



SO ORDERED: May 14, 2008.

Basil H. Lorch III
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

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In re: : Chapter 11
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ATA AIRLINES, INC., : Case No. 08-03675
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Debtor. :
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FINAL ORDER (I) AUTHORIZING DEBTOR TO USE THE SECURED LENDERS' CASH COLLATERAL AND (II) GRANTING ADEQUATE PROTECTION TO THE SECURED LENDERS PURSUANT TO 11 U.S.C. §§ 361, 362 AND 363

Upon the motion (the "Motion"), dated April 3, 2008, of ATA Airlines, Inc., the debtor-in-possession in the above-captioned bankruptcy case ("ATA" or the "Debtor"), (a) seeking this Court's authorization (i) pursuant to Section 363 of Title 11, United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the Bankruptcy Code), to use the Cash Collateral (as defined below) of the Secured Lenders and (ii) pursuant to Sections 361, 362 and 363 of the Bankruptcy Code, to provide adequate protection to the Secured Lenders with respect to any diminution in the value

of the Secured Lenders' interests in the Prepetition Collateral (as defined below), whether from the use of the Cash Collateral, the use, sale or lease of the Prepetition Collateral other than the Cash Collateral, and the imposition of the automatic stay pursuant to Section 362(a) of the Bankruptcy Code; and (b) seeking a preliminary hearing (the "Preliminary Hearing") on the Motion to consider entry of an interim order pursuant to Bankruptcy Rule 4001(b) (the "Interim Order") authorizing the Debtor to use the Cash Collateral; and (c) requesting that a final hearing (the "Final Hearing" and, together with the Preliminary Hearing, the "Hearings") be scheduled, and that notice procedures in respect of the Final Hearing be established by this Court to consider entry of a final order (this "Order") authorizing the Debtor's use of the Cash Collateral; and this Court having entered the Interim Order after holding the Preliminary Hearing on April 4, 2008; and due and sufficient notice of the Motion and the Hearings under the circumstances having been given; and a Final Hearing on the Motion having been commenced on May 7, 2008 and adjourned based upon the resolution of the objection of the Committee (as defined below) and submission of an agreed Order; and upon the entire record made at the Hearings, and this Court having found good and sufficient cause appearing therefor:

IT IS HEREBY FOUND THAT:

A. On April 2, 2008 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Chapter 11 Case"). The Debtor is continuing to manage its business as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner. An official committee of unsecured creditors (the "Committee") was appointed in the Chapter 11 Case on April 16, 2008.

B. This Court has jurisdiction over the Chapter 11 Case and the Motion pursuant to 28 U.S.C. § 157(b) and 1334. Consideration of this Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

C. Pursuant to the Term Loan Agreement dated as of August 14, 2007 (as amended, supplemented or otherwise modified prior to the Petition Date, the “Term Loan Agreement”), among New ATA Acquisition Inc., as borrower (the “Borrower”), the lenders party thereto (collectively, the “Secured Lenders”, with each being a “Secured Lender”) and JPMorgan Chase Bank, N.A., as administrative agent for the Secured Lenders (in such capacity, the “Administrative Agent”), the Secured Lenders made loans and other financial accommodations to or for the benefit of the Borrower, the Debtor (a wholly-owned subsidiary of the Borrower) and the Borrower’s other subsidiaries in an amount in excess of \$365,000,000 (inclusive of accrued but unpaid interest) as of the Petition Date. Pursuant to a Guarantee and Collateral Agreement executed in connection with the Term Loan Agreement and dated as of August 14, 2007 (as amended, supplemented or otherwise modified prior to the Petition Date, the “Guarantee and Collateral Agreement”; and together with all collateral (including bank account control agreements) and ancillary documentation executed in connection therewith, collectively, the “Prepetition Loan Documents”)¹, the Debtor guaranteed the Borrower’s obligations under the Term Loan Agreement and granted a security interest in substantially all of its personal property as collateral security for its obligations under the Guarantee and Collateral Agreement (all such obligations of the Debtor, the “Prepetition Obligations”).

¹ Unless otherwise defined herein, each capitalized term used herein shall have the meaning assigned thereto in the Guarantee and Collateral Agreement. For purposes of this Order, “Required Secured Lenders” shall mean, at any time, Secured Lenders holding more than 50% in principal amount of outstanding Loans (as defined in the Term Loan Agreement).

D. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in decretal paragraph 11), the Debtor acknowledges and agrees that, as of the Petition Date, in accordance with the terms of the Guarantee and Collateral Agreement, the Debtor is truly and justly indebted to the Secured Lenders in respect of the Prepetition Obligations, without defense, counterclaim or offset of any kind.

E. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in decretal paragraph 11), the Debtor acknowledges and agrees that it will not, and hereby waives any right to, challenge the validity, perfection, enforceability, or priority of the liens and security interests granted by the Debtor pursuant to the Prepetition Loan Documents to the Administrative Agent and the Secured Lenders to secure the Prepetition Obligations, upon and in substantially all of the Debtor's assets and property, including without limitation, certain owned aircraft, all Accounts, Chattel Paper, Commercial Tort Claims, Contracts, Deposit Accounts, Securities Accounts, Commodity Accounts, Documents, Equipment, Fixtures, General Intangibles, Instruments, Intellectual Property, Inventory, Investment Property, Letter of Credit Rights, and all other tangible and intangible personal property and the proceeds thereof securing the Prepetition Obligations (including the setoff rights described in the Prepetition Loan Documents and arising by operation of law, but excluding all "Excluded Property", as defined in the Guarantee and Collateral Agreement, collectively the "Prepetition Collateral"). The Debtor's cash, including without limitation, all cash and other amounts on deposit or maintained in any account or accounts by the Debtor, but excluding all "Excluded Cash" and "Excluded Accounts", as each such term is defined in the Guarantee and Collateral Agreement, and any amounts generated by the collection of accounts receivable, sale of inventory or other disposition of the Prepetition Collateral constitute proceeds of the

Prepetition Collateral and, therefore, are cash collateral of the Secured Lenders within the meaning of Section 363(a) of the Bankruptcy Code (the “Cash Collateral”). The Secured Lenders are entitled, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral to the extent of the diminution in value thereof, including for the use of the Cash Collateral, the use, sale or lease of the Prepetition Collateral other than the Cash Collateral, and the imposition of the automatic stay.

F. Shortly after the filing of the Chapter 11 Case, the Debtor, in consultation with its financial and legal advisors, as more specifically described in the *Declaration of Steven S. Turoff in Support of First-Day Pleadings* (the “First Day Declaration”), determined that the options it was reviewing which would have enabled the Debtor to maintain operations were not going to be successful and that it was necessary to pursue an orderly liquidation of the Debtor’s assets through the Chapter 11 Case.

G. Good cause has been shown for the entry of this Order. The Debtor does not have sufficient available sources of working capital and financing to wind down the operation of its business and conduct the orderly liquidation without the use of the Cash Collateral and the Prepetition Collateral. The Debtor is unable to obtain additional financing. Among other things, entry of this Order will minimize disruption caused by the cessation of the Debtor’s business operations and permit it to pay wind-down operating expenses and expenses relating to the orderly liquidation. The use of the Cash Collateral is, therefore, of the utmost significance and importance to the preservation of the value of the Debtor’s assets and its estate pending consummation of an orderly liquidation, and such use should enhance the prospects for the Debtor to confirm a liquidating Chapter 11 plan. Additionally, the Debtor has an ongoing need to use the Cash Collateral to permit the orderly wind-down of its business.

H. The Administrative Agent, the Secured Lenders and the Debtor have negotiated at arms' length and in good faith regarding the Debtor's use of the Cash Collateral to fund the wind-down of the Debtor's business operations and orderly liquidation of the Debtor's assets. The Administrative Agent and the Secured Lenders have agreed to permit the Debtor to use the Cash Collateral subject to the terms and conditions set forth in this Order, including the protection afforded a party acting in "good faith" pursuant to Section 363(m) of the Bankruptcy Code.

I. Notice of the Final Hearing and the relief requested in the Motion has been given to (i) the Office of the United States Trustee, (ii) counsel to the Administrative Agent, (iii) the Debtor's twenty (20) largest unsecured creditors as set forth in the list accompanying the Debtor's Petition, (iv) counsel for the Committee and (v) all other parties who have requested service pursuant to Bankruptcy Rule 2002. Such notice of the Final Hearing complies with Sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), the local rules of this District and the Interim Order.

