreement and incur secured borrowings from the DIP Agent and the DIP Lenders pursuant to the terms of the DIP Credit Agreement on an interim basis pending the Final Hearing on the DIP Motion. In accordance with the provisions of the Interim Order, the Debtors executed the DIP Credit Agreement, entered into the DIP Credit Facility with the DIP Agent and the DIP Lenders, and used a portion of the proceeds of the DIP

Credit Facility to pay the Pre-Petition Debt and certain fees and other expenses described in the DIP Credit Agreement, in each case in accordance with the terms and conditions of the Interim Order.

H. Refinancing and Repayment of Pre-Petition Debt; Use of Proceeds of the DIP Credit Facility. Proceeds of the DIP Credit Facility have been used for, in each case in a manner consistent with the terms and conditions contained in the DIP Credit Agreement, (a) the refinancing and repayment in full of the Pre-Petition Debt on the Closing Date (as defined in the DIP Credit Agreement), other than certain early termination fees asserted by UBS and Wells Fargo Retail Finance (the “**Non-Waived Termination Fees**”), (b) working capital and letters of credit, (c) other general corporate purposes of the Borrowers, including, without limitation, payment of prepetition sales tax to the extent set forth in the Budget (as defined below), (d) payment of costs of administration of the Cases, (e) payment of fees and amounts due under the DIP Credit Agreement, and (f) payment of such other prepetition obligations as the Court shall allow and in accordance with the Budget. Payment of the Pre-Petition Debt, as authorized by the Interim Order, was necessary as the Pre-Petition Agent and the Pre-Petition Credit Agreement Lenders would not otherwise consent to the priming of the Pre-Petition Credit Liens. Such payment was without prejudice to (i) the Borrowers or their estates, because payment of such amounts is subject to the rights of parties-in-interest under paragraph 7 below or (ii) the rights of any Pre-Petition Credit Agreement Lender to demand the payment of early termination fees not waived. Only one lender that is a Pre-Petition Credit Agreement Lender, GE Capital, has committed to fund the DIP Credit Facility.

I. Pre-Petition Credit Agreement Lenders’ Consent to DIP Liens. The Pre-Petition Credit Agreement Lenders have consented and agreed that, subject to the terms and conditions

contained herein, any and all pre-petition or post-petition liens and security interests (including, without limitation, any adequate protection replacement liens at any time granted to the Pre-Petition Credit Agreement Lenders by this Court) shall (a) only secure any Pre-Petition Debt that is (1) at any time repaid with the proceeds of the loans and advances made by the DIP Lenders (including, without limitation, at closing of the DIP Credit Agreement in accordance with this Final Order) prior to this Final Order becoming final and non-appealable and the occurrence of the Challenge Period Termination Date (as defined below), and (2) subsequently reinstated after the full payment thereof because such payment (or any portion thereof) is required to be returned or repaid to the Debtors or the DIP Lenders; and (b) be junior and subordinate in all respects to the DIP Liens granted under this Final Order and the DIP Credit Agreement (such junior liens and security interests of the Pre-Petition Credit Agreement Lenders are hereinafter referred to as the **“Pre-Petition Credit Agreement Junior Liens”**). Such reinstated Pre-Petition Debt described in clauses (a)(1) and (2) above in this paragraph is hereinafter referred to as the **“Reinstated Pre-Petition Debt”** and shall be junior and subordinate in all respect to the DIP Obligations. The Pre-Petition Credit Agreement Lenders have further agreed that, (a) until such time as all of the DIP Obligations are paid indefeasibly in full in cash (**“Indefeasible Payment”**) in accordance with the DIP Credit Agreement and this Final Order, the Pre-Petition Credit Agreement Lenders shall have no right to seek or exercise any enforcement rights or remedies in connection with the Reinstated Pre-Petition Debt or with respect to the Pre-Petition Credit Agreement Junior Liens (other than the rights of UBS and Wells Fargo Retail Finance to seek payments of the Non-Waived Termination Fees under paragraph 24(p) of this Final Order), including, without limitation, in respect of the occurrence or continuance of any Event of Default (as defined below); (b) the Pre-Petition Credit Agreement Lenders shall be deemed to have

consented to any sale or disposition of all or any portion of the Collateral (as defined below) approved by, arranged for or by the DIP Agent and shall terminate and release upon any such sale or disposition all of its Pre-Petition Credit Agreement Junior Liens on and security interests in such Collateral; (c) the Pre-Petition Credit Agreement Lenders shall deliver or cause to be delivered, at the Debtors' costs and expense (for which the Pre-Petition Credit Agreement Lenders shall be reimbursed upon submission to the Debtors of invoices or billing statements), any termination statements, releases and/or assignments (to the extent provided for in paragraph 2(e) herein) in favor of the DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of the Pre-Petition Credit Agreement Junior Liens on any portion of the Collateral subject to any sale or disposition approved by, arranged for or by the DIP Agent; and (d) upon (i) this Final Order becoming a final and non-appealable order and (ii) the occurrence of the Challenge Period Termination Date, all Pre-Petition Credit Agreement Junior Liens in the Collateral (except to the extent that they secure Non-Waived Termination Fees) shall terminate, be released and/or deemed assigned to the DIP Agent in accordance with paragraph 2(e) hereof (automatically and without further action of the parties), and the Pre-Petition Credit Agreement Lenders shall execute and deliver such agreements to evidence and effectuate such termination, release or assignment as the DIP Agent may request, and the DIP Agent shall be authorized to file on behalf of the Pre-Petition Credit Agreement Lenders such UCC termination statements or such other filings as may be applicable to the extent required under the Uniform Commercial Code of the applicable jurisdiction.

J. Noteholder Adequate Protection. As a result of the grant of the DIP Liens to the DIP Lenders and the use of Cash Collateral authorized herein, the Indenture Collateral Agent and the Senior Noteholders may be entitled to receive adequate protection pursuant to sections 361,

362, 363 and 364 of the Bankruptcy Code for any diminution in the value of their interest in the Pre-Petition Indenture Collateral (including the Cash Collateral) resulting from the Borrowers' use, sale or lease of the Pre-Petition Indenture Collateral (including the Cash Collateral) during the Cases. As adequate protection for the use of Cash Collateral and the grant of the DIP Liens to the DIP Lenders, the Indenture Collateral Agent, for the benefit of the Senior Noteholders, will receive the Noteholder Replacement Liens and the Noteholder Superpriority Claim (each as defined below). This grant is without prejudice to the rights of the Indenture Collateral Agent and the Senior Noteholders to request additional adequate protection for the use, sale or lease of the Pre-Petition Indenture Collateral that does not constitute Pre-Petition Credit Collateral; *provided, however*, that any such request for additional adequate protection shall be subject to the rights of the Debtors, the DIP Agent, the Tranche C Agent and the Official Committee to oppose such request.

K. Waivers. In light of their agreement to subordinate their liens and superpriority claims to the extent provided in this Final Order and the DIP Credit Agreement, the DIP Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent and the Senior Noteholders (a) are each entitled to a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code, and (b) subject to paragraph 10 of this Final Order, are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

L. Extension of Financing. The DIP Lenders have indicated a willingness to provide financing to the Borrowers in accordance with the DIP Credit Agreement and subject to (i) the entry of the Interim Order and this Final Order, (ii) approval of the terms and conditions of the DIP Credit Facility and the DIP Credit Agreement, and (iii) findings by the Court that such

financing is essential to the Debtors' estates, that the DIP Lenders are good faith financiers, and that the DIP Agent's and the DIP Lenders' claims, superpriority claims, security interests and liens and other protections granted pursuant to this Final Order and the DIP Credit Agreement will not be affected by any subsequent reversal, modification, vacatur or amendment of the Interim Order or this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

M. Intercreditor Agreement. The Intercreditor Agreement provides that the Pre-Petition Debt may be amended, restated, renewed, refunded, replaced (whether upon or after termination or otherwise), refinanced, supplemented, or otherwise modified in whole or in part from time to time. Proceeds of the DIP Credit Facility have been used in part to refinance the Pre-Petition Debt on the Closing Date, as permitted under and in accordance with the terms of the Intercreditor Agreement and in each case in accordance with the terms and conditions of the Interim Order. From and after the Closing Date and the repayment of the Pre-Petition Debt, the DIP Agent is, and is deemed to be, the assignee and successor-in-interest to the Priority Lien Collateral Agent (as such term is defined in the Intercreditor Agreement) for all purposes of the Intercreditor Agreement without the necessity of any further action by the Debtors or any other party, and the DIP Agent is and shall be at all times entitled to all rights and benefits afforded the Priority Lien Collateral Agent by and under the Intercreditor Agreement.

