

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re)	
)	Chapter 11
)	
WCI COMMUNITIES, INC., <u>et al.</u> , ¹)	Case No. 08 - 11643 (KJC)
)	
)	Jointly Administered
Debtors.)	
)	Re: Docket No. _____

FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) AND 507 AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363, 364 AND 507 AND (III) AUTHORIZING DEBTORS TO USE PROCEEDS OF POST-PETITION FINANCING AND CASH COLLATERAL TO REPAY SECURED INDEBTEDNESS PURSUANT TO 11 U.S.C. § 363

Upon the motion (the “**Motion**”) dated August 22, 2008 of WCI Communities, Inc. (the “**Borrower**”) and its affiliated debtors, each as debtor and debtor-in-possession (collectively, the “**Debtors**”) in the above-captioned cases (the “**Cases**”) pursuant to sections 105, 361, 362, 363(b)(1), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), seeking, among other things:

(1) authorization for the Borrower to obtain post-petition financing (the “**Financing**”), and for all of the other Debtors (the “**Guarantors**”) to guaranty the Borrower’s obligations in connection with

¹ The List of the Debtors and Tax Identification Numbers is located on the docket for Case No. 08-11643 (KJC) and <http://chapter11.epiqsystems.com/wcicomunities>.

the Financing in an aggregate principal amount of \$150,000,000 (subject to the terms and conditions set forth in the DIP Documents (as defined below)) from Wachovia Bank, National Association ("**Wachovia**"), acting as Administrative Agent (in such capacity, the "**Administrative Agent**"), and Bank of America, N.A. ("**Bank of America**"), acting as Collateral Agent (in such capacity, the "**Collateral Agent**" and, collectively with the Administrative Agent, the "**Agents**"), for themselves and a syndicate of financial institutions (together with Wachovia and Bank of America and including the fronting and issuing banks for the letters of credit issued thereunder, the "**DIP Lenders**") to be arranged by Wachovia Capital Markets, LLC and Banc of America Securities LLC;

(2) authorization for the Debtors to execute and enter into the DIP Documents and to perform such other and further acts as may be required in connection with the DIP Documents;

(3) the granting of adequate protection to the Pre-Petition Secured Lenders whose liens under or in connection with the following instruments are being primed: (a) that certain Third Consolidated, Amended and Restated Revolving Credit Construction Loan Agreement dated as of September 22, 2005 (as heretofore amended, supplemented or otherwise modified, the "**Tower Credit Agreement**"), among the Borrower, each guarantor thereof, the lenders party thereto (the "**Tower Lenders**") and Wachovia, as administrative agent for the Tower Lenders (with any successor agent, the "**Tower Agent**"), and all guarantees, mortgages,

security and pledge agreements and other documentation executed in connection therewith (collectively with the Tower Credit Agreement, the **“Tower Existing Agreements”**), (b) the Senior Term Loan Agreement dated as of December 23, 2005 (as heretofore amended, supplemented or otherwise modified, the **“Term Credit Agreement”**) among the Borrower, the lenders party thereto (the **“Term Lenders”**) and KeyBank National Association, as Administrative Agent (with any successor agent, the **“Term Agent”**), and Wachovia, as Syndication Agent (with any successor agent, the **“Term Syndication Agent”**), and all guarantees, mortgages, security and pledge agreements and other documentation executed in connection therewith (collectively with the Term Credit Agreement, the **“Term Existing Agreements”**), and (c) the Senior Unsecured Revolving Credit Facility dated as of June 13, 2006 (as heretofore amended, supplemented or otherwise modified, the **“Revolving Credit Agreement”** and, collectively with the Tower Credit Agreement and the Term Credit Agreement, the **“Pre-Petition Credit Agreements”**) among the Borrower, the lenders party thereto (the **“Revolving Lenders”** and, collectively with the Tower Lenders and the Term Lenders, the **“Pre-Petition Secured Lenders”**) and Bank of America, N.A., as Administrative Agent (with any successor agent, the **“Revolving Agent”**), and Wachovia, as Syndication Agent (with any successor agent, the **“Revolving Syndication Agent”** and, collectively with the Tower Agent, the Term Agent, the Term Syndication Agent, the Revolving Agent and

the Revolving Syndication Agent, the “**Pre-Petition Agents**”), and all guarantees, mortgages, security and pledge agreements and other documentation executed in connection therewith (collectively with the Revolving Credit Agreement, the “**Revolving Existing Agreements**” and the Revolving Existing Agreements, collectively with the Tower Existing Agreements and the Term Existing Agreements, the “**Existing Agreements**”);

(4) authorization for the Debtors to use Cash Collateral (as defined below) and the granting of adequate protection to the Pre-Petition Secured Lenders for the aggregate net diminution in the value of each Pre-Petition Secured Lender’s respective security interests in and liens on the Pre-Petition Collateral (as defined below); and

(5) authorization for the Debtors to use proceeds of the Financing and Cash Collateral to repay the Tower Debt (as defined below).

