

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
AMERICAN MEDIA, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 10-16140 (MG)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Re: Docket Nos. 18 and 52

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**FINAL ORDER (I) AUTHORIZING THE USE OF CASH COLLATERAL,  
(II) GRANTING ADEQUATE PROTECTION, AND (III) MODIFYING  
THE AUTOMATIC STAY**

THIS MATTER having come before the Court upon the motion (the “Motion”) of American Media, Inc. and certain of its affiliates, each as a debtor and debtor in possession (collectively the “Debtors” or “Debtors in Possession”) in the above-captioned chapter 11 cases (collectively, the “Cases”), pursuant to sections 105, 361, 362, 363, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the “Bankruptcy Code”) and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) seeking entry of an interim order (the “Interim Order”) and a final order (this “Final Order”) *inter alia*:

(i) authorizing the Debtors’ use of “cash collateral” (as defined in section 363(a) of the Bankruptcy Code, “Cash Collateral”) of the Prepetition Agent and Prepetition Lenders (each as defined herein);

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<sup>1</sup> The Debtors in these cases, together with the last four digits of each Debtor’s federal tax identification number, are: American Media, Inc. (3383); American Media Operations, Inc. (4424); American Media Consumer Entertainment, Inc. (3852); American Media Consumer Magazine Group, Inc. (3863); American Media Distribution & Marketing Group, Inc. (3860); American Media Mini Mags, Inc. (3854); American Media Newspaper Group, Inc. (3864); American Media Property Group, Inc. (4153); Country Music Media Group, Inc. (2019); Distribution Services, Inc. (1185); Globe Communications Corp. (2593); Globe Editorial, Inc. (3859); Mira! Editorial, Inc. (3841); National Enquirer, Inc. (4097); National Examiner, Inc. (3855); Star Editorial, Inc. (9233); and Weider Publications, LLC (1848).



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

(iii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Interim Order and this Final Order; and

(iv) scheduling a final hearing (the “Final Hearing”) to consider the relief requested in the Motion and the entry of this Final Order, and approving the form of notice with respect to the Final Hearing.

The Court having considered the Motion, the *Declaration of Christopher Polimeni, Executive Vice President, Chief Financial Officer and Treasurer of American Media, Inc., in Support of the Debtors’ Chapter 11 Petitions and Request for First Day Relief* (the “First Day Declaration”), and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on November 19, 2010 (the “Interim Hearing”) and the Final Hearing held on December 6, 2010; and the Interim Hearing to consider the interim relief requested in the Motion having been held and concluded; and the Court having thereafter entered the Interim Order [Docket No. 52] approving the Motion on an interim basis and scheduling the Final Hearing; and notice of the Final Hearing having been provided in accordance with Bankruptcy Rules 2002, 4001(b) and (d), and 9014; and the Final Hearing to consider the final relief requested in the Motion having been held and concluded; and all objections, if any, to the final relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and otherwise is fair and reasonable and in the

best interests of the Debtors, their estates, and their creditors and equity holders and is essential for the continued operation of the Debtors' businesses; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

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

A. Petition Date: On November 17, 2010 (the "Petition Date"), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Court") commencing these Cases. Simultaneously with the filing of the Cases, the Debtors filed with the Bankruptcy Court the Debtors' Joint Prepackaged Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated as of October 30, 2010 (as amended or supplemented, the "Plan"), and the Disclosure Statement Relating to the Debtors' Joint Prepackaged Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated as of October 30, 2010 (as amended or supplemented, the "Disclosure Statement").

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

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

D. Statutory Committee. As of the date hereof, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) has not yet appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code (a “Statutory Committee”).