N. Business Judgment and Good Faith Pursuant to Section 364(e). The terms and conditions of the DIP Credit Facility and the DIP Credit Agreement, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available 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 Credit Agreement and the

use of Cash Collateral were both negotiated in good faith (as the term “good faith” is used in section 364(e) of the Bankruptcy Code) and at arms’ length among the Debtors, the DIP Agent, the DIP Lenders, the Pre-Petition Agent, and the Pre-Petition Credit Agreement Lenders. Use of Cash Collateral and credit extended or to be extended under the DIP Credit Agreement has been or will be so extended in good faith, and for valid business purposes and uses, the consequence of which is that the DIP Agent and the DIP Lenders are entitled to the protection and benefits of section 364(e) of the Bankruptcy Code.

O. Entry of Final Order. For the reasons stated above, the Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rule 4001(c)(2).

NOW, THEREFORE, on the DIP Motion of the Debtors and the record before the Court with respect to the DIP Motion, and with the consent of the Debtors, the Pre-Petition Agent, the Pre-Petition Lenders, the Ad Hoc Committee, the DIP Agent and the DIP Lenders to the form and entry of this Final Order, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. Motion Granted. The DIP Motion is granted subject to the terms and conditions set forth in this Final Order.

2. DIP Credit Agreement Authorization.

(a) Approval of DIP Credit Agreement. The terms and the conditions of the DIP Credit Facility and the DIP Credit Agreement are hereby approved in all respects and shall be deemed to be incorporated into the terms and conditions of this Final Order. The Debtors are expressly and immediately authorized, empowered and directed to execute and deliver the DIP Credit Agreement and to incur and to perform the DIP Obligations, both to the extent not implemented pursuant to the Interim Order, in accordance with, and subject to, the terms of this

Final Order and the DIP Credit Agreement, and to deliver all instruments and documents which may be required or necessary for the performance by the Borrowers under the DIP Credit Agreement and the creation and perfection of the DIP Liens described in and provided for by this Final Order and the DIP Credit Agreement, in each case, to the extent not implemented pursuant to the Interim Order. The Debtors are hereby authorized and directed to pay the principal, interest, fees, expenses and other amounts described in the DIP Credit Agreement as such become due, including, without limitation, agents' fees, facility fees, arranger fees, commitment fees, closing fees, letter of credit fees, and reasonable attorneys', financial advisors' and accountants' fees and disbursements as provided for in the DIP Credit Agreement and the DIP Credit Facility without further approval of this Court; *provided, however*, that unresolved disputes as to the reasonableness of any professional fees and expenses may be determined by the Court. The DIP Credit Agreement evidences valid and binding obligations of the Borrowers, which obligations shall be enforceable against the Borrowers, their estates and their creditors, in accordance with their terms.

(b) Authorization to Borrow. Consistent with the terms of this Final Order, the DIP Credit Agreement and the Budget, the Borrowers are hereby authorized through the Termination Date (as defined below) to request extensions of credit up to a total committed amount of \$80,000,000 composed of three (3) facilities (the commitments for which may in aggregate principal amount exceed \$80,000,000, but under which availability will never exceed \$80,000,000), including (1) a senior revolving credit facility not to exceed \$45,000,000 in aggregate principal amount (the “**DIP Revolving Loans**”), which includes (i) a sublimit for letters of credit up to \$30,000,000 (the “**DIP Letters of Credit**”) and (ii) a sublimit for swingline loans up to \$10,000,000 to be provided by the DIP Agent and the DIP Lenders (the “**DIP**

**Swingline Loans**”), (2) a senior Tranche B term loan not to exceed \$20,000,000 in aggregate principal amount (the “**DIP Term Loan**”), and (3) a senior Tranche C facility not to exceed \$25,000,000 in aggregate principal amount (collectively with the DIP Term Loan, the DIP Swingline Loans, the DIP Letters of Credit and the DIP Revolving Loans, the “**DIP Loan**”).

(c) Application of DIP Proceeds. The Borrowers are authorized to borrow and apply the DIP Loan under the DIP Credit Facility solely for (1) the refinancing and repayment in full of the Pre-Petition Debt, to the extent not implemented pursuant to the Interim Order, other than the Non-Waived Termination Fees, (2) working capital and letters of credit, (3) other general corporate purposes of the Borrowers, including, without limitation, payment of prepetition sales tax to the extent set forth in the Budget, (4) payment of costs of administration of the Cases, (5) payment of fees and amounts due under the DIP Credit Agreement, and (6) payment of such prepetition obligations as the Court shall allow and in accordance with the Budget, in each case in a manner consistent with the terms and conditions contained in the DIP Credit Agreement. If payment of any portion of the Non-Waived Termination Fees is authorized by the Court in accordance with paragraph 24(p) of this Final Order, the Borrowers shall be authorized to apply the DIP Loan towards any allowed Non-Waived Termination Fees.

(d) Conditions Precedent. The DIP Lenders and the DIP Agent shall have no obligation to make any extension of credit pursuant to the DIP Credit Agreement unless all of the conditions precedent to the making of such extension of credit under the DIP Credit Agreement are satisfied in full. From and after the Petition Date, the Debtors shall use the proceeds of the extensions of credit under the DIP Credit Agreement only for the purposes specifically set forth in the DIP Credit Agreement and this Final Order and in compliance with the Budget.

(e) Post-Petition Liens. (1) To secure the prompt payment and performance of any and all DIP Obligations under the DIP Credit Agreement, the DIP Credit Facility and/or this Final Order, the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, first priority, continuing, valid, binding, enforceable, non-avoidable and automatically perfected post-petition security interests in and liens (collectively, the “**DIP Liens**”), senior and superior in priority to all other secured and unsecured creditors of the Debtors’ estates (but subject to the Carve Out and liens and claims set forth in paragraphs 2(f) and 2(i) of this Final Order), upon and to all presently owned and hereafter acquired assets and real and personal property of the Borrowers and the Guarantors, including, without limitation, the following:

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) all Documents;
- (iv) all General Intangibles (including payment intangibles and software);
- (v) all Goods (including Inventory, Equipment and Fixtures);
- (vi) all Instruments;
- (vii) all Investment Property;
- (viii) all Deposit Accounts and all other bank accounts and all deposits therein (including, without limitation, cash deposits for future shipment of goods);
- (ix) all money, cash or cash equivalents;
- (x) all Supporting Obligations and Letter of Credit Rights;
- (xi) all (a) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity

accounts) and (b) monies, credit balances, deposits and other property of Borrowers and Guarantors now or hereafter held or received by or in transit to the DIP Agent, any DIP Lender or their respective affiliates or at any other depository or other institution from or for the account of Borrowers or Guarantors, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

(xii) all Records;

(xiii) all Commercial Tort Claims;

(xiv) all real property (owned and leased) including Real Estate and Leasehold Properties; *provided, however,* that with respect to any Leasehold Property that is subject to a lease or underlying mortgage that expressly prohibits the granting of liens in such Leasehold Property, the DIP Lenders' liens shall be limited to the proceeds from any disposition of such Leasehold Property;

(xv) the Borrowers' rights under section 506(c) of the Bankruptcy Code and the proceeds thereof;

(xvi) any unencumbered assets of the Borrowers;

(xvii) all capital stock and other equity interests in the Borrowers and their subsidiaries;

(xviii) to the extent not otherwise described above, all Receivables and all present and future claims, rights, interests, assets and properties recovered by or on behalf of Borrowers or Guarantors; and

(xix) to the extent not otherwise included, all Proceeds, insurance claims and other rights to payments not otherwise included in the foregoing and products of the foregoing

and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing.

(collectively, (i) through and including (xx), the “**DIP Collateral**”<sup>2</sup> and, together with the Pre-Petition Collateral, the “**Collateral**”). Notwithstanding anything herein to the contrary, the DIP Collateral shall not include (1) any proceeds of avoidance actions under chapter 5 of the Bankruptcy Code, or (2) any assets subject to a statutory trust under applicable state lien law.