Due and sufficient notice of the Motion, the relief requested therein and the hearing thereon having been served by the Debtors on the statutory committee of unsecured creditors appointed under section 1102(a)(1) of the Bankruptcy Code (the “**Creditors’ Committee**”), the Agents, the DIP Lenders, the Pre-Petition Agents, the Pre-Petition Secured Lenders, the United States Trustee for the District of Delaware (the “**U.S. Trustee**”), the indenture trustees for the Senior Subordinated Notes, the Junior Subordinated Notes and the Convertible Notes (as each are defined in the Motion) (including counsel if known), the Debtors’ 30 largest unsecured creditors on a consolidated basis (including counsel if known), and all parties requesting notices

pursuant to Bankruptcy Rule 2002, in compliance with Bankruptcy Rules 4001(b) and (c).

A hearing having been held by this Court on September 23, 2008 (the “**Hearing**”).

Upon the record made by the Debtors at the Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. The Debtors duly commenced these Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code on August 4, 2008 (the “**Petition Date**”) in the United States Bankruptcy Court for the District of Delaware (this “**Court**”).

2. On August 13, 2008, the U.S. Trustee appointed the Creditors’ Committee.

3. The Debtors are operating their business and managing their affairs as debtors and debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Cases.

4. *Jurisdiction and Venue.* This Court has core jurisdiction over the Cases, the Motion, the documents and agreements referred to herein, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. *Notice.* The notice given by the Debtors of the Motion, the relief requested therein and the Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c).

6. *Debtors' Stipulations.* Without prejudice to the rights of any other party (but subject to the limitations thereon contained in paragraphs 20 and 21), the Debtors stipulate and acknowledge that:

(a) As of the Petition Date, the Borrower and the applicable pre-petition guarantors, without defense, counterclaim or offset of any kind, were indebted and liable to (i) the Tower Lenders in the aggregate principal amount of approximately \$49,055,226 in respect of loans made by the Tower Lenders, plus interest thereon and fees, expenses (including, without limitation, any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the Tower Agreements), charges and other obligations incurred in connection therewith as provided in the Tower Agreements (collectively, the "**Tower Debt**"), (ii) the Term Lenders in the aggregate principal amount of approximately \$224,829,124 in respect of loans made by the Term Lenders, plus, as the case may be, interest thereon and fees, expenses (including, without limitation, any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the Term Agreements), charges and other obligations (including, without limitation, approximately \$10,200,000 arising out of terminated hedging agreements with KeyBank National Association) incurred in connection therewith as provided in the Term Agreements (the "**Term Debt**"), and (iii) the Revolving Lenders in the aggregate principal amount of approximately \$488,961,711 in respect of loans made and, without duplication, letters of credit issued under the Revolving Credit Agreement in an aggregate undrawn amount of approximately \$36,714,708 and in an aggregate drawn but unreimbursed amount of approximately \$9,962,163, plus, as the case may be, interest thereon and fees, expenses

(including, without limitation, any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the Revolving Agreements), charges and other obligations incurred in connection therewith as provided in the Revolving Agreements (collectively, the "**Revolving Debt**", and the Revolving Debt collectively with the Tower Debt and the Term Debt, the "**Pre-Petition Debt**").

(b) The Pre-Petition Debt constitutes the legal, valid and binding obligation of the applicable Debtors, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code);

(c) No portion of the Pre-Petition Debt is subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law.

(d) The Tower Debt was originally secured by first priority liens on and security interests in (the "**First Priority Tower Lender Liens**") certain residential tower projects located in Florida and in New Jersey and related collateral (including, without limitation, all proceeds thereof), as more specifically and to the extent described in the Tower Existing Agreements (the "**Tower Collateral**"). The Term Debt and the Revolving Debt was each originally unsecured and was each guaranteed by certain of WCI's wholly-owned subsidiaries.

(e) On or after August 17, 2007, WCI and certain of its wholly owned subsidiaries granted to the Revolving Lenders and the Term Lenders first priority liens on and security interests in (the "**First Priority Shared Lender Liens**") substantially all of their assets and property (and proceeds thereof) other than the Tower Collateral (the

“Shared Collateral,” and together with the Tower Collateral, the **“Pre-Petition Collateral”**).

(f) On or after January 16, 2008, WCI and certain of its wholly owned subsidiaries granted (i) to the Revolving Lenders and the Term Lenders, as security for, respectively, the Revolving Debt and the Term Debt, second priority liens on and security interests in (the **“Second Priority Shared Lender Liens”**) the Tower Collateral, and (ii) to the Tower Lenders, as security for the Tower Debt, a second priority lien on and security interest in (the **“Second Priority Tower Lender Liens”**) the Shared Collateral. Also, on or after January 16, 2008, certain of WCI’s wholly-owned subsidiaries guaranteed to the Tower Lenders repayment of the Tower Debt.