J. Based on the record presented to this Court at the Hearings, the Debtor has an ongoing need to use Cash Collateral, and the terms of the Debtor's use of the Cash Collateral appear to be fair and reasonable and to reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties. This Court concludes that entry of this Order is in the best interest of the Debtor's estate and creditors.

Based upon the foregoing findings and conclusions, and upon the record made before this Court at the Hearings, and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED that:

1. The Motion is granted. All objections have been withdrawn or resolved pursuant to this Order.

2. The Debtor is hereby authorized to use the Cash Collateral during the period from the Petition Date through and including the Termination Date for general corporate purposes during the Chapter 11 Case in accordance with the terms and conditions of this Order and the Budget (as defined below).

3. The Debtor shall only use the Cash Collateral for the payment of the costs and expenses associated with the wind-down operations of the Debtor's business, the orderly liquidation of the Debtor's assets and the conduct of the Chapter 11 Case as set forth in a four-week budget to be submitted to the Required Secured Lenders (any such budget deemed reasonably acceptable by the Required Secured Lenders, the "Budget"). A copy of the Budget for the time period from April 26, 2008 to May 23, 2008 is attached hereto as Exhibit A. A copy of the Budget for the period from the Petition Date through April 25, 2008 was attached as Exhibit A to the Interim Order. No later than ten (10) days prior to the last day covered by the Budget then in effect, the Debtor shall deliver to the Secured Lenders, the Administrative Agent and the Committee a proposed budget covering the subsequent four-week period (a "Proposed Budget"). Unless the Administrative Agent provides written notice to the Debtor, within five (5) days after receipt of the Proposed Budget, that the Proposed Budget is not reasonably acceptable to the Required Secured Lenders, the Proposed Budget shall become the "Budget" for purposes hereof. Except as expressly set forth herein, this Order does not address the disposition of any Prepetition Collateral outside the ordinary course of business or the Debtor's use of the Cash Collateral resulting therefrom.

4. (a) As adequate protection for, and to the extent of, any diminution in the value of the Secured Lenders' interest in the Prepetition Collateral resulting from (x) the use of the Cash Collateral pursuant to Section 363(c) of the Bankruptcy Code, (y) the use, sale or lease of the Prepetition Collateral (other than the Cash Collateral) pursuant to Section 363(c) of the Bankruptcy Code and (z) the imposition of the automatic stay pursuant to Section 362(a) of the Bankruptcy Code (the amount of any such diminution being referred to hereinafter as the "Adequate Protection Obligations"), the Administrative Agent and the Secured Lenders are hereby granted (effective as of the Petition Date and without the necessity of the execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements or otherwise), valid and perfected, replacement security interests in and liens (the "Replacement Liens") on all prepetition and postpetition assets and properties (tangible, intangible, real, personal and mixed) of the Debtor of any kind or nature, whether now existing or newly acquired or arising, and wherever located, including, without limitation, all accounts, accounts receivable, chattel paper, electronic chattel paper, inventory, machinery, equipment, contract rights, documents, goods, fixtures, intellectual property and other general intangibles, investment property, owned and leased real property, vehicles, instruments, letters of credit, letter of credit rights, commercial tort claims, causes of action, cash, deposit accounts, securities, securities accounts, books and records, causes of action arising under Chapter 5 of the Bankruptcy Code against affiliates of the Debtor and all proceeds and products of the foregoing (collectively, the "Postpetition Collateral"). The Postpetition Collateral shall not include (i) Deposit Accounts used exclusively for, and only funded to the extent necessary to pay, payroll, payroll taxes, union dues, and other employee wage and benefit payments, as set forth in the definition of "Excluded Accounts" in the Guarantee and Collateral Agreement, (ii) the Tax Trust Accounts, as defined in