(2) In no event shall (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors’ estates under section 551 of the Bankruptcy Code, and (ii) any person or entity who pays (or through the extension of credit to any Debtor, causes to be paid) any of the DIP Obligations, be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or security interests granted in favor of, or conferred upon the DIP Agent and the DIP Lenders by the terms of the DIP Credit Agreement or this Final Order, until Indefeasible Payment of all of the DIP Obligations in accordance with the DIP Credit Agreement and this Final Order. Upon (x) this Final Order becoming final and non-appealable and (y) the occurrence of the Challenge Period Termination Date, all Pre-Petition Credit Liens in favor of the Pre-Petition Agent and the Pre-Petition Credit Agreement Lenders in the Pre-Petition Credit Collateral shall be deemed to be assigned (and not terminated or released to the extent so assigned) to the DIP Agent and the DIP Lenders as additional collateral security for all DIP Obligations, and such assignment shall be in addition to, and shall not limit, prejudice or impair in any way any of the claims or liens of the DIP Agent and the DIP Lenders in the Collateral granted pursuant to the DIP Credit Agreement and this Final Order. In no event shall the DIP

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<sup>2</sup> All defined terms used in the description of DIP Collateral as set forth in paragraph 2(e) shall have the meanings ascribed thereto in the DIP Credit Agreement. All terms not specifically defined in the DIP Credit Agreement and used in paragraph 2(e) shall have the meanings assigned to such term in Article 8

Lenders have any liability in connection with such assignment or the pre-petition liens so assigned.

(f) DIP Lien Priority. The DIP Liens (1) are created pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, (2) are first priority, continuing, valid, binding, enforceable, non-avoidable and automatically perfected, and are senior and superior to any security, mortgage, or collateral interest or lien or claim to any of the DIP Collateral, including, without limitation, the Noteholder Replacement Liens (as defined below), the Credit Agreement Replacement Liens (as defined below) and the Pre-Petition Credit Agreement Junior Liens, subject only to the Carve Out, the Prior Liens, the Indenture Liens of the Indenture Collateral Agent and the Senior Noteholders in any Pre-Petition Indenture Collateral that does not constitute Pre-Petition Credit Collateral, and the liens granted to Bank of America, N.A. (“**BofA**”) pursuant to paragraph 2(i) of this Final Order, and (3) shall secure all DIP Obligations. The DIP Liens shall not be made further subject to, or *pari passu* with, any lien or security interest by any court order heretofore or hereafter entered in the Cases; and shall be valid and enforceable against any trustee appointed in the Cases, in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases or in any other proceedings related to any of the foregoing (any “**Successor Cases**”), or upon the dismissal of any of the Cases. The DIP Liens shall not be subject to sections 506(c), 510, 549, 550 or 551 of the Bankruptcy Code.

(g) Enforceable Obligations. The DIP Credit Agreement shall constitute and evidence the valid and binding obligations of the Debtors, which obligations shall be enforceable against the Debtors, their estates and their creditors, in accordance with their terms.

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or 9 of the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of New York.

(h) Superpriority Administrative Claim Status. All DIP Obligations shall be an allowed superpriority administrative expense claim (the “**DIP Superpriority Claim**” and, together with the DIP Liens, the “**DIP Protections**”) with priority (except as otherwise provided in paragraph 8 below) in any Case under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330 of the Bankruptcy Code (except as otherwise provided in paragraph 8 below), 331, 364(c)(1), 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726(b), 1113, and 1114. Except for the Carve Out, no costs or expenses of administration including, without limitation, professional fees allowed and payable under Bankruptcy Code sections 328, 330, and 331, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims to the DIP Collateral are, or will be, senior to, prior to, or on a parity (except as provided in paragraph 2(i) of this Final Order) with the DIP Protections or the DIP Obligations, or with any other claims of the DIP Agent or the DIP Lenders arising hereunder.

(i) Cash Management Service. (1) In consideration for its provision of cash management services and treasury services (collectively, the “**Cash Management Obligations**”) in connection with the Pre-Petition Revolving Loans, BofA is granted and shall share a pro rata interest in the Pre-Petition Credit Agreement Junior Liens, the Credit Agreement Replacement Liens and the Pre-Petition Superpriority Claim (as defined below) on a *pari passu* basis with those certain lenders under the Pre-Petition Revolving Loans, and (2) in consideration for its provision of Cash Management Obligations in connection with the DIP Revolving Loans, BofA

is hereby granted a DIP Lien in the DIP Collateral to secure the Cash Management Obligations and shall have an allowed DIP Superpriority Claim for all Cash Management Obligations, each of which shall be on a *pari passu* basis with those certain lenders under the DIP Revolving Loans.

3. Repayment of Pre-Petition Debt; Adequate Protection.

(a) (1) The repayment in full of the Pre-Petition Debt (other than early termination fees not waived) in accordance with the provisions of the Interim Order and this Final Order is hereby ratified and reaffirmed, and (2) as adequate protection for the DIP Liens granted to the DIP Lenders in accordance with the terms and conditions contained in the DIP Credit Agreement, the Interim Order and this Final Order, and the use of Cash Collateral as authorized herein, to the extent that the Pre-Petition Agent's and the Pre-Petition Credit Agreement Lenders' interest in the Pre-Petition Credit Collateral, including the Cash Collateral, is diminished by the use, sale or lease thereof, including the use of Cash Collateral, the Pre-Petition Agent, for the benefit of the Pre-Petition Credit Agreement Lenders, is hereby granted (i) additional and replacement security interests and liens in and upon the Collateral (the **'Credit Agreement Replacement Liens'**) to secure any unpaid Pre-Petition Debt, (ii) an allowed superpriority administrative expense claim with respect to any unpaid Pre-Petition Debt (the **'Pre-Petition Superpriority Claim'**) with priority (except with respect to the DIP Protections and as otherwise provided in paragraph 8 below) in any Case under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330 of the Bankruptcy Code (except

as otherwise provided in paragraphs 8 below), 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726(b), 1113, and 1114, and (iii) the Pre-Petition Credit Agreement Junior Liens to secure any Reinstated Pre-Petition Debt.

(b) The adequate protection granted to the Pre-Petition Credit Agreement Lenders under paragraph 3(a) is expressly conditioned upon the following: (1) the Reinstated Pre-Petition Debt shall be junior and subordinate in right of payment to all DIP Obligations; (2) the Credit Agreement Replacement Liens and the Pre-Petition Credit Agreement Junior Liens shall be junior and subordinate in all respects to the DIP Lenders' liens and security interests upon and in the Collateral; (3) until Indefeasible Payment of all of the DIP Obligations in accordance with the DIP Credit Agreement and this Final Order, the Pre-Petition Credit Agreement Lenders shall have no right to seek or exercise any enforcement rights or remedies in connection with the Reinstated Pre-Petition Debt, the Credit Agreement Replacement Liens or the Pre-Petition Credit Agreement Junior Liens, including, without limitation, in respect of the occurrence or continuance of any Event of Default (as hereinafter defined); (4) the Pre-Petition Credit Agreement Lenders shall be deemed to have consented to any sale or disposition of Collateral approved, arranged for or by the DIP Agent, and shall terminate and release upon any such sale or disposition all of its liens on and security interests in such Collateral; (5) the Pre-Petition Credit Agreement Lenders shall deliver or cause to be delivered, at the Debtors' costs and expense (for which the Pre-Petition Credit Agreement Lenders shall be reimbursed upon submission to the Debtors of invoices or billing statements), any termination statements, releases or other documents necessary to effectuate and/or evidence the release and termination of the Pre-Petition Credit Agreement Lenders' liens on or security interests in any portion of the Collateral subject to any sale or disposition approved, arranged for or by the DIP Agent; and

(6) upon the Final Order becoming final and non-appealable and the occurrence of the Challenge Period Termination Date, all of the Credit Agreement Replacement Liens and the Pre-Petition Credit Agreement Junior Liens shall terminate, be released and/or deemed assigned to the DIP Agent (automatically and without further action of the parties), and the Pre-Petition Credit Agreement Lenders shall execute and deliver such agreements to evidence and effectuate such termination, release or assignment as the DIP Agent may request, and the DIP Agent shall be authorized to file on behalf of the Pre-Petition Credit Agreement Lenders such Uniform Commercial Code termination statements or such other filings as may be applicable to the extent required under the Uniform Commercial Code of the applicable jurisdiction. The Credit Agreement Replacement Liens and the Pre-Petition Credit Agreement Junior Liens will not be assigned to the DIP Lenders except pursuant to this Final Order and upon this Final Order becoming final and non-appealable and the occurrence of the Challenge Period Termination Date. The Credit Agreement Replacement Liens and the Pre-Petition Credit Agreement Junior Liens shall remain in effect solely during the interim period prior to this Final Order becoming final and non-appealable and the occurrence of the Challenge Period Termination Date, and shall be assigned or released upon this Final Order becoming final and non-appealable and the occurrence of the Challenge Period Termination Date.