(g) The liens and security interests granted to the Pre-Petition Agents pursuant to and in connection with the Existing Agreements (including, without limitation, all security agreements, pledge agreements, mortgages, deeds of trust and other security documents executed by any of the Debtors in favor of any Pre-Petition Agent, for its benefit and for the benefit of the Pre-Petition Secured Lenders) in connection with the Existing Agreements (collectively, the **“Pre-Petition Liens”**), are (i) valid, binding, perfected and, other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code, enforceable liens and security interests in the Pre-Petition Collateral, (ii) not, pursuant to the Bankruptcy Code or applicable non-bankruptcy law, subject to recharacterization, subordination or avoidance, *provided* that this stipulation shall not prejudice any potential avoidance actions or defenses to such avoidance actions with respect to the Second Priority Tower Lender Liens and the Second Priority Shared Lender Liens, and (iii) subject and subordinate only to (A) the

DIP Liens (as defined below), (B) the Carve-Out (as defined below), (C) the Adequate Protection Liens (as defined below) and (D) valid, perfected and unavoidable liens existing as of the Petition Date or duly perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case to the extent such liens are as a matter of law senior to or *pari passu* with the liens of the Pre-Petition Agents on the Pre-Petition Collateral.

(h) The aggregate value of the Pre-Petition Collateral that secures the Tower Debt substantially exceeds the aggregate amount of the Tower Debt.

7. *Findings Regarding the Financing.*

(a) Good cause has been shown for the entry of this Order.

(b) The Debtors have an immediate need to obtain the Financing and use Cash Collateral to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, to repay the Tower Debt and to satisfy other working capital and operational needs. The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, incurrence of new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

(c) The Debtors have been unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and have been unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors also have been

unable to obtain superpriority or secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the Agents and the DIP Lenders, subject to the Carve-Out as provided for herein, the DIP Liens and the Superpriority Claims (as defined below) under the terms and conditions set forth in this Order and in the DIP Documents. Given the current capital markets environment, alternative financing may not be available to the Debtors at all and will not be available on terms more favorable than set forth in the DIP Documents.

(d) The terms of the Financing and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The Financing has been negotiated in good faith and at arm's length among the Debtors, the Agents and the DIP Lenders, and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the Financing and the DIP Documents, including without limitation, (i) all loans made to, and all letters of credit issued for the account of, the Debtors pursuant to the DIP Documents, and (ii) any other "Obligations" (as defined in the DIP Credit Agreement, including, without limitation, hedging obligations, credit extended in respect of overdrafts and related liabilities and other depository, treasury, and cash management services and other clearing services provided by any DIP Lender or its affiliates (all of the foregoing in clauses (i) and (ii) collectively, the "**DIP Obligations**")), shall be deemed to have been extended by the Agents and the DIP Lenders and their affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the

protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) Repayment of the Tower Debt reflects the Debtors' exercise of prudent business judgment and is fair and reasonable under the circumstances.

8. *Authorization of the Financing and the DIP Documents.*

(a) The Debtors are hereby authorized to enter into the DIP Documents. The Borrower is hereby authorized to borrow money and obtain letters of credit pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized to, and the Borrower is authorized to cause its non-Debtor subsidiaries to, guaranty such borrowings and the Borrower's obligations with respect to such letters of credit, in an aggregate principal or face amount of \$150,000,000 (plus interest, fees and other expenses and amounts provided for in the DIP Documents), in accordance with the terms of this Order and the DIP Documents, which may be used for all purposes not prohibited under the DIP Documents, including, without limitation, to provide working capital for the Borrower and the Guarantors, to pay interest, fees and expenses in accordance with this Order and the DIP Documents and to make adequate protection payments, cure payments and any other payments permitted to be made by the Court. In addition to such loans and other financial accommodations, the Debtors are authorized to enter into related hedging obligations and incur overdrafts and related liabilities arising from treasury, depository and cash management services, including, without limitation, any automated clearing house fund transfers provided to or for the benefit of the Debtors by any DIP Lender or any affiliate of any DIP Lender, *provided, however*, that nothing

herein shall require any Agent or any other party to incur overdrafts or to provide any such services or functions to the Debtors.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees in accordance with the DIP Documents and take such actions, in each case as may be reasonably required or necessary for the Debtors' performance of their obligations under the Financing (it being understood for the avoidance of doubt that the recording of mortgages and the payment of fees in connection therewith shall be subject to the terms of the DIP Documents), including, without limitation:

(i) the execution, delivery and performance of the Loan Documents (as defined in the Credit Agreement substantially in the form that was filed with the Court on September 16, 2008 and as modified by the filing with the Court of changed pages thereto on September 19, 2008 (the "**DIP Credit Agreement**")) and any exhibits attached thereto, including, without limitation, the DIP Credit Agreement, the Security Agreement and the Pledge Agreement (each as defined in the DIP Credit Agreement) and any mortgages contemplated thereby (collectively, and together with the letter agreements referred to in clause (iii) below, the "**DIP Documents**"),

(ii) subject to the terms of the DIP Credit Agreement, the execution, delivery and performance of one or more amendments to the DIP Credit Agreement for any purpose, including, without limitation, to add additional financial institutions as DIP Lenders and reallocate the commitments for the Financing among the

DIP Lenders, in each case in such form as the Debtors, the Agents and the requisite DIP Lenders may agree, *provided* that approval of the Court shall be required for amendments to the DIP Credit Agreement that (A) shorten the maturity of the extensions of credit thereunder or (B) increase the commitments, the rate of interest or the letter of credit fees payable thereunder,

(iii) the non-refundable payment to the Agents or the DIP Lenders, as the case may be, of the fees referred to in the DIP Credit Agreement (and in the separate letter agreements between them in connection with the Financing) and reasonable costs and expenses as may be due from time to time, including, without limitation, reasonable fees and expenses of the professionals retained as provided for in the DIP Documents (with copies of invoices to be provided by the Debtors to counsel to the Creditors' Committee at the time such invoices are submitted to the Debtors), and

(iv) the performance of all other acts required under or in connection with the DIP Documents.