E. Debtors’ Stipulations. Without prejudice to the rights of parties in interest as set forth in paragraph 15 herein, the Debtors and Debtors in Possession admit, stipulate, acknowledge and agree that (collectively, paragraphs E(i) through E(v) below are referred to herein as the “Debtors’ Stipulations”):

(i) Prepetition Facility. Pursuant to that certain Amended and Restated Credit Agreement dated as of January 30, 2006, as amended and restated as of December 31, 2008 (as may have been amended, supplemented, restated or otherwise modified prior to the Petition Date, the “Prepetition Credit Agreement” and, together with all other loan and security documents executed in connection therewith, the “Prepetition Credit Documents”), among American Media, Inc. (“Holdings”), American Media Operations, Inc. (the “Borrower”), JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the “Prepetition Agent”), the lenders party thereto (together with the other persons identified as “Secured Parties” in the Prepetition Credit Agreement, the “Prepetition Lenders”), and the other agents party thereto, the Prepetition Lenders provided credit and letter of credit facilities to the Borrower and provided other financial accommodations to or for the benefit of the Borrower and certain of its affiliates (collectively, the “Prepetition Facility”).

(ii) Prepetition Obligations. The Prepetition Facility provided the Borrower with a \$450,000,000 term loan facility and a \$60,000,000 revolving credit facility, which includes a \$10,000,000 swingline subfacility and a \$15,000,000 letter of credit subfacility. As of

the Petition Date, the approximate outstanding obligations owing under the Prepetition Credit Agreement were \$499,233,420.00 in principal and prepayment penalties, plus accrued and unpaid interest, fees (including, for the avoidance of doubt, the “Deferred Fees” as defined in the Prepetition Credit Agreement), costs and expenses (collectively, together with all “Obligations” as defined in the Prepetition Credit Agreement, the “Prepetition Obligations”). The Prepetition Obligations are guaranteed by Holdings and each of the “Subsidiary Loan Parties” (as defined in the Prepetition Credit Agreement, and collectively with Holdings, the “Guarantors”).

(iii) *Prepetition Liens and Prepetition Collateral.* As more fully set forth in the Prepetition Credit Documents, prior to the Petition Date, the Borrower and the Guarantors granted security interests in and liens on substantially all of the assets of the Borrower and Guarantors (collectively, the “Prepetition Collateral”) to the Prepetition Agent, for the benefit of itself and the Prepetition Lenders (the “Prepetition Liens”).

(iv) *Validity, Perfection and Priority of Prepetition Liens and Prepetition Obligations.* Subject to the provisions of paragraph 15 of this Final Order, the Debtors and Debtors in Possession, to the best of their information and belief, acknowledge and agree that: (a) as of the Petition Date, the Prepetition Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected; (b) as of the Petition Date, the Prepetition Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens otherwise permitted by the Prepetition Credit Documents (to the extent any such permitted liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date, the “Permitted Prior Liens”);<sup>2</sup> (c) the Prepetition

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<sup>2</sup> Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Prior Liens are valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtors, the Prepetition Agent, the Prepetition Lenders, and any

Obligations constitute legal, valid, binding, and non-avoidable obligations of the Borrower and Guarantors; (d) no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (whether equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of actions, and/or choses in action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code, against the Prepetition Agent or any of the Prepetition Lenders or any of their respective officers, directors, employees, agents, attorneys, professionals, affiliates, parents, subsidiaries, assigns and successors arising out of, based upon or related to any of the Prepetition Credit Documents; (f) the Prepetition Obligations are allowed secured claims within the meaning of section 506 of the Bankruptcy Code, together with accrued and unpaid interest, fees (including, without limitation, attorneys' fees and related expenses), and any and all other charges of whatever nature owing in respect of such Prepetition Obligations; and (g) any payments made on account of the Prepetition Obligations to or for the benefit of the Prepetition Agent or the Prepetition Lenders prior to the Petition Date were payments out of the Prepetition Collateral, and such payments did not diminish any property otherwise available for distribution to unsecured creditors or other parties in interest and/or were made in the ordinary course of business or financial affairs of the applicable Debtor and the Prepetition Agent and Prepetition Lenders.

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Statutory Committee to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Permitted Prior Lien and/or security interest.

(v) *Cash Collateral.* The Debtors agree that all of the Debtors' cash, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes the Cash Collateral of the Prepetition Agent and Prepetition Lenders.