the Debtor's Prepetition Wages Motion and Trust Fund Motion (as defined in the First Day Declaration), (iii) equipment (including records and documents relating to such equipment but excluding equipment constituting Prepetition Collateral) described in section 1110(a)(3) and section 1110(d) of the Bankruptcy Code and the proceeds of any insurance for such equipment to the extent of the interest of the applicable secured party, lessor or conditional vendor in the equipment and (iv) causes of action arising under Chapter 5 of the Bankruptcy Code against non-affiliates of the Debtor and the proceeds thereof (the "Non-Affiliate Avoidance Actions"). Subject to the Carveout, said Replacement Liens shall be (i) a first priority perfected lien upon all of the Postpetition Collateral that is not otherwise encumbered by a validly perfected, non-avoidable security interest or lien on the Petition Date, (ii) a first priority, senior, priming and perfected lien upon Postpetition Collateral subject to a lien (x) securing the Prepetition Obligations as of the Petition Date or (y) that is junior to the liens securing the Prepetition Obligations and (iii) a second priority, junior perfected lien upon all Postpetition Collateral (other than the portion described in the preceding clause (ii)), which is subject to a validly perfected first priority lien as of the Petition Date. Notwithstanding the foregoing, nothing herein is intended to impair or affect the setoff/recoupment rights, if any, of the United States or any of its agencies.

(b) As further adequate protection hereunder, the Debtor shall provide the following reports to the Administrative Agent, the Secured Lenders and the Committee (the "Reporting Requirements"), each in form reasonably satisfactory to the Administrative Agent: (i) commencing on Monday, May 19, 2008,² and every Monday thereafter, (A) thirteen-week rolling cash flow projections for the Debtor, substantially in the form attached as Exhibit B

² The Interim Order provided for such reporting commencing on Friday, April 11, 2008 and every Friday thereafter.

hereto, showing on a weekly basis for the current week and the succeeding twelve weeks (x) beginning and ending liquidity, (y) weekly receipts by significant category and (z) weekly disbursements by significant category, and (B) a comparison of actual weekly cash flows for the week immediately preceding the week in which such comparison is being delivered to the projected cash flows for such week as shown in the most recent thirteen-week rolling cash flow projections delivered to the Administrative Agent, Secured Lenders and the Committee, together, in the case of each of the foregoing clauses (A) and (B), with a certification of the Debtor's Chief Restructuring Officer ("CRO") confirming such CRO's review of such projections or comparison, as applicable; and (ii) within 30 days after the end of every month, monthly financial statements prepared by the Debtor, which shall include such financial statements for such month and for the portion of such fiscal year through the end of such month. In addition, the Debtor shall permit representatives, agents and/ or employees of the Administrative Agent or any of the Secured Lenders to have reasonable access to its premises and non-privileged records during normal business hours (without unreasonable interference with the proper operation of the Debtor's business) and shall cooperate, consult with and provide to such persons all such non-privileged information as they may reasonably request from time to time.

(c) The Debtor further agrees to use any cash that is not Cash Collateral prior to use of the Cash Collateral, and to use such cash in accordance with the terms and conditions of this Order and the Budget.

(d) As additional adequate protection, the Debtor is authorized and directed, within 20 days of the submission of invoices therefor (with a copy of such invoices to be provided simultaneously to the Committee), to pay or reimburse all reasonable fees, costs and charges incurred by the Administrative Agent and any of the Secured Lenders (including,

without limitation, the reasonable fees and out-of-pocket disbursements of lead and local counsel to the Administrative Agent and any of the Secured Lenders), in each case, in connection with matters relating to the Interim Order, this Order and the monitoring of the Chapter 11 Case or the enforcement and protection of the rights and interests of the Administrative Agent and the Secured Lenders in respect of the Adequate Protection Obligations and the Prepetition Obligations. None of the fees, costs and expenses payable pursuant to this paragraph shall be subject to separate approval by this Court (but this Court shall resolve any dispute as to the reasonableness of any such fees, costs and expenses), and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto.

(e) Based solely upon the Secured Lenders' consent, the adequate protection provided herein is reasonable under the circumstances to protect the interests of the Secured Lenders. Notwithstanding any other provision hereof, the grant of adequate protection to the Administrative Agent and the Secured Lenders pursuant hereto is without prejudice to the right of the Secured Lenders to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection, and without prejudice to the right of the Debtor or any other party in interest to contest any such modification.

(f) As part of the resolution of the Objection filed by the Committee, the Secured Lenders shall not have any unsecured deficiency claim under section 506(a)(1) of the Bankruptcy Code (the "Secured Lender Deficiency Claim") as to the first proceeds of any Non-Affiliate Avoidance Actions up to the lesser of (i) \$7,500,000 and (ii) 10% of all allowed prepetition unsecured claims other than the Secured Lender Deficiency Claim.