(c) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with the terms of the DIP Documents. Subject to paragraphs 20 and 21, no obligation, payment, transfer or grant of security under the DIP Documents or this Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff, recoupment or counterclaim.

9. *Payment of Tower Debt.* The Debtors are authorized and directed to use a portion of the proceeds of the Financing and/or Cash Collateral to repay the Tower Debt in full. Any such repayment shall be irrevocable and shall not be subject to restitution, disgorgement or any other challenge under any circumstances, including, without limitation, pursuant to any Lender Claim (as defined below). The Tower Agent and the Tower Lenders shall be entitled to all the protections of this Order granted to the Pre-Petition Agents and the Pre-Petition Secured Lenders for so long as any Tower Debt is outstanding. If no Tower Debt is outstanding, then the Tower Agent and the Tower Lenders shall be considered as a Pre-Petition Agent and as Pre-Petition Secured Lenders under this Order for purposes of each recital to this Order and paragraphs 6, 7, 8, 9, 17, 19(d), the second sentence of 19(e), 20, 21, 22, 24 and 25.

10. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed claims against the Debtors with priority over any and all administrative expenses, diminution claims (including, without limitation, all Adequate Protection Obligations (as defined below)) and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (the “**Superpriority Claims**”), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall for purposes of section 1129(a)(9)(A) of

the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which shall be payable from and have recourse to all pre- and post-petition property of the Debtors and all proceeds thereof except for any Avoidance Actions (as defined below) and the products and the proceeds thereof, subject only to the payment of the Carve-Out, and

(b) For purposes hereof, the “**Carve-Out**” means (i) all unpaid fees due and payable to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930, (ii) the accrued and unpaid costs, fees and expenses incurred by professionals retained by the Debtors and the Creditors’ Committee until the date of receipt by the Borrower from the Agents of written notice (the “**Default Notice**”) specifying the occurrence and continuance of an Event of Default, *provided* that any such accrued and unpaid professional costs, fees and expenses incurred after the specified Event of Default is waived or cured shall also be included in the Carve-Out, and (iii) the accrued and unpaid fees and expenses incurred by professionals retained by the Debtors and the Creditors’ Committee after the date of receipt by the Borrower of a Default Notice and only for so long as the Event of Default triggering the occurrence of such date is continuing, in an aggregate amount not to exceed \$7,000,000, plus (without duplication) all accrued and unpaid allowed costs, fees and expenses incurred by professionals retained by the Debtors and the Creditors’ Committee appointed in the Cases prior to the occurrence of such date. Notwithstanding the foregoing, so long as an Event of Default shall not have occurred and be continuing, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under 11 U.S.C.

§§ 330 and 331, as the same may be due and payable, and the same shall not reduce the Carve-Out.

11. *DIP Liens.*

As security for the DIP Obligations, effective and perfected upon the date of this Order and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by any Agent or DIP Lender of, or over, any DIP Collateral (as defined below), the following security interests and liens are hereby granted to the Collateral Agent for its own benefit and the benefit of the DIP Lenders (all property identified in clauses (a), (b) and (c) below (excluding tangible and intangible property described in clause (d)) being collectively referred to as the “**DIP Collateral**”), subject to the Carve-Out (all such liens and security interests granted to the Collateral Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Order and the DIP Documents, the “**DIP Liens**”):

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all pre- and post-petition property of the Debtors (other than the Excluded Assets), whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (collectively, “**Unencumbered Property**”), including, without limitation, all cash of the Debtors (whether maintained with the Agents or otherwise) and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants,

equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, equity interests of subsidiaries and the proceeds of all the foregoing.

(b) Liens Priming Pre-Petition Secured Lenders' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and post-petition property of the Debtors (other than the Excluded Assets), including, without limitation, Cash Collateral and all other cash (if any), inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, equity interests of subsidiaries, and the proceeds of all the foregoing, whether now existing or hereafter acquired, that is subject to the existing liens presently securing the Pre-Petition Debt (including, without limitation, in respect of issued but undrawn letters of credit). Such security interests and liens shall be senior in all respects to the interests in such property of the Pre-Petition Secured Lenders arising from current and future liens of the Pre-Petition Secured Lenders (including, without limitation, the Adequate Protection Liens (as defined below)), but shall not be senior to any valid, perfected and unavoidable interests of other parties arising out of liens, if any, on such property existing immediately prior to the Petition Date, or to any valid, perfected and unavoidable interests in such property arising out of liens to which the liens of the Pre-Petition Secured Lenders become subject subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all pre- and post-petition property of the Debtors (other than the property described in clauses (a) or (b) of this paragraph 11, as to which the liens and security interests in favor of the Collateral Agent on behalf of the DIP Lenders will be as described in such clauses, and other than Excluded Assets), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which security interests and liens in favor of the Collateral Agent on behalf of the DIP Lenders are junior to such valid, perfected and unavoidable liens.