4. Authorization to Use Cash Collateral. Pursuant to the terms and conditions of this Final Order, the DIP Credit Facility and the DIP Credit Agreement, and in accordance with the budget submitted to the DIP Agent and the Tranche C Agent pursuant to the DIP Credit Agreement, and provided to the Official Committee and the Ad Hoc Committee (as same may be modified from time to time consistent with the terms of the DIP Credit Agreement, the “**Budget**”), the Debtors are authorized to use the Cash Collateral of the Pre-Petition Credit

Agreement Lenders and of the Senior Noteholders (during the period commencing immediately after the filing of the Cases and terminating upon the date upon which the Final Order has become final and non-appealable and the Challenge Period Termination Date has occurred (the “**Cash Collateral Use Period**”)). The Debtors’ authorization to use Cash Collateral shall terminate upon an Event of Default, *provided, however*, during the Remedies Notice Period (as defined below) the Debtors may use Cash Collateral solely to meet payroll obligations and pay expenses essential to the preservation of the Collateral and the Debtors and their estates, provided that any such payments are made in a manner consistent with the terms and provisions of the Budget. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business or any Debtor’s use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in the DIP Credit Facility and the DIP Credit Agreement. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent and the Senior Noteholders hereunder is insufficient to compensate for the diminution in value of the interests in the Pre-Petition Credit Collateral and the Pre-Petition Indenture Collateral, respectively, during the Cases or any Successor Cases; *provided, however*, (i) any section 507(b) claim granted in the Cases shall be junior and subordinate in right of payment only to all DIP Obligations, and (ii) any section 507(b) claim granted to the Pre-Petition Credit Agreement Lenders shall terminate and be released upon the Final Order becoming final and non-appealable and the occurrence of the Challenge Period Termination Date.

5. Senior Noteholder Adequate Protection. The Debtors shall provide, and hereby grant, adequate protection to the Senior Noteholders and the Indenture Collateral Agent for

(1) the DIP Liens granted to the DIP Lenders in accordance with the terms and conditions contained in the DIP Credit Agreement, the Interim Order and this Final Order, and (2) the use of Cash Collateral as authorized herein, to the extent that the Indenture Collateral Agent's and the Senior Noteholders' interest in the Pre-Petition Indenture Collateral, including the Cash Collateral, is diminished by the use, sale or lease thereof, including the use of Cash Collateral, in the form of: (i) additional and replacement security interests and liens in and upon all of the Collateral co-extensive in all respects with the Credit Agreement Replacement Liens (the "**Noteholder Replacement Liens**"), (ii) an allowed superpriority administrative expense claim co-extensive in all respects with the Pre-Petition Superpriority Claim (the "**Noteholder Superpriority Claim**"), and (iii) notice and periodic reporting of financial and other information co-extensive with that provided to the DIP Lenders including, without limitation, as contemplated by Article 4 and Section 5.15 of the DIP Credit Agreement approved by the Interim Order and this Final Order, as may be amended or supplemented, in each case in a manner consistent with and subject to the terms and conditions contained in the Intercreditor Agreement; *provided, however*, that (x) the Noteholder Replacement Liens shall be subject and subordinate only to the DIP Liens, the Carve Out, the Prior Liens, the Credit Agreement Replacement Liens (except to the extent such lien relates to Pre-Petition Indenture Collateral that does not constitute Pre-Petition Credit Collateral) and the Pre-Petition Credit Agreement Junior Liens (except to the extent such lien relates to Pre-Petition Indenture Collateral that does not constitute Pre-Petition Credit Collateral) in the Cases, in any Successor Cases, or upon the dismissal of any of the Cases and (y) the Noteholder Superpriority Claim shall be subject and subordinate only to the DIP Superpriority Claim, the Carve Out and the Pre-Petition Superpriority Claim. The foregoing grant is without prejudice to the rights of the Indenture

Collateral Agent and the Senior Noteholders to request additional adequate protection for the use, sale or lease of the Pre-Petition Indenture Collateral that does not constitute Pre-Petition Credit Collateral; *provided, however*, that any such request for additional adequate protection shall be subject to the rights of the Debtors, the DIP Agent, the Tranche C Agent and the Official Committee to oppose such request.

6. Post-Petition Lien Perfection. This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens, the Credit Agreement Replacement Liens, the Pre-Petition Credit Agreement Junior Liens and the Noteholder Replacement Liens, without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect such liens or to entitle the beneficiary thereof to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent, the Pre-Petition Agent or the Indenture Collateral Agent may, in their sole discretion, file such financing statements, mortgages, notices of liens and other similar documents (collectively, the “**Notice Documents**”), and are hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such Notice Documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the respective Cases. The Debtors shall execute and deliver to the DIP Agent, the Pre-Petition Agent and the Indenture Collateral Agent all such Notice Documents as the DIP Agent, the Pre-Petition Agent and the Indenture Collateral Agent or any of the DIP Lenders may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the liens granted pursuant hereto. The DIP Agent, the Pre-Petition Agent and the Indenture Collateral Agent, in their discretion, may file a xerographic copy of this Final Order as a financing statement with any

recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Borrowers have real or personal property, and in such event, the subject filing or recording officer shall file or record such copy of this Final Order. The DIP Agent shall, in addition to the rights granted to it under the DIP Credit Agreement, be deemed to be the successor in interest to the Pre-Petition Agent with respect to all Pre-Petition Credit Collateral access agreements and other agreements with third parties granting rights in, or waiving claims against, any Pre-Petition Credit Collateral, including, without limitation, each collateral access agreement duly executed and delivered by any landlord of the Debtors.

7. Reservation of Certain Third Party Rights and Bar of Challenges and Claims.

Nothing in this Final Order or the DIP Credit Agreement shall prejudice whatever rights the Official Committee or any other party in interest other than the Debtors may have (a) to object to or challenge the findings herein, including, but not limited to, those in relation to (i) the validity, extent, perfection or priority of the mortgage, security interests and liens of the Pre-Petition Agent and the Pre-Petition Credit Agreement Lenders in and to the Pre-Petition Credit Collateral, or (ii) the validity, allowability, priority, status or size of the Pre-Petition Obligations, or (b) to bring suit against the Pre-Petition Agent or the Pre-Petition Credit Agreement Lenders in connection with or related to the Pre-Petition Credit Agreement, or the actions or inactions of the Pre-Petition Agent or the Pre-Petition Credit Agreement Lenders arising out of or related to the Pre-Petition Credit Agreement, or (c) to object to the reasonableness of the closing fees and the administrative agent fee of the DIP Agent, and the commitment fee and facility fee of the Tranche C Agent; *provided, however*, that, unless the Official Committee or any other party in interest commences a contested matter or adversary proceeding raising such objection or challenge, including, without limitation, any claim against the Pre-Petition Agent or the Pre-

Petition Credit Agreement Lenders in the nature of a setoff, counterclaim or defense to the Pre-Petition Obligations (including but not limited to, those under sections 506, 544, 547, 548, 550 and/or 552 of the Bankruptcy Code or by way of suit against the Pre-Petition Agent or the Pre-Petition Credit Agreement Lenders), or files a motion with the Bankruptcy Court seeking authority to do any of the foregoing, on or before January 3, 2006 (which is the date that is 75 days following retention of counsel for the Official Committee) (the “**Challenge Period**”, and the date that is the next calendar day after the termination of the Challenge Period, in the event that no objection, suit or challenge is raised during the Challenge Period, shall be referred to as the “**Challenge Period Termination Date**”), upon the Challenge Period Termination Date, any and all such challenges, suits and objections by any party (including, without limitation, the Official Committee and any chapter 11 or chapter 7 trustee appointed herein) shall be deemed to be forever waived and barred, and the Pre-Petition Obligations shall be deemed to be allowed in full and, to the extent of the value of the Pre-Petition Credit Collateral and the Pre-Petition Indenture Collateral, as applicable, on the Petition Date, shall be deemed to be allowed as a secured claim within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with these Cases or any Successor Cases and the Borrowers’ Stipulations shall be binding on all creditors, interest holders and parties in interest.