F. *Adequate Protection.* The Prepetition Agent, for the benefit of itself and the Prepetition Lenders, is entitled to receive adequate protection to the extent of any diminution in value of its interests in the Prepetition Collateral (including the Cash Collateral) resulting from, among other things, the use of Cash Collateral, the use, sale or lease of Prepetition Collateral authorized herein, and the imposition of the automatic stay (collectively, the "Diminution in Value") pursuant to sections 361, 362, and 363 of the Bankruptcy Code. Pursuant to sections 361, 363, and 507(b), as adequate protection for any Diminution in Value, the Prepetition Agent, for the benefit of itself and the Prepetition Lenders, will receive (a) the Adequate Protection Liens; (b) the Adequate Protection Superpriority Claim; and (c) the Adequate Protection Payments (each as defined herein).

G. *Sections 506(c) and 552(b).* In light of the Prepetition Agent's and Prepetition Lenders' agreement to subordinate their liens and superpriority claims to the Carve Out (as defined herein) and to permit the use of their Cash Collateral as set forth herein, the Prepetition Agent and Prepetition Lenders are entitled to (a) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (b) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

H. *Necessity of Relief Requested.* The ability of the Debtors to finance their operations requires the use of Cash Collateral, absent which immediate and irreparable harm will result to the Debtors, their estates and creditors, and the possibility for successful chapter 11

cases. In the absence of the use of Cash Collateral, the continued operation of the Debtors' businesses would not be possible and serious and irreparable harm to the Debtors, their estates and their creditors would occur. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses in the ordinary course of business or to maintain their property without the use of Cash Collateral. The relief requested in the Motion is therefore necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the management and preservation of their property. The Prepetition Agent, Prepetition Lenders constituting "Required Lenders" as defined in the Prepetition Credit Agreement (the "Prepetition Required Lenders") and the Debtors have negotiated at arms' length and in good faith regarding the Debtors' use of Cash Collateral to fund the continued operation of the Debtors' businesses. The Prepetition Agent and Prepetition Required Lenders have agreed to permit the Debtors to use their Cash Collateral, subject to the terms and conditions set forth herein. Entry of this Final Order is in the best interests of the Debtors and their estates.

I. Reserved.

J. Notice. Notice of the Final Hearing has been provided by the Debtors, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including: (i) the U.S. Trustee; (ii) the parties included on the Debtors' list of the thirty (30) largest unsecured creditors; (iii) counsel to the Prepetition Agent for itself and for the Prepetition Lenders; and (iv) counsel to the ad hoc committee of certain holders of senior subordinated notes and senior PIK notes (the "Ad Hoc Noteholder Committee"). Such notice has been given pursuant to Bankruptcy Rule 4001(b) and is good, sufficient and appropriate under the circumstances, and no other or further notice is required for entry of this Final Order.



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

IT IS HEREBY ORDERED that:

1. Motion Granted. The Motion is granted, and the use of Cash Collateral on a final basis is authorized, subject to the terms and conditions set forth in this Final Order.

2. Objections Overruled. All objections to the Motion to the extent not withdrawn or resolved are hereby overruled.

3. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final Order, the Debtors are authorized to use Cash Collateral as set forth herein for the period (the "Specified Period") from the Petition Date through the date which is the earlier to occur of (i) the expiration of the Remedies Notice Period and (ii) 11:59 p.m. (Eastern Time) on February 17, 2011. Except as otherwise expressly provided herein, during the Specified Period, Cash Collateral may be (i) used in the ordinary course of business for working capital and general corporate purposes, (ii) used for the payment of Professional Fees (as defined herein) and other fees and expenses, in each case, to the extent of the Carve Out, (iii) used to make Adequate Protection Payments (as defined below), (iv) used for the payment of expenses not incurred in the ordinary course of business, in an aggregate amount during the Specified Period not to exceed \$5,000,000 and (v) transferred to the Escrow Issuer (as defined in the Plan) for the payment of fees, interest and other amounts relating to the escrow of proceeds from the offering of New First Lien Notes and New Second Lien Notes (each as defined in the Plan) to the extent such transfer is approved by order of the Bankruptcy Court, in an aggregate amount during the Specified Period not to exceed \$15,000,000; provided, however, that during the Remedies Notice Period, the Debtors may use Cash Collateral solely to meet payroll obligations and to pay