(d) Excluded Assets. The following are “**Excluded Assets**”: (i) the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code or other applicable law, or any other avoidance actions under the Bankruptcy Code (collectively, “**Avoidance Actions**”) and products and proceeds thereof, (ii) customer deposits and other third party funds held by the Debtors in escrow (it being understood and agreed that the Debtors’ respective interests in such deposits or funds shall not constitute Excluded Assets) and products and proceeds thereof, (iii) equity interests owned by certain of the Debtors in the joint ventures listed on Schedule 1.01-B to the DIP Credit Agreement, (iv) equity interests in any of the Debtors’ direct foreign subsidiaries in excess of 65% of their voting equity interests and (v) assets that the Debtors may not pledge as a result of any contractual prohibition.

(e) Liens Senior to Certain Other Liens. The DIP Liens and the Adequate Protection Liens (as defined below) shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors, unless expressly permitted to be senior under the DIP Credit Agreement or applicable law.

12. *Protection of DIP Lenders' Rights.*

(a) So long as there are any borrowings or letters of credit or other amounts (other than contingent indemnity obligations as to which no claim has been asserted when all other amounts have been paid and no letters of credit are outstanding) outstanding, or the DIP Lenders have any Commitment (as defined in the DIP Credit Agreement) under the DIP Credit Agreement, the Pre-Petition Agents and Pre-Petition Secured Lenders shall (i) take no action to foreclose upon or recover in connection with the liens granted thereto pursuant to the Existing Agreements or this Order, or otherwise exercise remedies against any DIP Collateral, (ii) be deemed to have consented to any release of DIP Collateral authorized under the DIP Documents and (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral unless, solely as to this clause (iii), the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Order, or as

may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date.

(b) The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the Agents and the DIP Lenders to exercise, (i) immediately upon the occurrence of an Event of Default, all rights and remedies under the DIP Documents other than those rights and remedies against the DIP Collateral as provided in clause (ii) below and (ii) upon the occurrence and during the continuance of an Event of Default and the giving of five business days' prior written notice (to the extent provided for in, and subject to the terms of, the DIP Credit Agreement) to the Debtors and to counsel to the Creditors' Committee and the U.S. Trustee, all rights and remedies against the DIP Collateral provided for in the DIP Documents (including, without limitation, the right to set off against accounts maintained by the Debtors with any Agent or DIP Lender or any affiliate thereof). In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and the Debtors and the Pre-Petition Secured Lenders hereby waive their right to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of either Agent or the DIP Lenders set forth in this Order or the DIP Documents, *provided* that nothing herein shall limit, or be deemed a waiver of, the Debtors' rights under the DIP Documents or this Order. In no event shall the Agents and the DIP Lenders, and except as provided in paragraph 16(h), the Pre-Petition Agents or the Pre-

Petition Secured Lenders, be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral.

13. *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve-Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including, without limitation, liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral, the Pre-Petition Collateral or the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law without the prior written consent of the Agents or the Pre-Petition Agents, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the Agents, the DIP Lenders, the Pre-Petition Agents or the Pre-Petition Secured Lenders.

14. *Cash Collateral.* To the extent any funds were on deposit with any Pre-Petition Secured Lender as of the Petition Date, including, without limitation, all funds deposited in, or credited to, an account of any Debtor with any Pre-Petition Secured Lender immediately prior to the filing of the Debtors’ bankruptcy petitions (the “**Petition Time**”) (regardless of whether, as of the Petition Time, such funds had been collected or made available for withdrawal by any such Debtor), such funds (the “**Deposited Funds**”) are subject to rights of setoff. By virtue of such setoff rights, the Deposited Funds are subject to a lien in favor of such Pre-Petition Secured Lenders pursuant to sections 506(a) and 553 of the Bankruptcy Code. Such Pre-Petition Secured Lenders are obligated, to the extent provided in the Existing Agreements, to share the benefit of such liens and setoff rights with the other Pre-Petition Secured Lenders party to such Existing Agreements. Any proceeds of the Pre-Petition Collateral (including, without limitation, the Deposited

Funds or any other funds on deposit at the Pre-Petition Secured Lenders or at any other institution as of the Petition Date) are cash collateral of the Pre-Petition Secured Lenders within the meaning of section 363(a) of the Bankruptcy Code. The Deposited Funds and all such proceeds of Pre-Petition Collateral are, to the extent considered "cash collateral" under the Bankruptcy Code, referred to herein as "**Cash Collateral.**"

15. *Use of Cash Collateral.* The Debtors are hereby authorized to use all Cash Collateral of the Pre-Petition Secured Lenders, and the Pre-Petition Secured Lenders are directed promptly to turn over to the Debtors all Cash Collateral received or held by them, *provided* that the Pre-Petition Secured Lenders are granted adequate protection as hereinafter set forth. The Debtors' right to use Cash Collateral, and the Pre-Petition Secured Lenders' consent to use of Cash Collateral, shall terminate automatically on the Termination Date(as defined in the DIP Credit Agreement) unless each Pre-Petition Agent consents in writing to the continued use of Cash Collateral on the terms set forth in this Order, the Agents rescind (by amendment, waiver or otherwise) the occurrence of the Termination Date or the Debtors are given authority to use Cash Collateral by this Court.