8. Carve Out. Subject to the terms and conditions contained in this paragraph 8 and paragraph 10, the DIP Protections, the Pre-Petition Credit Agreement Lender Junior Liens, the Credit Agreement Replacement Liens and the Noteholder Replacement Liens are subordinate only to the following (collectively, the “**Carve-Out**”): (a) allowed administrative expenses pursuant to 28 U.S.C. § 1930(a)(6), (b) allowed fees and expenses incurred by the Debtors and the Official Committee pursuant to sections 327 and 1103 of the Bankruptcy Code (the ‘**Estate**

**Professional Fees**”), and (c) allowed fees and expenses of a chapter 7 trustee under section 726(b) of the Bankruptcy Code; *provided, however*, that such allowed fees and expenses of a chapter 7 trustee shall not exceed \$50,000 in the aggregate for purposes of constituting a part of the Carve Out. For purposes of clause (b), (i) if, at the time of reference, a Commitment Termination Date (as defined below) has not occurred, the amount of the Carve Out shall not be limited except that no payment may be made to any professional absent an order allowing such payment, and (ii) if, at the time of reference, a Commitment Termination Date has occurred and is continuing, the amount of the Carve Out shall be limited to \$1,000,000 plus the lesser of, as of the Commitment Termination Date, (a) the Budget amount as set forth on the Borrowing Base Certificate (as defined in the DIP Credit Agreement) most recently delivered to the DIP Agent prior to the Commitment Termination Date or (b) the actual amount of unpaid Estate Professional Fees. The Carve Out shall be reduced by the amount of any unapplied retainers provided to professionals of the Debtors and the Official Committee. The DIP Lenders’ obligation to fund or otherwise pay the Carve Out, including allowed professional fees, shall be added to and made a part of the DIP Obligations, secured by the Collateral, and the DIP Lenders shall be entitled to all of the rights, claims, liens, priorities and protections under this Final Order, the DIP Credit Agreement, the Bankruptcy Code, and/or applicable law in connection therewith. No portion of the Carve Out may be used to litigate, object, contest or challenge in any manner or raise any defenses to the debt or collateral position of the DIP Agent, the Tranche C Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders the Indenture Collateral Agent or the Senior Noteholders, whether by challenging the validity, extent, amount, perfection, priority or enforceability of the indebtedness under the DIP Credit Agreement, the Pre-Petition Credit Agreement or the Senior Secured Indenture, or the validity,

perfection or priority of any mortgage, security interest or lien with respect thereto or any other rights or interests or replacement liens with respect thereto or any other rights or interests of the DIP Agent, the Tranche C Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent or the Senior Noteholders, or by seeking to subordinate or recharacterize the DIP Obligations, the Pre-Petition Obligations, or disallow any claim, mortgage, security interest, lien, or replacement lien or by asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the DIP Agent, the Tranche C Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent or any Senior Noteholder, or any of their respective officers, directors, agents or employees. Unless otherwise ordered by the Court, the Carve Out shall not be used in connection with (i) preventing, hindering or delaying the DIP Lenders' or the DIP Agent's enforcement or realization upon the DIP Collateral once an Event of Default has occurred, (ii) using or seeking to use cash collateral or selling or otherwise disposing of the DIP Collateral without the consent of the DIP Agent, (iii) using or seeking to use any insurance proceeds without the consent of the DIP Agent; or (iv) incurring Indebtedness (as defined in the DIP Credit Agreement) without the consent of the DIP Agent. The DIP Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any professionals incurred in connection with the Cases under any chapter of the Bankruptcy Code, and nothing in this Final Order or otherwise shall be construed to obligate the DIP Lenders, in any way, to pay compensation to or to reimburse expenses of any professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Without limiting any of the DIP Lenders' rights under the DIP Credit Agreement and this Final Order, the DIP Lenders shall implement a

Reserve (as such term is defined in the DIP Credit Agreement) in respect of the Carve Out in accordance with the terms and conditions of the DIP Credit Agreement. Such Reserve shall reduce the amount of the DIP Loans otherwise available to the Borrowers under the DIP Credit Agreement.

9. Payment of Compensation. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, the Official Committee or of any Person or shall affect the right of the DIP Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent, the Official Committee, the Ad Hoc Committee or any Senior Noteholder to object to the allowance and payment of such fees and expenses.

10. Consent to Section 506(c) Claims. No costs or expenses of administration which have been or may be incurred in the Cases or the Successor Cases at any time shall be charged against the DIP Agent, the Tranche C Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent and the Senior Noteholders, their claims, or their Collateral, pursuant to sections 105, 506(c) or 522 of the Bankruptcy Code, or otherwise, without their prior written consent, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent and the Senior Noteholders; *provided, however*, that no such consent is required with respect to taxes on sales of Collateral that have accrued prior to a Commitment Termination Date and employee wages that were earned prior to the Commitment Termination Date so long as such sales taxes and employee wages have been set forth in the Budget and the most recent Borrowing Base Certificate delivered to the DIP Agent in accordance with the DIP Credit Agreement, and

*provided further*, that the rights of Louise Partners with respect to section 506(c) claims, and the rights of the Debtors, the DIP Agent, and the Tranche C Agent to object to such claims, shall be preserved.

11. Collateral Rights. Unless the DIP Agent has provided its prior written consent or the Indefeasible Payment of all DIP Obligations has occurred (or the Indefeasible Payment of all DIP Obligations upon entry of an order approving indebtedness described in subparagraph (a) below), all commitments to lend have terminated and all DIP Letters of Credit have been cash collateralized as required by the DIP Credit Agreement, there shall not be entered in these proceedings, or in any Successor Cases, any order which authorizes any of the following:

- (a) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the Collateral and/or entitled to priority administrative status which is equal or senior to those granted to the DIP Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Credit Agreement Lenders herein; or
- (b) the enforcement of any claimed security, mortgage, or collateral interest or other lien of any person other than of the DIP Agent on all or any portion of the Collateral (other than in connection with the Prior Liens); or
- (c) the Borrowers' return of goods constituting Collateral pursuant to section 546(h)<sup>3</sup> of the Bankruptcy Code.

12. Proceeds. Without limiting the provisions and protections of paragraph 11 above, if at any time prior to the Indefeasible Payment of all DIP Obligations and the termination of the DIP Agent's and DIP Lenders' obligation to make loans and advances under the DIP Credit

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<sup>3</sup> As correctly numbered in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Agreement, including subsequent to the confirmation of any plan with respect to any or all of the Debtors, the Debtors' estates, any trustee, any examiner with enlarged powers or any responsible officer, subsequently appointed shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d), then all of the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent in pro rata reduction of the DIP Obligations.

13. Commitment Termination Date. All (i) DIP Obligations of the Debtors to the DIP Agent and the DIP Lenders shall be immediately due and payable, and (ii) authority to use the Cash Collateral shall cease, both on the date (the '**Commitment Termination Date**') that is the earliest to occur of:

- (a) nine (9) months from the Petition Date;
- (b) the effective date of any plan of reorganization for one or more of the Debtors confirmed pursuant to Bankruptcy Code section 1129;
- (c) the consummation of a sale of all or substantially all of one or more of the Debtors' assets pursuant to section 363 of the Bankruptcy Code; and
- (d) the date that is a "Termination Declaration Date" as defined herein.

The authorization of Debtors to obtain loans from the DIP Lenders in accordance with the DIP Credit Agreement and this Final Order shall expire on the Commitment Termination Date.

14. Payment Upon Maturity. The DIP Obligations shall be due and payable in accordance with the terms of the DIP Credit Agreement, without notice or demand, on the Commitment Termination Date. Any DIP Letter of Credit outstanding on the Commitment Termination Date shall be cash collateralized in an amount equal to 105% of the maximum drawing amount. If any such Cash Collateral is subject to the Carve Out, then the amount thereof shall be increased by the amount of the Carve Out to which it is subject.

15. Payment on Effective Date of Plan. Any plan of reorganization confirmed in the Cases shall provide for the Indefeasible Payment of all of the DIP Obligations on the effective date of such plan.

16. Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Collateral, and the Debtors shall not assume, assign or reject or seek to assume, assign or reject (except that any Debtor shall assume, assign or reject pursuant to an order from the Court approving any real property lessor's motion to compel such actions) any Leasehold Property (as defined in the DIP Credit Agreement) or other rights under any lease or license of real or personal property without the prior written consent of the DIP Agent (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Agent or the DIP Lenders or an order of this Court), except for (i) sales of the Debtors' inventory in the ordinary course of business, (ii) as otherwise provided for in the DIP Credit Agreement and this Final Order, or (iii) pursuant to an order of this Court, or any tribunal hearing an appeal therefrom, concerning the sale, liquidation or other disposal of the Debtors' assets. Nothing contained in this paragraph shall limit or impair the right of any real property lessor of any Debtor to request that the Court compel the Debtors to assume or reject any real property lease.