expenses critical to the preservation of the Debtors and their estates, including the Adequate Protection Payments and Professional Fees to the extent of the Carve Out; and provided further, however, that during the Specified Period, the Debtors are limited to the use of Cash Collateral to no more than an aggregate amount of \$65,500,000. Other than as set forth in a Cash Collateral Continuance Order (as defined in paragraph 12 below), the authorization hereunder for the Debtors to use Cash Collateral shall automatically terminate at the expiration of the Specified Period without any further notice or action (including, without limitation, further notice, motion or application to, order of or hearing before the Court). 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 may be permitted in this Final Order or another order of the Court (it being understood, for the avoidance of doubt, that the Debtors may use Cash Collateral or other proceeds resulting therefrom in accordance with any order of the Court).

4. Reserved.

5. Adequate Protection Liens.

(a) *Adequate Protection Liens.* As adequate protection against any Diminution in Value, pursuant to sections 361 and 363(e) of the Bankruptcy Code, the Prepetition Agent, for the benefit of itself and the Prepetition Lenders, is hereby granted additional and replacement continuing valid, binding, enforceable, non-avoidable, and automatically perfected postpetition security interests in and liens (the "Adequate Protection Liens") on any and all presently owned and hereafter acquired personal property, real property and all other assets of the Debtors, together with any proceeds thereof (collectively, the "Collateral"), but excluding any of the Debtors' claims or causes of action arising under sections

502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code (other than the proceeds thereof).

(b) *Priority of Adequate Protection Liens.*

(i) The Adequate Protection Liens shall be junior only to: (A) the Carve Out; and (B) the Permitted Prior Liens. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the Collateral.

(ii) The Adequate Protection Liens shall be enforceable against the Debtors, their estates and any successors thereto, including without limitation, any trustee or other estate representative appointed in the Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, "Successor Cases"). Except as provided herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Cases or any Successor Cases, or upon the dismissal of any of the Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 506(c), 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any estate pursuant to section 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the Adequate Protection Liens.

6. Adequate Protection Superpriority Claims.

(a) *Adequate Protection Superpriority Claim.* As further adequate protection against any Diminution in Value, the Prepetition Agent and Prepetition Lenders are each hereby

granted as and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (the “Adequate Protection Superpriority Claim”).

(b) *Priority of Adequate Protection Superpriority Claim.* The Adequate Protection Superpriority Claim shall be junior only to the Carve Out. Except for the Carve Out, the Adequate Protection Superpriority Claim shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 1113 and 1114 of the Bankruptcy Code.

7. Adequate Protection Payments and Protections. As further adequate protection for any Diminution in Value, the Debtors are authorized and directed to provide adequate protection payments to the Prepetition Agent, on behalf of itself and the Prepetition Lenders (the “Adequate Protection Payments”), in the form of: (a) payments in cash on a current basis at the times specified in the Prepetition Credit Agreement of all prepetition or postpetition interest (at the non-default rate), fees and other amounts due (other than pursuant to Article VII of the Prepetition Credit Agreement) under the Prepetition Credit Documents, and (b) ongoing payment in cash of the reasonable fees, costs and expenses of the Prepetition Agent, including, without limitation, the reasonable fees, costs and expenses of legal, financial advisory, investment banking and other professionals retained by the Prepetition Agent (including, without limitation, Wachtell, Lipton, Rosen & Katz and any replacement or additional professional that the Prepetition Agent deems reasonably appropriate and whose fees and expenses are required to be paid by the Debtors pursuant to the Prepetition Credit Agreement). In addition, the Debtors shall

provide continued maintenance and insurance of the Collateral in the amounts and for the risks, and by the entities, required under the Prepetition Credit Documents. The Prepetition Agent and Prepetition Lenders shall not be required to comply with the U.S. Trustee fee guidelines, but shall provide statements of fees, costs and expenses (redacted if necessary for privilege) to the U.S. Trustee, counsel for any Statutory Committee and counsel for the Debtors. The U.S. Trustee, the Statutory Committee, the Ad Hoc Noteholder Committee and the Debtors shall have fifteen (15) days to review and, if appropriate, dispute any of such fees, costs and expenses. If no dispute to any of such fees, costs and expenses is raised, the Debtors shall be authorized to pay such fees, costs and expenses without further order of the Court.