5. As used in this Order, "Carveout" means (a) the unpaid fees of the clerk of the Bankruptcy Court and of the United States Trustee pursuant to 28 U.S.C. § 1930(a) and (b) (the

“Statutory Fees”), (b) following delivery of written notice to the Debtor that an Event of Default (as defined below) has occurred and is continuing and, provided that such Event of Default has not been waived or cured, the payment of allowed professional fees and disbursements (the “Professional Fees and Disbursements”) incurred after delivery of such written notice by the professionals retained by the Debtor or the Committee (including the reasonable expenses of the members of the Committee) not to exceed \$750,000 in the aggregate, plus all unpaid Professional Fees and Disbursements previously incurred prior to delivery of written notice to the Debtor and the Committee of the occurrence of such Event of Default and (c) the costs and administrative expenses (other than the fees and expenses, if any, incurred, directly or indirectly, in respect of, arising from or relating to, the initiation or prosecution (but not the investigation conducted prior to such initiation or prosecution) of any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims or causes of action against the Administrative Agent or the Secured Lenders) not to exceed \$100,000 in the aggregate that are permitted to be incurred by any Chapter 7 trustee pursuant to an order of this Court following any conversion to Chapter 7 of the Chapter 11 Case. So long as written notice of the occurrence of an Event of Default shall not have been delivered to the Debtor and the Committee, or any such Event of Default shall have been waived by the Required Secured Lenders or cured, the Debtor shall be permitted to pay without reduction of the Carveout the Professional Fees and Disbursements, as the same may be due and payable, and any amounts set forth in the Budget from time to time in respect thereof are understood to be an estimate by the Debtor and not a cap, subject to the other provisions of this Order. Nothing herein shall be construed as a waiver of the right of the Administrative Agent or any Secured Lender to object to the allowance of any

Professional Fees and Disbursements. The Carveout shall be senior to the Replacement Liens and the liens securing the Prepetition Obligations.

6. Subject to the Carveout, the Adequate Protection Obligations shall constitute expenses of administration under Sections 503(b)(1), 507(a) and 507(b) of the Bankruptcy Code (the “507(b) Claims”) with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, Sections 326, 328, 330, 331 and 726 of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtor, and any successor trustee or any creditor, in the Chapter 11 Case or any subsequent proceedings under the Bankruptcy Code, provided that the Secured Lenders shall not have 507(b) Claims on the proceeds of the Non-Affiliate Avoidance Actions. Subject to the Carveout, no cost or expense of administration under Sections 503(b) or 507(b) or otherwise, including those resulting from the conversion of the Chapter 11 Case pursuant to Section 1112 of the Bankruptcy Code, shall be senior to, or pari passu with, the 507(b) Claims of the Secured Lenders arising out of the Adequate Protection Obligations.

7. Except as expressly set forth in this Order, the Replacement Liens granted pursuant to this Order shall not be (i) subject to any lien that is avoided and preserved for the benefit of the Debtor’s estate under Section 551 of the Bankruptcy Code or (ii) subordinated to or made pari passu with any other lien under Sections 363 and 364 of the Bankruptcy Code. Subject to the Carveout, the Replacement Liens shall be prior and senior to all liens and encumbrances of all other secured creditors in and to such Postpetition Collateral granted or arising after the Petition Date (including, without limitation, liens and security interests, if any, granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtor). The Replacement Liens granted pursuant to the Interim

Order and this Order shall constitute valid and duly perfected security interests and liens, and the Administrative Agent and the Secured Lenders shall not be required to file or serve financing statements, notices of lien or similar instruments which otherwise may be required under federal or state law in any jurisdiction or take any action, including taking possession, to validate and perfect such security interests and liens; and the failure by the Debtor to execute any documentation relating to the Replacement Liens shall in no way affect the validity, perfection or priority of such Replacement Liens. If, however, the Administrative Agent, in its sole discretion, shall determine to file or serve any such financing statements, notices of lien or similar instruments, or to otherwise confirm perfection of such Replacement Liens, the Debtor is directed to cooperate with and assist in such process, the stay imposed by Section 362(a) of the Bankruptcy Code is hereby lifted to allow the filing and recording of a certified copy of the Interim Order and this Order or any such financing statements, notices of lien or similar instruments, and all such documents shall be deemed to have been filed or recorded at the time of and on the date of the Interim Order.