16. *Adequate Protection.* Each Pre-Petition Secured Lender is entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection for and equal in amount to the aggregate net diminution in the value of such Pre-Petition Secured Lender's interests in the Pre-Petition Collateral, including the Cash Collateral, including, without limitation, any such net diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and any other Pre-Petition Collateral, the priming of the Pre-Petition Agents' security interests and liens in the Pre-Petition Collateral by the Agents and the DIP Lenders pursuant to the DIP

Documents and this Order and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (each such aggregate net diminution for each Pre-Petition Secured Lender, a “**Net Diminution**”). As adequate protection, the Pre-Petition Agents and the Pre-Petition Secured Lenders are hereby granted the following (collectively, the “**Adequate Protection Obligations**”):

(a) Adequate Protection Liens. To the extent of any Net Diminution, the Pre-Petition Agents (for themselves and for the benefit of the Pre-Petition Secured Lenders) are hereby granted (effective and perfected upon the date of entry of this Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements) a replacement security interest in and lien upon all the DIP Collateral, subject and subordinate only to (i) the security interests and liens granted to the Agents for the benefit of the DIP Lenders in this Order and pursuant to the DIP Documents, (ii) all valid, enforceable, perfected and unavoidable liens on all of the Debtors’ assets and property in existence as of the Petition Date or duly perfected after Petition Date as permitted by section 546(b) of the Bankruptcy Code and (iii) the Carve-Out (the “**Adequate Protection Liens**”).

(b) Section 507(b) Claim. To the extent of any Net Diminution, the Pre-Petition Agents and the Pre-Petition Secured Lenders are hereby granted, subject to the payment of the Carve-Out, a superpriority claim against the Debtors as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the claims under section 364(c)(1) of the Bankruptcy Code held by the Agents and the DIP Lenders, *provided, however*, that the Pre-Petition Agents and the Pre-Petition Secured Lenders shall not receive or retain any payments, property or other amounts in respect of the superpriority

claims under section 507(b) of the Bankruptcy Code granted hereunder or under the Existing Agreements unless and until the DIP Obligations have indefeasibly been paid in cash in full; and *provided, further*, that the Pre-Petition Agents and the Pre-Petition Secured Lenders' superpriority claims shall not be paid from any Avoidance Actions or the products or the proceeds thereof.

(c) Interest, Fees and Expenses. The Pre-Petition Agents shall receive from the Debtors (i) current cash payments of all fees and expenses (including, without limitation, those fees and expenses accrued prior to the Petition Date in an amount not to exceed approximately \$587,000 in the aggregate) payable to the Pre-Petition Agents under the Existing Agreements, including, but not limited to, the reasonable fees and disbursements of counsel, financial consultants, appraisers (regardless of appraisal date) and other consultants (or any such replacement or successor professional(s)) for the Pre-Petition Agents engaged by the Pre-Petition Agents in accordance with the arrangements existing immediately prior to the Petition Date promptly upon receipt of invoices therefor with copies of such invoices to be provided by the Debtors to counsel to the Creditors' Committee at the time that such invoices are sent to the Debtors and (ii) payment of current cash interest on the Pre-Petition Debt and letter of credit and unused commitment fees (including, without limitation, such fees and interest payable after the Petition Date that accrued prior to the Petition Date, in an aggregate amount not to exceed \$706,000) at the applicable non-default contract rate in effect on the date immediately preceding the Petition Date (including LIBOR pricing options for interest periods of three months or less) under the Existing Agreements on the non-default interest payment dates provided for under the Existing Agreements, *provided* that, subject to the limitations set forth in

paragraphs 20 and 21, nothing in this Order shall be construed to prejudice the right of any party in interest (other than the Debtors), in the event that the liens securing the Pre-Petition Debt are invalidated, subordinated or otherwise avoided or the Pre-Petition Debt is invalidated, subordinated, avoided or is determined to be undersecured, to seek to disgorge such payments or to recharacterize such payments as payments of principal, and *provided further* that, if, in accordance with applicable law, the Court allows the Pre-Petition Secured Lenders' claim for the payment of interest at the default rate provided for in the Existing Agreements, such claim shall constitute an administrative expense priority claim (an "**Interest Claim**") against the Debtors' estates and shall be paid in full in cash upon the effective date of any confirmed plan of reorganization with respect to the Debtors.

(d) Monitoring of Pre-Petition Collateral. Without limiting the Debtors' obligation in the immediately preceding subparagraph (c) and subject to the terms of the Existing Agreements, the Pre-Petition Agents shall be permitted to retain additional consultants and advisors. So long as the Debtors' right to use Cash Collateral is in effect, such additional consultants and advisors shall be given reasonable access to the Debtors' properties for the sole purposes of monitoring the value of the Pre-Petition Collateral; following any termination of the Debtors' right to use Cash Collateral, such additional consultants and advisors shall be given reasonable access to the Debtors' properties for any purpose consistent with the terms of the Existing Agreements, this Order and applicable law. The reasonable and documented fees and expenses of any such consultant and advisor shall comprise part of the claims of the Pre-Petition Secured

Lenders, and shall be paid, in accordance with the terms of the Existing Agreements and applicable law.