17. Events of Default; Remedies.

(a) Events of Default. The occurrence of any of the following events shall constitute an Event of Default under this Final Order:<sup>4</sup>

- (1) failure to pay principal when due (including, without limitation, the occurrence of an Overadvance) or failure to pay interest or fees within five business days after the due date thereof;
- (2) any representation or warranty of the DIP Credit Agreement found to be materially incorrect;
- (3) breach of any affirmative, negative or financial covenant under the DIP Credit Agreement, subject to grace and cure periods, if any, set forth in the DIP Credit Agreement;
- (4) any post-petition judgment in excess of an amount set forth in the DIP Credit Agreement or which would operate to divest the Debtors of any assets of a value in an amount set forth in the DIP Credit Agreement;
- (5) the disruption, damage or injunction of business operations of the Debtors to the extent and for the period set forth in the DIP Credit Agreement;
- (6) conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code;
- (7) the dismissal of any of the Cases;
- (8) the appointment in any of the Cases of a chapter 11 trustee or an examiner with expanded powers;

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<sup>4</sup> Capitalized terms used in this paragraph and not defined herein shall have the meanings ascribed to them in the DIP Credit Agreement.

- (9) the grant of any superpriority administrative expense claim or any lien which is *pari passu* with or senior to those of the DIP Agent and the DIP Lenders;
- (10) the Bankruptcy Court's entry of an order granting relief from the automatic stay to permit foreclosure of security interests in assets of the Debtors which violates Section 8.1(m)(x) of the DIP Credit Agreement;
- (11) the failure of this Final Order to become final and non-appealable within sixty (60) days of the commencement of the Cases;
- (12) any reversal, revocation or modification without the consent of the DIP Agent of the Final Order or any other order of the Bankruptcy Court with respect to the Cases and affecting the DIP Facility;
- (13) in connection with the consummation of a sale of all or substantially all of one or more of the Debtors' assets pursuant to section 363 of the Bankruptcy Code, the Debtors' failure to pay such sale proceeds to the DIP Agent in accordance with the DIP Credit Agreement;
- (14) the filing of any plan of reorganization that does not provide for the Indefeasible Payment of the DIP Obligations;
- (15) the failure of the Debtors to file a bidding procedures motion in form and substance satisfactory to the DIP Agent and the Tranche C Agent on or before November 11, 2005;
- (16) the failure of the Bankruptcy Court to enter a bidding procedures order on or before November 22, 2005, which shall include a bid deadline on or before November 25, 2005;

(17) the failure of the Debtors to complete an auction for the sale of all or substantially all of the Debtors' assets on or before November 30, 2005 (the "**Sale**");

(18) the failure of the Bankruptcy Court to enter an order approving the Sale on or before December 6, 2005;

(19) the failure of the Sale to close on or before December 19, 2005; and

(20) an Event of Default under the DIP Credit Agreement.

(b) Rights and Remedies Upon Event of Default.

(1) Immediately upon the occurrence and during the continuation of an Event of Default, (i) the DIP Agent may declare all the DIP Obligations to be immediately due and payable and may declare the termination, reduction or restriction of any further commitment to extend credit to the Borrowers to the extent any such commitment remains (the declaration of any of the foregoing being herein referred to as a "**Termination Declaration**" and the date of such declaration being herein referred to as the "**Termination Declaration Date**"), (ii) the Debtors' authorization to use Cash Collateral shall terminate; *provided, however,* that during the Remedies Notice Period (as defined below), the Debtors may use Cash Collateral solely as permitted in paragraph 4 of this Final Order, and (iii) the DIP Agent may increase the rate of interest applicable to the DIP Loans and the Letter of Credit Fees to the Default Rate under the DIP Credit Agreement.

(2) In addition to the remedies described above and other customary remedies, any automatic stay otherwise applicable to the DIP Agent or the DIP Lenders is

hereby modified so that upon the occurrence and during the continuance of an Event of Default, and following the giving of five (5) business days' written notice (the **'Remedies Notice Period'**) to the Borrowers, the Official Committee, the United States Trustee, the Ad Hoc Committee, any affected lessor of the Debtor's real property, and counsel for any affected lessor of the Debtor's real property that filed a notice of appearance in the Cases, the DIP Agent shall be entitled to foreclose on all or any portion of the DIP Collateral, collect accounts receivable and apply the proceeds thereof to the obligations, occupy the Borrowers' premises to complete inventories, fulfill orders and sell inventories, execute going out-of-business sales or otherwise exercise remedies against the DIP Collateral permitted by applicable nonbankruptcy law. During the Remedies Notice Period, the Debtors, the Official Committee, the United States Trustee and/or the Ad Hoc Committee shall be entitled to an emergency hearing with the Bankruptcy Court, and, unless ordered otherwise prior to the expiration of the Remedies Notice Period, the automatic stay, as to the DIP Lenders and the DIP Agent, shall be automatically terminated at the end of the Remedies Notice Period and without further notice or order.

(3) If the DIP Agent or the DIP Lenders exercise any of their rights and remedies upon the occurrence of an Event of Default, the DIP Agent may retain one or more agents to sell, lease, or otherwise dispose of the DIP Collateral. In any exercise of their rights and remedies upon an Event of Default under the DIP Credit Agreement, the DIP Agent and DIP Lenders are authorized to proceed under or pursuant to the DIP Credit Agreement.

All proceeds realized from any of the foregoing (subject to the Carve Out and any Prior Liens) shall be turned over to the DIP Agent for indefeasible application to the DIP Obligations and the Cash Management Obligations under, and in accordance with the provisions of, the DIP Credit Agreement and this Final Order, and thereafter, after the DIP Obligations have been repaid in full, to the extent any such proceeds remain, to the Pre-Petition Agent to partially satisfy the Pre-Petition Obligations, if any, as “proceeds of Collateral” as per the terms of the Pre-Petition Credit Agreement.

(c) Other Remedies. Nothing included herein shall prejudice, impair, or otherwise affect (1) the rights of any of the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent, the Senior Noteholders, the DIP Agent or the DIP Lenders to seek any other or supplemental relief in respect of the Debtors, or (2) the DIP Agent’s or DIP Lenders’ (or their affiliates’) rights, as provided in the DIP Credit Agreement or the DIP Credit Facility, to suspend or terminate providing any form or type of financial accommodation to the Borrowers, including, without limitation, in relation to any of the DIP Loan, the DIP Obligations, the DIP Credit Agreement, or the DIP Facility, in accordance with the terms of and to the extent provided for in the DIP Credit Agreement.

18. Leasehold Property Rights of DIP Lenders. Without limiting any of the rights or remedies of the DIP Lenders (including, without limitation, all rights afforded under applicable state law) provided in paragraph 17 hereof or otherwise in this Final Order or the DIP Credit Agreement, upon or after the occurrence of an Event of Default, the DIP Agent shall have the right, in its discretion, on five (5) business days’ written notice to the Debtors, the Official Committee, the United States Trustee, the Ad Hoc Committee, any affected lessor of the Debtor’s real property, and counsel for any affected lessor of the Debtor’s real property that filed

a notice of appearance in the Cases, to file and pursue (on behalf of any Debtor or as the secured party with respect to any Leasehold Property) or direct and require any Debtor to immediately file and diligently pursue, and prosecute any motion or other appropriate pleading with this Court seeking the assumption, assignment or rejection of such leases with respect to the Leasehold Property as the DIP Agent shall specify and, in the case of the assignment, assigned to such person or other entity as the DIP Agent shall specify on terms and conditions acceptable to the DIP Agent and subject to (i) higher and better offers to the extent required under section 363 of the Bankruptcy Code and (ii) the affected lessor's rights under the applicable lease(s) (subject to section 365 of the Bankruptcy Code) and section 365 and other applicable provisions of the Bankruptcy Code. During such five (5) business days' written notice period, the Debtors, the Official Committee, the United States Trustee and/or the Ad Hoc Committee shall be entitled to an emergency hearing with the Bankruptcy Court, and, unless ordered otherwise prior to the expiration of such five (5) business days' written notice period, the DIP Agent may commence the enforcement of the foregoing remedies without further notice or order. The Debtors are authorized and directed to execute and deliver such agreements, documents and instruments as the DIP Agent may request to effectuate the foregoing, but no such agreements, documents or instruments shall be required for such purpose.