8. The Debtor's right to use the Cash Collateral pursuant to this Order shall terminate (the date of any such termination, the "Termination Date") on the earliest to occur of (x) September 30, 2008 (or such later date if the Required Secured Lenders consent, which extension thereof shall be effective without further Court approval) or (y) upon three (3) business days' written notice to the Debtor (with a copy to counsel for the Committee and the United States Trustee) after the occurrence and continuance of any of the following events (unless waived by the Required Secured Lenders, "Events of Default") beyond any applicable grace period set forth below:

- a. Failure of the Debtor to make any payment to the Administrative Agent or the Secured Lenders as and when required by this Order;

- b. Failure of the Debtor to (i) use Cash Collateral for approved categories of expenses set forth in the Budget or comply with any other material terms of this Order, (ii) maintain a cash balance as of any week covered by the Budget that is equal to or greater than the amount for such week shown on the Budget under the line “Ending Balance”, (iii) comply with any other covenant or agreement specified in this Order (other than those described in clauses (i) and (ii) above and clause (iv) below) and such failure to comply with any such other covenant or agreement shall continue unremedied for more than three (3) business days after written notice thereof or (iv) comply with any of the Reporting Requirements and such failure shall continue unremedied for more than three (3) business days;
- c. Expiration of the then applicable Budget without a new Proposed Budget’s becoming the Budget in accordance with paragraph 3 of this Order;
- d. Any representation or warranty made in writing by the Debtor in the Reporting Requirements (other than with respect to projected financial information) shall prove to have been incorrect in any material respect when made;
- e. The Chapter 11 Case shall be dismissed or converted to a Chapter 7 case; or a Chapter 11 trustee with plenary powers, a responsible officer, or an examiner with enlarged powers relating to the operation of the businesses of the Debtor (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed in the Chapter 11 Case;
- f. This Court shall enter an order granting relief from the automatic stay to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of the Debtor which have an aggregate value in excess of \$250,000; provided, however, that this Event of Default shall not apply to equipment abandoned or returned in accordance with Section 1110 of the Bankruptcy Code;
- g. An order shall be entered reversing, amending, supplementing, staying for a period in excess of three (3) business days, vacating or otherwise modifying this Order without the consent of the Secured Lenders;
- h. The Debtor shall create, incur or suffer to exist any postpetition liens or security interests other than (i) those granted pursuant to the Interim Order and this Order, (ii) carriers’, mechanics’, warehousemen’s, repairmen’s or other similar liens arising in the ordinary course of business, (iii) pledges or deposits in connection with workers’ compensation, unemployment insurance and other social security legislation and (iv) deposits to secure the payment of any postpetition statutory obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business; provided that the aggregate value of the liens, pledges or deposits referred to in clauses (iii) and (iv) above shall not exceed \$100,000 at any one time; or any other claim which is pari passu with or senior to

the claims of the Administrative Agent and the Secured Lenders shall be granted in the Chapter 11 Case;

- i. Any judgment in excess of \$500,000 as to any postpetition obligation not covered by insurance shall be rendered against the Debtor and the enforcement thereof shall not be stayed; or there shall be rendered against the Debtor a non-monetary judgment with respect to a postpetition event which has or could reasonably be expected to have a material adverse effect on the property, business, condition (financial or otherwise) of the Debtor taken as a whole or the ability of the Debtor to perform its obligations under this Order; and
- j. A filing by the Debtor (or any of its successors and assigns) of any motion or application or adversary proceeding challenging the validity, enforceability, perfection or priority of the liens securing the Prepetition Obligations or any other cause of action against and/or with respect to the Prepetition Obligations, the prepetition liens securing such Prepetition Obligations, the Administrative Agent or the Secured Lenders.

The Debtor shall promptly provide notice to the Administrative Agent (with a copy to counsel for the Committee and the United States Trustee) of the occurrence of any Event of Default.