(e) Information. The Debtors shall (i) provide the Pre-Petition Agents and the Creditors' Committee with any written financial information or periodic reporting that is provided to, or required to be provided to, the Agents or the DIP Lenders and (ii) without duplication of the financial information or periodic reporting that is provided pursuant to clause (i), shall continue to provide the Pre-Petition Agents with, and shall provide to the Creditors' Committee, at the time of delivery of financial information and periodic reporting under the DIP Credit Agreement, financial and other reporting substantially in compliance with the Existing Agreements, which reporting shall be limited to: annual audited consolidated balance sheets, income statements, statements of shareholders' equity and cash flows ("**financial statements**") and unaudited quarterly financial statements; the Adjusted Tangible Net Worth and Leverage Ratio (each as defined in the Revolving Credit Agreement) on a quarterly basis; monthly unaudited financial statements; monthly reports of daily cash balances; monthly sales schedules listing all single and multi-family (traditional) homes and high-rise (tower) homes sales; monthly 13-week cash flow projections and reports and reconciliation statements; all such information shall be subject to existing confidentiality agreements among the Pre-Petition Agents and the Debtors and between the Creditors' Committee and the Debtors (as applicable), which, in each case, shall remain in full force and effect.

(f) Notice of Events of Default. Promptly upon a Responsible Officer (as defined in the DIP Credit Agreement) of the Debtors becoming aware of an Event of Default (as defined in the DIP Credit Agreement), the Debtors shall notify the Agents, the

Pre-Petition Agents, the Creditors' Committee and the U.S. Trustee of the occurrence of such Event of Default.

(g) Minimum Appraised Value Ratio. The Debtors shall maintain a minimum Appraised Value Ratio of 1.26:1 (with "**Appraised Value Ratio**" having the meaning assigned to such term in the DIP Credit Agreement). Compliance with such covenant shall be tested in accordance with the terms of the DIP Credit Agreement. The authority provided to the Debtors under this Order to use Cash Collateral, and the Pre-Petition Secured Lenders' consent thereto, shall immediately terminate if (i) the Debtors fail to maintain the minimum Appraised Value Ratio covenant, tested in accordance with the DIP Credit Agreement, and (ii) such failure continues unremedied for 20 days from the earlier to occur of (A) the receipt of notice by the Borrower from the Pre-Petition Agents or the Agents of such failure and (B) the date that a Responsible Officer of the Debtors becomes aware of such failure (it being understood and agreed that (x) such termination of the authorization for use of Cash Collateral by the Debtors does not limit or otherwise affect the Debtors' ability to seek to use Cash Collateral on a non-consensual basis and (y) all parties (including the Debtors) reserve all of their rights with respect to any such alleged failure and the remedies or consequences relating thereto), *provided* that the Pre-Petition Agents shall promptly provide the Borrower with all appraisals of assets and such appraisals shall be conducted periodically on the basis set forth in the DIP Credit Agreement.

(h) Marshalling. Notwithstanding anything herein to the contrary, the Pre-Petition Secured Lenders and the Pre-Petition Agents agree to seek to recover, and may only recover, any Net Diminution first from the Debtors against which the Pre-

Petition Secured Lenders and the Pre-Petition Agents have valid and enforceable pre-petition secured claims and liens which are not avoided or invalidated (the "Pre-Petition Obligors") and shall only seek to recover, and may only recover, any Net Diminution from the Debtors against which the Pre-Petition Secured Lenders and the Pre-Petition Agents do not have valid and enforceable pre-petition secured claims and liens if such Net Diminution cannot be satisfied in full from the assets of the Pre-Petition Obligors. For purposes of this paragraph 16(h), "Pre-Petition Secured Lenders" shall mean the Term Lenders and the Revolving Lenders and "Pre-Petition Agents" shall mean the Revolving Agent, Revolving Syndication Agent, Term Agent and Term Syndication Agent.

17. *Reservation of Rights of Pre-Petition Secured Lenders.* Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including, without limitation, section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Pre-Petition Secured Lenders. Except as expressly provided herein, nothing contained in this Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to each Pre-Petition Agent, any Pre-Petition Secured Lender, the Agents or any DIP Lender including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor or the Creditors' Committee to contest such assertion).

18. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) Subject to the provisions of paragraph 12(a) above, the Agents, the DIP Lenders, the Pre-Petition Agents and the Pre-Petition Secured Lenders are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien and similar instruments in any jurisdiction, or take possession of or control over, or take any other action, in each case to the extent necessary or reasonably required by the DIP Agents to validate and perfect the liens and security interests granted to them hereunder. Whether or not the Agents on behalf of the DIP Lenders or the Pre-Petition Agents on behalf of the Pre-Petition Secured Lenders shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien and similar instruments, or take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of this Order. Upon the request of the Agents, each of the Pre-Petition Agents and Pre-Petition Secured Lenders, without any further consent of any party, is authorized to take, execute, deliver and file such instruments (in each case without representation or warranty of any kind) to enable the Agents to further validate, perfect, preserve and enforce the DIP Liens.