8. Modification of Automatic Stay. The automatic stay under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the Prepetition Agent or any of the Prepetition Lenders may reasonably request under the circumstances to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the Prepetition Agent and Prepetition Lenders under this Final Order; and (d) authorize the Debtors to pay, and the Prepetition Agent and Prepetition Lenders to retain and apply, payments made in accordance with the terms of this Final Order.

9. Perfection of Adequate Protection Liens. This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Adequate Protection Liens as of the Petition Date without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any

jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Adequate Protection Liens or to entitle the Prepetition Agent and Prepetition Lenders to the priorities granted herein. Notwithstanding the foregoing, the Prepetition Agent is authorized to file, as it deems necessary in its sole discretion, such financing statements, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the applicable Adequate Protection Liens and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the Adequate Protection Liens. The Debtors are authorized to execute and deliver to the Prepetition Agent all such financing statements, notices and other documents as any of the Prepetition Agent or Prepetition Lenders may reasonably request. The Prepetition Agent, in its sole discretion, may file a photocopy of the Interim Order and/or this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

10. Debtors' Obligations. The Debtors shall:

(a) Use Cash Collateral to the extent authorized under paragraph 3 of this Final Order;

(b) Serve the Prepetition Agent and its counsel with a copy of each report filed by the Debtors in these Cases as required by the Court or the U.S. Trustee; and

(c) Deliver to the Prepetition Agent all other information, reports, documents and other materials required by the Prepetition Credit Agreement at the times specified therein and as otherwise reasonably requested by the Prepetition Agent.

11. Events of Default. The occurrence of any of the following events, unless waived in writing by the Prepetition Agent, after consultation with the Prepetition Required Lenders, shall constitute an event of default (collectively, the “Events of Default”):

(a) the failure by the Debtors to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Final Order;

(b) the obtaining of credit or the incurring of indebtedness that is (i) secured by a security interest, mortgage or other lien on all or any portion of the Collateral which is equal or senior to any security interest, mortgage or other lien of the Prepetition Agent and the Prepetition Lenders, or (ii) entitled to priority administrative status which is equal or senior to that granted to the Prepetition Agent and Prepetition Lenders herein, unless in either case of (i) or (ii) the proceeds of such credit or such indebtedness is used to refinance the Prepetition Obligations in full or the Prepetition Agent and the Prepetition Lenders receive adequate protection approved by the Court and acceptable to the Prepetition Agent, after consultation with the Prepetition Required Lenders;

(c) the entry of an order by the Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a lien on or security interest in any material portion of the Collateral, or (ii) with respect to any lien on or the granting of any lien on any material portion of the Collateral to any state or local environmental or regulatory agency or authority, which in either case of (i) or (ii) would

have a material adverse effect on the business, operations, property, assets, or condition, financial or otherwise, of the Debtors;

(d) reversal, vacatur, or modification (without the prior written consent of the Prepetition Agent, after consultation with the Prepetition Required Lenders) of this Final Order;

(e) dismissal of the Cases or conversion of the Cases to chapter 7 cases, or appointment of a chapter 11 trustee or examiner with enlarged powers;

(f) the granting of any motion providing for reconsideration or modification of this Final Order without the consent of the Prepetition Agent, after consultation with the Prepetition Required Lenders;

(g) the granting of a motion relating to the marshalling of Collateral without the consent of the Prepetition Agent, after consultation with the Prepetition Required Lenders; or

(h) the Restructuring Support Agreement (as defined in the First Day Declaration) shall have terminated in accordance with Section 5 thereof.

12. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, the Prepetition Agent may, after consultation with the Prepetition Required Lenders, declare a termination, reduction or restriction of the ability of the Debtors to use any Cash Collateral (any such declaration shall be referred to herein as a “Termination Declaration”) from and after the end of the Remedies Notice Period (as defined below). The Termination Declaration shall be given by facsimile (or other electronic means) to counsel to the Debtors, counsel to the Ad Hoc Noteholder Committee, counsel to any Statutory Committee appointed in these Cases and the U.S. Trustee (the earliest date any such Termination Declaration is made shall be referred to herein as the “Termination Declaration Date”). During the five (5) business day period commencing with the Termination Declaration



Date (the “Remedies Notice Period”), the Debtors shall be entitled to seek an emergency hearing with the Court. Unless the Court orders otherwise during the Remedies Notice Period (a “Cash Collateral Continuance Order”), the Debtors shall no longer be authorized hereunder from and after the end of the Remedies Notice Period to use Cash Collateral, except for the Carve Out.

13. Carve Out.

(a) *Carve Out.* As used in this Final Order, “Carve Out” means the (i) unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a), (ii) reasonable and documented unpaid fees and expenses of professional persons (the “Professional Fees”) retained by any Debtor or any Statutory Committee pursuant to an order of the Court (collectively, “Professionals”), incurred prior to delivery of a Carve Out Trigger Notice (as defined below), (iii) reasonable and documented unpaid Professional Fees, in an aggregate amount not to exceed \$1,000,000 (the “Carve Out Cap”), of Professionals incurred subsequent to delivery of a Carve Out Trigger Notice, and (iv) in the event of a conversion of the Cases to cases under chapter 7 of the Bankruptcy Code, the payment of fees and expenses incurred by a trustee and any professional retained by such trustee, in an aggregate amount not to exceed \$100,000 under section 726(b) of the Bankruptcy Code. The term “Carve Out Trigger Notice” shall mean a written notice provided by the Prepetition Agent to counsel to the Debtors, the U.S. Trustee, counsel to the Ad Hoc Noteholder Committee and counsel to any Statutory Committee appointed in these Cases, which notice may be delivered upon the occurrence and during the continuation of an Event of Default.

(b) *No Direct Obligation to Pay Professional Fees.* The Prepetition Agent and Prepetition 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 or any

Successor Cases. Nothing in this Final Order or otherwise shall be construed (i) to obligate the Prepetition Agent or Prepetition 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, (ii) to increase the Carve Out if actual allowed Professional Fees are higher in fact than the Carve Out Cap, (iii) as consent to the allowance of any professional fees or expenses of any Professionals, or (iv) to affect the right of the Prepetition Agent or Prepetition Lenders to object to the allowance and payment of such fees and expenses.

14. Limitations on the Cash Collateral and the Carve Out. Subject to Paragraphs 15 and 20 of this Final Order, the Cash Collateral and the Carve Out may not be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) invalidating, setting aside, avoiding, recharacterizing or subordinating, in whole or in part, the Prepetition Obligations, (ii) for monetary, injunctive or other affirmative relief against any Prepetition Agent or Prepetition Lender, or (iii) except during the Remedies Notice Period, preventing, hindering or otherwise delaying the exercise by the Prepetition Agent or Prepetition Lenders of any rights and/or remedies under this Final Order, the Prepetition Credit Documents, or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Court or otherwise) by the Prepetition Agent or Prepetition Lenders upon any of the Collateral; (b) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior consent of the Prepetition Agent, after consultation with the Prepetition Required Lenders, unless otherwise ordered by the Court; (c) in any way to object to, contest or interfere with the enforcement or realization upon any of the Collateral by the Prepetition Agent or Prepetition Lenders once an Event of Default has occurred, except during the Remedies Notice Period; (d) to

object to or challenge (or support or encourage any other person to object to or challenge) in any way the claims, liens, or interests (including interests in the Collateral) held by or on behalf of the Prepetition Agent or any Prepetition Lender; (e) to assert, commence or prosecute any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the Prepetition Agent or any Prepetition Lender in their capacity as agent and/or lender under the Prepetition Credit Agreement; or (f) to prosecute an objection to, contest in any manner, or raise any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Obligations or Prepetition Liens or any other rights or interests of the Prepetition Agent or any Prepetition Lender. Notwithstanding the foregoing, the Cash Collateral and the Carve Out may be used by any Statutory Committee or any other person or entity granted standing by the Court to investigate, but not Challenge (as defined herein), the Prepetition Obligations, the Prepetition Liens and/or a potential Challenge, provided that no more than \$100,000 in the aggregate may be spent on investigating the foregoing.