9. On the Termination Date, upon five (5) business days' written notice to the Debtor (with a copy to counsel to the Committee and the United States Trustee) (i) the Adequate Protection Obligations shall become immediately due and payable, (ii) the Administrative Agent and each Secured Lender may setoff amounts which are included in the Secured Lenders' Postpetition Collateral in any account maintained with, or subject to a control agreement in favor of, the Administrative Agent or any Secured Lender, respectively and (iii) the Administrative Agent and the Secured Lenders may exercise the rights and remedies available under the Prepetition Loan Documents, this Order or applicable law, including without limitation, foreclosing upon and selling all or a portion of the Prepetition Collateral or Postpetition Collateral in order to collect the Adequate Protection Obligations. The actions described in clauses (ii) and (iii) above may be taken without further order of or application to this Court as the Required Secured Lenders shall elect, and the automatic stay is hereby deemed modified and vacated to the extent necessary to permit such actions. The Administrative Agent and the

Secured Lenders shall be entitled to apply the payments or proceeds of the Prepetition Collateral or the Postpetition Collateral in accordance with the provisions of the Prepetition Loan Documents and this Order to pay the Adequate Protection Obligations and, subject to the rights of any other party in interest to challenge the Prepetition Obligations and the Administrative Agent's liens on the Prepetition Collateral as set forth in paragraph 11 below, to pay the Prepetition Obligations, and in no event shall the Administrative Agent or any of the Secured Lenders be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Prepetition Collateral, the Postpetition Collateral or otherwise. Notwithstanding the occurrence of the Termination Date or anything herein, all of the rights, remedies, benefits and protections provided to the Administrative Agent and the Secured Lenders under this Order shall survive the Termination Date. Upon receipt by the Debtor of a three (3) business days' written notice of the termination of the Debtor's ability to use the Cash Collateral after the occurrence and continuance of an Event of Default pursuant to paragraph 8 above, the Debtor shall retain the right to seek approval of this Court under Sections 361 and 363 of the Bankruptcy Code to use the Cash Collateral and/or to obtain alternative financing under Section 364 of the Bankruptcy Code, and the Secured Lenders reserve the right to object to any such proposed use or alternative financing.

10. The provisions of this Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (a) confirming any plan of reorganization or plan of liquidation in the Chapter 11 Case; (b) converting the Chapter 11 Case to a Chapter 7 case; or (c) dismissing the Chapter 11 Case. If an order dismissing the Chapter 11 Case under Section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that (a) the Replacement Liens

granted pursuant to the Interim Order and this Order to the Administrative Agent and the Secured Lenders shall continue in full force and effect, shall remain binding on all parties in interest notwithstanding such dismissal until the obligations secured thereby shall have been paid and satisfied in full and (b) this Court shall retain jurisdiction, notwithstanding such dismissal, for the limited purposes of enforcing such Replacement Liens.

11. The acknowledgments and agreements contained in paragraphs D and E shall be binding upon the Debtor in all circumstances, and shall be binding upon all other parties in interest, including without limitation, the Committee, unless (a) a party in interest (including the Committee) has properly filed an adversary proceeding or contested matter (subject to the limitations set forth in paragraph 17) challenging the validity, perfection, priority, extent, enforceability or amount of the Prepetition Obligations or the Administrative Agent's liens on the Prepetition Collateral in respect thereof, or otherwise asserting any claims or causes of action against the Administrative Agent or the Secured Lenders on behalf of the Debtor's estate, no later than July 31, 2008, which deadline may be extended upon the written consent of the Administrative Agent and (b) this Court rules in favor of the plaintiff in any such timely and properly filed adversary proceeding or contested matter. If no such adversary proceeding or contested matter is commenced as of such date, the Prepetition Obligations shall constitute allowed claims, not subject to subordination and otherwise unavoidable, for all purposes in the Chapter 11 Case or any subsequent Chapter 7 case, the Administrative Agent's liens on the Prepetition Collateral shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim, offset of any kind, subordination and otherwise unavoidable, and the Administrative Agent, the Secured Lenders, the Prepetition Obligations and the Administrative Agent's liens on the Prepetition Collateral shall not be subject to any other or further challenge

by any party in interest seeking to exercise the rights of the Debtor's estate, including without limitation, any successor thereto. If any such adversary proceeding or contested matter is timely commenced as of such date, the acknowledgements and agreements contained in paragraphs D and E shall nonetheless remain binding and preclusive (as provided in this paragraph) except to the extent that such acknowledgements and agreements were expressly challenged in such adversary proceeding or contested matter.