19. Additional Collateral Rights. Until Indefeasible Payment of all of the DIP Obligations and without further order of the Court:

(a) In the event that any party who holds a lien or security interest in any Collateral that is junior and/or subordinate to the DIP Liens and claims of the DIP Lenders in such Collateral receives or is paid proceeds of such Collateral prior to the Indefeasible Payment of all DIP Obligations, such junior or subordinate lienholder shall be deemed to have received, and

shall hold, such Collateral proceeds in trust for the DIP Agent and shall immediately turn over to the DIP Agent such proceeds for application to the DIP Obligations in accordance with the DIP Credit Agreement and this Final Order.

(b) Upon and after the occurrence of an Event of Default, in connection with a liquidation of any of the Collateral, the DIP Agent (or any of its employees, agents, consultants, contractors or other professionals) shall have the right, at the costs and expense of the Debtors, to: (i) enter upon, occupy and use any personal property, fixtures and equipment owned or leased by the Debtors and (ii) use any and all trademarks, tradenames, copyrights, licenses, patents or any other similar assets of the Debtors, which are owned by or subject to a lien of any third party and which are used by the Debtors in their businesses. The DIP Lenders will be responsible for the payment of any applicable fees, rentals, royalties or other amounts due to such lessor, licensor or owner of such property for the period of time that the DIP Agent actually uses the equipment or the intellectual property (but in no event for any accrued and unpaid fees, rentals or other amounts due for any period prior to or after the date that the DIP Agent actually occupies or uses such assets or properties); and

(c) On and after the occurrence of an Event of Default, upon the DIP Agent providing five (5) business days' notice to the Debtors, the Official Committee, the United States Trustee, the Ad Hoc Committee, any affected lessor of the Debtor's real property and counsel for any affected lessor of the Debtor's real property that filed a notice of appearance in the Cases of the DIP Agent's intention to enter onto or into such lessor's leased premises to remove or otherwise dispose of any Collateral located at such leased premises in accordance with the terms of this paragraph, the DIP Agent (or any of its employees, agents, consultants, contractors or other professionals) shall have the right, following the expiration of such five (5) business days' notice

period described in this paragraph, to enter onto or into such leased premises for the purpose of removing the Collateral off the leased premises or selling such Collateral at the leased premises. The Debtors shall remain obligated to perform any obligation and to pay any rent and additional rent due under the terms of their leases at all times, including during the period commencing upon the DIP Agent obtaining the right to enter the Debtors' leased premises in accordance with this paragraph through and including the date at which the DIP Agent vacates the leased premises and provides such lessor with written confirmation of such vacation and delivers in connection with such written confirmation any keys, access cards or other means of access to the leased premises to the extent such items are then available to the DIP Agent (the "**Collateral Access Period**"). In the event that such rental or other obligations incurred during the Collateral Access Period are not otherwise fulfilled or performed by or on behalf of Debtors, then the DIP Lenders or their agents will be responsible for the performance and payment of such rental charges (*provided, however*, that any such rental charges for which the DIP Lenders or their agents are responsible during the Collateral Access Period under this paragraph shall be calculated solely on a per diem basis and shall not include any outstanding amounts owed by the Debtors) and such other obligations under such applicable lease (subject to the provisions of the Bankruptcy Code) and except as otherwise provided by an Order of this Court. Nothing herein shall require the DIP Lenders to assume any lease or cure any defaults as a condition to the rights afforded in this paragraph, other than as set forth in the immediately preceding sentence. Notwithstanding anything contained herein to the contrary or otherwise, in relation to the Debtors' leased real property, the DIP Agent shall have the right, in its discretion, to seek, or direct and require any Debtor to seek, approval from the Court to conduct "going-out-of-business sales" or other sales at any leased location outside the ordinary course of Debtors' businesses

conducted at such location, subject to the terms and guidelines approved by the Court and the rights of any lessor of such leased location under their respective leases and Section 365 of the Bankruptcy Code, and nothing contained herein shall be deemed to prejudice the rights of any real property lessor of any Debtor to any affected leased location to object to such relief.

20. Modification of Automatic Stay. The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified as necessary to (1) permit the Debtors to grant the Credit Agreement Replacement Liens, the Pre-Petition Credit Agreement Junior Liens, the Noteholder Replacement Liens and the DIP Liens and to incur all liabilities and obligations to the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the Indenture Collateral Agent, the Senior Noteholders, the DIP Agent and the DIP Lenders under the DIP Credit Agreement, the DIP Credit Facility and this Final Order, and (2) authorize the DIP Agent and the Pre-Petition Agent to retain and apply payments hereunder and file the Notice Documents.

21. Proofs of Claim. Neither the DIP Agent nor any of the DIP Lenders will be required to file proofs of claim in any of the Cases. The Pre-Petition Agent is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) aggregate proofs of claim in each of the Cases on behalf of the Pre-Petition Credit Agreement Lenders. Any proof of claim so filed shall be deemed to be in addition and not in lieu of any other proof of claim that may be filed by any of the Pre-Petition Credit Agreement Lenders. Any order entered by the Bankruptcy Court in relation to the establishment of a bar date in any of the Cases will so provide. Notwithstanding any other provision of this paragraph or this Final Order, if UBS and Wells Fargo Retail Finance do not file a request for payment of the Non-Waived Termination Fees prior to the establishment of any bar date in the Cases or

Successor Cases, they shall be required to file proofs of claim on account of the Non-Waived Termination Fees.

22. Good Faith under Section 364(e) of the Bankruptcy Code. The terms and conditions of the DIP Credit Facility and the DIP Credit Agreement, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available 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 Credit Agreement and the use of Cash Collateral were both negotiated in good faith (as the term "good faith" is used in section 364(e) of the Bankruptcy Code) and at arms' length between the Debtors, the DIP Agent, the DIP Lenders, the Pre-Petition Agent, and the Pre-Petition Credit Agreement Lenders. Use of Cash Collateral and credit extended or to be extended under the DIP Credit Agreement has been or will be so extended in good faith, and for valid business purposes and uses, the consequence of which is that the DIP Agent and the DIP Lenders are entitled to the protection and benefits of section 364(e) of the Bankruptcy Code.

23. Release. The Debtors (in their own right and on behalf of their respective estates, representatives, directors, officers, employees, attorneys and agents, and their successors and assigns) (the "**Releasing Parties**") hereby jointly and severally release, acquit, and forever discharge the DIP Agent, the Tranche C Agent, the DIP Lenders and their representatives, directors, officers, employees, attorneys and agents, and their successors and assigns (the "**Released Parties**") from any and all acts and omissions of the Released Parties, and from any and all claims, causes of action, avoidance actions, counterclaims, demands, controversies, costs, debts, sums of money, accounts, reckonings, bonds, bills, damages, obligations, liabilities, objections, legal proceedings, equitable proceedings, and executions of any nature, type, or

description which the Releasing Parties have or may come to have against the Released Parties, whether directly, indirectly or derivatively, whether or not in connection with or related to the DIP Credit Facility or any matter or document related hereto, at law or in equity, by statute or common law, in contract, in tort, whether the law of the United States or any other country, union, organization of foreign countries or otherwise, known or unknown, suspected or unsuspected, but excluding obligations under the DIP Credit Facility (the "**Released Claims**"). The Debtors further covenant not to sue the Released Parties on account of any Released Claim. This paragraph is in addition to and shall not in any way limit any other release, covenant not to sue, or waiver by the Releasing Parties in favor of the Released Parties. Notwithstanding anything contained in this provision, the Released Parties shall exclude any current or former representative, director, officer, employee, independent contractor, attorney and agent of the Debtors or their successors, assigns or affiliates provided that nothing in this sentence shall in any way create, acknowledge or ratify any claims against or liability of the DIP Lenders or limit the release of the DIP Lenders in this Final Order.

24. Other Rights and Obligations.

(a) No Modification or Stay of this Final Order. Based on the findings set forth in this Final Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Credit Agreement, in the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of this or any other Court, no such modification, amendment or vacatur shall affect the validity and enforceability of any advances made hereunder or lien or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacatur, any claim granted to the DIP Agent or the DIP Lenders hereunder arising prior to the effective date of such modification, amendment or vacatur

of any DIP Protections granted to the DIP Agent for the sole benefit of the DIP Agent and the DIP Lenders shall be governed in all respects by the original provisions of this Final Order, and the DIP Agent and the DIP Lenders shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Protections granted herein, with respect to any such claim. Since the loans made pursuant to the DIP Credit Agreement are made in reliance on this Final Order, the obligations owed the DIP Lenders prior to the effective date of any stay, modification or vacatur of this Final Order cannot, as a result of any subsequent order in the Cases, or in any Successor Case, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Lenders under this Final Order and/or the DIP Credit Agreement.