15. Reservation of Certain Third Party Rights and Bar of Challenges and Claims. Nothing in this Final Order shall prejudice the rights of a Statutory Committee, a successor trustee and, solely if no Statutory Committee is appointed, any other party in interest granted standing by the Court (other than the Debtors), to seek to object to or to challenge the Debtors' Stipulations, including, but not limited to those in relation to: (a) the validity, extent, priority, or perfection of the mortgage, security interests, and liens of the Prepetition Agent or any Prepetition Lender; or (b) the validity, allowability, priority, full secured status or amount of the Prepetition Obligations. A party in interest, including any Statutory Committee, if appointed, must commence, as appropriate, a contested matter or adversary proceeding raising such objection or challenge, including, without limitation, any claim against the Prepetition Agent or

any Prepetition Lender in the nature of a setoff, counterclaim or defense to the applicable Prepetition Obligations (each, a “Challenge”) within the earlier of: (i) seventy-five (75) days after the Petition Date or (ii) the date a plan of reorganization is confirmed in these Cases (the “Challenge Period”). The applicable Challenge Period may only be extended once by an additional thirty (30) days for cause shown on motion and hearing brought prior to its expiration or by written consent of the Prepetition Agent, after consultation with the Prepetition Required Lenders. Upon the expiration of the Challenge Period (the “Challenge Period Termination Date”), without the filing of a Challenge: (A) any and all such Challenges by any party (including, without limitation, any Statutory Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed in these Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case), shall be deemed to be forever waived, released and barred, and (B) all of the Debtors’ Stipulations, waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to the Prepetition Agent’s and each Prepetition Lender’s claims, liens, and interests shall be of full force and effect and forever binding upon the Debtors, the Debtors’ bankruptcy estates and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases. Upon entry of a final nonappealable order sustaining any Challenge brought pursuant to this paragraph, payments made to the Prepetition Agent or the Prepetition Lenders may be subject to appropriate reversal or reapplication as this Court may determine on notice and hearing. Upon entry of a final nonappealable order determining any Prepetition Lender to be undersecured, payment of interest or fees to that Prepetition Lender under this Final Order shall be reapplied to principal.

16. 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.

17. Section 506(c) Claims. No costs or expenses of administration which have been or may be incurred in the Cases or any Successor Cases at any time shall be charged against the Prepetition Agent or any Prepetition Lender or any of their respective claims or the Collateral pursuant to section 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the Prepetition Agent or applicable Prepetition Lender, respectively, and no such consent shall be implied from any other action, inaction, or acquiescence by the agent or any such lenders.

18. No Marshaling/Applications of Proceeds. The Prepetition Agent and Prepetition Lenders shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Collateral, as the case may be, and proceeds shall be received and applied in accordance with this Final Order notwithstanding any other agreement or provision to the contrary.

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

20. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the Prepetition Agent’s or any Prepetition Lender’s right to seek any other or

supplemental relief in respect of any Debtor, including the right to seek additional adequate protection (without prejudice to any other person's right, including the Debtors, to object to or otherwise oppose such additional adequate protection and to use Cash Collateral for such opposition); (b) any of the rights of the Prepetition Agent or any Prepetition Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases or Successor Cases, conversion of any of the Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, (iii) assert that the Prepetition Obligations exceed the value of the Collateral for purposes of a plan of reorganization or otherwise, or (iv) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans (or any other person's right, including the Debtors, to object to or otherwise oppose (b)(i)-(iv) and to use Cash Collateral for such opposition); or (c) any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the Prepetition Lenders (or any other person's right, including the Debtors, to object to or otherwise oppose such rights, claims, or privileges, if appropriate and to use Cash Collateral for such opposition).