12. Entry of this Order shall be without prejudice to any and all rights, remedies, claims and causes of action which the Administrative Agent or the Secured Lenders may have against the Debtor or any other parties, and without prejudice to the right of the Administrative Agent and the Secured Lenders to seek relief in the Chapter 11 Case, including without limitation, relief from the automatic stay in effect pursuant to Bankruptcy Code Section 362 or conversion to Chapter 7 of the Chapter 11 Case, and the right of the Debtor and any other party in interest to oppose any such relief. The provisions of this Order shall be binding upon and inure to the benefit of the Administrative Agent, the Secured Lenders, the Debtor, and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Chapter 11 Case as a legal representative of the Debtor or the Debtor's estate.

13. (a) In order to facilitate the processing of claims, to ease the burden upon this Court and to reduce any unnecessary expense to the Debtor's estate, the Administrative Agent is authorized to file a master proof of claim on behalf of itself and the Secured Lenders on account of their claims arising under the Prepetition Loan Documents and hereunder against the Debtor (the "Master Proof of Claim"), and the Administrative Agent shall not be required to file a verified statement pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure.

(b) Upon the filing of the Master Proof of Claim against the Debtor, the Administrative Agent and each Secured Lender, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against the Debtor arising under the Prepetition Loan Documents, and the claim of the Administrative Agent and each Secured Lender (and each of their respective successors and assigns), named in the Master Proof of Claim shall be allowed or disallowed as if such entity had filed a separate proof of claim in the Chapter 11 Case in the amount set forth opposite each name in the Master Proof of Claim; provided that the Administrative Agent may but shall not be required to amend the Master Proof of Claim from time to time to, among other things, reflect a change in the holders of claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from any transfer of any such claims.

(c) The provisions set forth of this paragraph and the Master Proof of Claim are intended solely for the purpose of administrative convenience and, except to the extent set forth herein or therein, neither the provisions of this paragraph nor the Master Proof of Claim shall affect the substantive rights of the Debtor, the Committee, the Administrative Agent or the Secured Lenders or any other party in interest or their respective successors in interest including, without limitation, the right of each Secured Lender (or their successors in interest) to vote separately on any plan of reorganization or plan of liquidation proposed in the Chapter 11 Case.

14. Pursuant to Sections 105, 361 and 363 of the Bankruptcy Code, the Administrative Agent and the Secured Lenders are hereby found to be entities that have acted in “good faith” in connection with the negotiation and entry of the Interim Order and this Order, and each is entitled to the protection provided to such entities under Section 363(m) of the Bankruptcy Code.

15. Except on the terms of this Order, the Debtor shall be prohibited from at any time using the Cash Collateral. Notwithstanding any provision in any “first day” or any other orders entered by this Court authorizing the Debtor to make payments in respect of prepetition obligations, the provisions in this Order and the Budget conditioning the payment of such amounts or limiting the amount of such payments are controlling.

16. In consideration of the Secured Lenders’ consent to the use of the Cash Collateral in accordance with the terms of this Order and the Budget, no expenses of administration of the Chapter 11 Case other than those set forth in the Budget, or any future proceeding or case which may result therefrom, including without limitation, a case under Chapter 7 shall be charged pursuant to Section 506(c) of the Bankruptcy Code against the Prepetition Collateral or the Postpetition Collateral without the prior written consent of the Required Secured Lenders, except for the Carveout, and no such consent shall be implied from any action, inaction or acquiescence by the Secured Lenders or otherwise.

17. Notwithstanding anything herein to the contrary, the Cash Collateral and the Carveout may not be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent, enforceability or amount of the Prepetition Obligations or the liens of the Administrative Agent or the Secured Lenders in the Prepetition Collateral, or the liens or claims granted under this Order (but may be used for the investigation in connection therewith, subject to a limitation of \$75,000), (b) assert any claims, counterclaims, defenses or causes of action against the Administrative Agent or the Secured Lenders or their respective affiliates, agents, representatives or professionals or (c) seek to modify or otherwise alter any of the rights granted to the Administrative Agent or the Secured Lenders hereunder or under the Prepetition Loan Documents, in each of the foregoing cases without such parties’ prior written consent.

18. Except as specifically amended, supplemented or otherwise modified hereby, all of the provisions of the Interim Order shall remain in effect and are hereby ratified by this Order. In the event of any inconsistency between the terms of this Order and the terms of the Interim Order, the terms of this Order shall govern.

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