(b) Expenses. As provided in the DIP Credit Agreement, including, without limitation, reasonable, documented legal, accounting, collateral examination, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, indemnification and reimbursement of fees and expenses, and other out of pocket expenses of the DIP Agent and the DIP Lenders in connection with the DIP Credit Agreement will, subject to paragraph 7 hereof, be paid by the Borrowers, whether or not the transactions contemplated hereby are consummated.

(c) Binding Effect. The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Agent, the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Credit Agreement Lenders, the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estate of the Debtors) whether in the Cases, in any Successor Cases, or upon dismissal of any such chapter 11 or chapter 7 case.

(d) No Waiver. The failure of the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the DIP Agent or the DIP Lenders to seek relief or otherwise exercise their rights and remedies under the DIP Credit Agreement, the DIP Credit Facility, the Intercreditor Agreement or this Final Order, as applicable, shall not constitute a waiver of any of their rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair (1) the rights of the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the DIP Agent or the DIP Lenders under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the rights to (i) request conversion of any of the Cases to cases under chapter 7, dismissal of any of the Cases, or the appointment of a trustee in any of the Cases (but only in the event an Event of Default has occurred and is continuing), or (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans or (2) any of the rights, claims or privileges (whether legal, equitable or otherwise) of the Pre-Petition Agent, the Pre-Petition Credit Agreement Lenders, the DIP Agent or the DIP Lenders.

(e) No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

(f) No Marshaling or 552(b) Claim. None of the DIP Agent, the DIP Lenders, the Pre-Petition Agent and/or the Pre-Petition Credit Agreement Lenders shall be subject to (a) the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Collateral, or (b) an “equities of the case” claim under section 552(b) of the Bankruptcy Code against any of the DIP Agent, the DIP Lenders, the Pre-Petition Agent and/or the Pre-Petition

Credit Agreement Lenders with respect to proceeds, product, offspring or profits of any of the Collateral.

(g) Amendment. The Debtors and the DIP Agent (after having obtained the approval of the DIP Lenders to the extent required by the DIP Credit Agreement) may amend or waive any provision of the DIP Credit Agreement without further order of this Court, provided that such amendment or waiver, in the judgment of the Debtors and the DIP Agent, is nonprejudicial to the rights of third parties. Except as otherwise provided herein, no other waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by on behalf of all the Borrowers and the DIP Agent (after having obtained the approval of the DIP Lenders as provided in the DIP Credit Agreement) and approved by the Bankruptcy Court.

(h) Survival of Final Order. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (1) confirming any plan of reorganization in any of the Cases, (2) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code, or (3) dismissing any of the Cases, and the terms and provisions of this Final Order, as well as the DIP Protections granted pursuant to this Final Order and the DIP Credit Agreement, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Protections shall maintain their priority as provided by this Final Order until Indefeasible Payment and discharge of all the obligations of the Debtors to the DIP Agent and the DIP Lenders pursuant to the DIP Credit Agreement and this Final Order (such payment being without prejudice to any terms or provisions contained in the DIP Credit Facility which survive such discharge by their terms). The DIP Obligations shall not be discharged by the entry of an order confirming a plan of reorganization, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code. None of the Debtors shall propose or support any

plan of reorganization that is not conditioned upon the Indefeasible Payment in full in cash of all of the DIP Obligations, on or prior to the earlier to occur of (i) the effective date of such plan and (ii) the Commitment Termination Date.

(i) Inconsistency. In the event of any inconsistency between the terms and conditions of the DIP Credit Agreement and of this Final Order, the provisions of this Final Order shall govern and control.

(j) Joint and Several Liability. Nothing in this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable to the DIP Agent and the DIP Lenders in accordance with the terms of the DIP Credit Facility and the DIP Credit Agreement.

(k) Enforceability. This Final Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable immediately upon execution hereof pursuant to Bankruptcy Rule 4001(c)(2).

(l) Objections Overruled. All objections to the DIP Motion to the extent not withdrawn or resolved, are hereby overruled.

(m) No Waivers or Modification of Final Order. Debtors irrevocably waive any right to seek any modification or extension of this Final Order without the prior written consent of the DIP Agent and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent.

(n) Financing Term. The authorization of Debtors to obtain loans from the DIP Lenders in accordance with the DIP Credit Agreement and this Final Order shall expire sixty (60) days from the commencement of the Cases, unless the Final Order becomes final and non-appealable on or before such date.

(o) Waiver and Deferral of Early Prepayment Fees. Provided that no challenge or objection is raised before occurrence of the Challenge Period Termination Date, then:

(1) with respect to the Revolving Credit Facility (as defined in the Pre-Petition Credit Agreement), all Early Prepayment Fees (other than early termination fees owed to UBS and Wells Fargo Retail Finance) due shall be waived on the business day next following the Challenge Period Termination Date; and

(2) with respect to the Tranche B Loan (as defined in the Pre-Petition Credit Agreement), (i) \$300,000 of the Early Prepayment Fees shall be waived on the business day next following the Challenge Period Termination Date, and (ii) the remaining \$300,000 owed to GE (A) shall be due and payable on the date when the DIP Term Loan is accelerated or paid by any party or upon any buyout of the DIP Term Loan, or (B) shall be waived if GE acts as lead arranger and administrative agent in connection with a financing of the Borrowers' emergence from the Cases by way of a confirmed plan or sale or in connection with a refinancing of the facilities provided under the DIP Credit Agreement; *provided, however,* GE shall have no obligation to provide such financing.

(p) Reservation of Rights on Non-Waived Termination Fees. UBS and Wells Fargo Retail Finance have not waived their right to assert that the Debtors' obligations to them under the Pre-Petition Credit Agreement includes an obligation to pay the Non-Waived Termination Fees with respect to the payment on the Closing Date to them of the portion of the Pre-Petition Revolving Loans provided by them as Pre-Petition Credit Agreement Lenders. Nothing in this Final Order shall prejudice the rights of UBS and Wells Fargo to assert that they are entitled to

allowance or payment of the Non-Waived Termination Fees or of any other party in interest to object to the allowance or payment of the Non-Waived Termination Fees.

25. Nullifying Pre-Petition Restrictions to Post-Petition Financing. Notwithstanding anything to the contrary contained in any pre-petition agreement, contract, document, note or instrument to which any Debtor is a party (other than leases of Leasehold Properties) or under which any Debtor is obligated, any provision that restricts, limits or impairs in any way any Debtor's ability or right to grant to the DIP Lenders security interests in or liens upon any of its assets or properties (including, among other things, any anti-lien granting or anti-assignment clauses in any contractual arrangements to which any Debtor is a party) under the DIP Credit Agreement, the Interim Order and/or this Final Order or otherwise enter into and comply with all of the terms, conditions and provisions thereof (all such provisions being collectively referred to as "**Restrictive Clauses**") shall not be effective and shall be unenforceable against any such Debtor(s) and the DIP Lenders, but only with respect to the entry of this Final Order granting such post-petition financing (and in no event shall this paragraph preclude any lessor from enforcing any provision of its applicable lease in the event that (1) the DIP Lenders become a tenant or lessee under such lease by foreclosing on the leasehold mortgage granted herein with respect to such lease, and (2) any reorganized Debtor obtains new financing, including exit financing), and, therefore, shall not adversely affect the validity, priority or enforceability (subject to paragraphs 17, 18, and 19 hereof) of the liens, security interests, claims, rights, priorities and/or protections granted to the DIP Lenders pursuant to this Final Order and/or the DIP Credit Agreement or any of the rights of the DIP Lenders hereunder or thereunder. Subject to paragraphs 17, 18, and 19 hereof, such Restrictive Clauses shall not render any contract unable to be assumed and/or assigned by any Debtor (or by the DIP Agent, on behalf of any Debtor,

pursuant to the provisions contained in this Final Order), or in any way impair or limit the ability or right of any Debtor (or the DIP Agent, on behalf of any Debtor, pursuant to the provisions contained in this Final Order) to assume and/or assign any contract, or any contract counterparty's right to object to such relief on any other grounds, under Sections 365 or 1123 of the Bankruptcy Code. For the avoidance of doubt, this paragraph 25 does not apply to any leases of Leasehold Properties to which any Debtor is a party.

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

SO ORDERED by the Court this 10<sup>th</sup> day of November, 2005.

/s/Burton R. Lifland  
UNITED STATES BANKRUPTCY JUDGE