21. Section 507(b) Reservation. 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 Prepetition Agent and/or Prepetition Lenders hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Cases or any Successor Cases. Nothing contained herein shall prejudice the Prepetition Agent's or Prepetition Lenders' rights to seek additional adequate protection as appropriate.

22. No Waiver by Failure to Seek Relief. The failure of the Prepetition Agent or any Prepetition Lender to seek relief or otherwise exercise its rights and remedies under this Final Order, the Prepetition Credit Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the Prepetition Agent, or any Prepetition Lender.

23. Proofs of Claim. The Prepetition Agent and Prepetition Lenders shall not be required to file proofs of claim in any of the Cases or Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or Successor Cases to the contrary, the Prepetition Agent on behalf of itself and the Prepetition Lenders, is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in each of the Cases or Successor Cases for any claim allowed herein. Any proof of claim filed by the Prepetition Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition Lenders. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Cases or Successor Cases shall not apply to the Prepetition Agent or Prepetition Lenders.

24. Release. Each Debtor in its individual capacity, and upon the expiration of the Challenge Period without the filing of a Challenge by such person, any other party, including without limitation, each Statutory Committee, each chapter 11 trustee, and each examiner or other estate representative appointed in these Cases, and each chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case, if any (together, the “Releasing Parties”), hereby forever releases, waives and discharges each Prepetition Agent and Prepetition

Lenders, together with each of their respective officers, directors, employees, agents, attorneys, professionals, affiliates, parents, subsidiaries, assigns and/or successors (collectively, the “Released Parties”), from any and all claims and causes of action as set forth in Paragraph E(iv) of this Final Order.

25. Set-Off. Notwithstanding anything herein to the contrary, this Final Order shall not require the Prepetition Agent or any Prepetition Lender to turn over or release to any party any Cash Collateral in its possession as of the Petition Date that is subject to set off under the Bankruptcy Code; provided, however, that, until the occurrence of a Termination Declaration Date, no such Prepetition Agent or Prepetition Lender shall exercise, or seek to exercise, any such setoff rights; provided further that all parties hereby reserve all of their rights as to whether any such setoff is valid and enforceable under the Bankruptcy Code and applicable nonbankruptcy law.

26. Reserved.

27. Good Faith. The Prepetition Agent and each of the Prepetition Lenders have acted in good faith (including, without limitation, for the purposes of Section 363(m) of the Bankruptcy Code) in connection with this Final Order and their reliance on this Final Order is in good faith.

28. Binding Effect of Final Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtors, the Prepetition Agent, the Prepetition Lenders, all other creditors of any of the Debtors, any committee appointed in the Cases, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Cases, any



Successor Cases, or upon dismissal of any Case or Successor Case. In the event of any inconsistency between the provisions of this Final Order and any other order (including any “First Day” order), the provisions of this Final Order shall govern and control. Any payments to be made under any order (including any “First Day” order) shall be made in accordance with this Final Order.

29. No Modification of Final Order. 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 Court or any other court, such modification, amendment or vacatur shall not affect the validity, perfection, priority, allowability, enforceability or non-avoidability of any advances previously made or made hereunder, or lien, claim or priority authorized or created hereby. Any liens or claims granted to the Prepetition Agent and Prepetition Lenders hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Final Order shall be governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

30. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Cases; (b) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Final Order, including the claims, liens, security interests and other protections granted to the Prepetition Agent and Prepetition Lenders pursuant to this Final Order, notwithstanding the entry of any such order, shall continue in the Cases, in any Successor Cases, or following dismissal of the Cases or any Successor Cases, and shall maintain their priority as

provided by this Final Order until all Prepetition Obligations have been indefeasibly paid in full in cash, notwithstanding the expiration of the Specified Period or any earlier termination of the Debtors' authorization to use Cash Collateral.

31. Reserved.

32. Effect of this Final Order. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution thereof.

33. 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 6th day of December, 2010.

/s/Martin Glenn  
MARTIN GLENN  
United States Bankruptcy Judge