(b) A certified copy of this Order may, in the discretion of the Agents, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien and similar instruments, and all filing

offices are hereby authorized to accept such certified copy of this Order for filing and recording.

(c) The Agents and the DIP Lenders shall be entitled, pursuant to paragraph 23, to the benefit of the financing statements, trademark filings, copyright filings, mortgages, notices of lien and similar instruments filed by the Pre-Petition Agents on behalf of the Pre-Petition Secured Lenders, and the possession of or control over any property of the Debtors by any Pre-Petition Agent or Pre-Petition Secured Lender, for purposes of validating and perfecting the liens and security interests granted to the Agents and the DIP Lenders hereunder and placing third parties on notice of the encumbrance of the property subject to such liens and security interests, irrespective of whether the liens and security interests of the Pre-Petition Agents and the Pre-Petition Secured Lenders are subsequently avoided, subordinated or invalidated.

(d) Without limiting the definition of Excluded Assets, any provision of any lease or other license, contract or other agreement to which a Debtor is a party that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign or otherwise transfer any such leasehold interest, or the proceeds thereof, or other post-petition collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting post-petition liens, in such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Lenders in accordance with the terms of the DIP Credit Agreement or this Order.

19. *Preservation of Rights Granted Under the Order.*

(a) Other than as expressly permitted by the DIP Documents, (i) no lien or mortgage shall be granted or allowed on any property of the Debtors and no claim or lien having a priority superior to or *pari passu* with those granted by this Order to the Agents and the DIP Lenders or to the Pre-Petition Agents and the Pre-Petition Secured Lenders shall be granted or allowed while any portion of the Financing (or any refinancing thereof) or the Commitments thereunder or the DIP Obligations or the Adequate Protection Obligations remain outstanding and (ii) the DIP Liens and the Adequate Protection Liens shall not be (A) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or (B) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

(b) Unless all DIP Obligations shall have been paid in full (and, with respect to outstanding letters of credit issued pursuant to the DIP Credit Agreement, cash collateralized in accordance with the provisions of the DIP Credit Agreement) and the Adequate Protection Obligations shall have been paid in full, the Debtors shall not seek, and it shall constitute an Event of Default and terminate the right of the Debtors to use Cash Collateral if any of the Debtors seeks, or if there is entered, (i) any modification or extension of this Order (other than a Permitted Final Order Amendment (as defined in the DIP Credit Agreement)) without the prior written consent of the Agents (or, to the extent the DIP Obligations shall have been irrevocably paid in full, the Pre-Petition Agents), and

no such consent shall be implied by any other action, inaction or acquiescence, or (ii) an order converting or dismissing any of the Cases.

(c) If an order dismissing any of the Cases 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 (i) the Superpriority Claims, Interest Claims, priming liens, security interests and replacement security interests granted to the Agents and the DIP Lenders and, as applicable, the Pre-Petition Agents and the Pre-Petition Secured Lenders pursuant to this Order shall continue in full force and effect in accordance with the terms hereof and shall maintain their priorities as provided in this Order until all DIP Obligations and Adequate Protection Obligations shall have been paid and satisfied in full (and that such Superpriority Claims, Interest Claims, priming liens and replacement security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in (i) above.

(d) If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (i) the validity of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the Agents or Pre-Petition Agents, as applicable, of the effective date of such reversal, stay, modification or vacation or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Credit Agreement with respect to any DIP Obligations or Adequate Protection Obligations. Notwithstanding any such reversal, stay, modification or vacation, any use

of Cash Collateral, or DIP Obligations or Adequate Protection Obligations incurred by the Debtors to the Agents, the DIP Lenders, the Pre-Petition Agents or the Pre-Petition Secured Lenders prior to the actual receipt of written notice by the Agents and Pre-Petition Agents of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Order, and the Agents, DIP Lenders, Pre-Petition Agents and Pre-Petition Secured Lenders shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Order and pursuant to the DIP Documents with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(e) Except as expressly provided in this Order or in the DIP Documents, the DIP Liens, the Superpriority Claims and all other rights and remedies of the Agents and the DIP Lenders granted by the provisions of this Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission or (ii) the entry of an order confirming a plan of reorganization in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Order and the DIP Documents shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims and all other rights and remedies of the Agents and the DIP Lenders granted by the provisions of this Order

and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full.

20. *Limitation on Use of Financing Proceeds and DIP Collateral.*

Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings, letters of credit, Cash Collateral, Pre-Petition Collateral, DIP Collateral or the Carve-Out may be used for any of the following purposes (each, a “**Lender Claim**”):

(a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Existing Agreements, or the liens or claims granted under this Order, the DIP Documents or the Existing Agreements, (b) assert any claim or cause of action against the Agents, the DIP Lenders, the Pre-Petition Agents or the Pre-Petition Secured Lenders or their respective agents, affiliates, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the Agents’ or the Pre-Petition Agents’ assertion, enforcement or realization on the Cash Collateral or the DIP Collateral in accordance with the DIP Documents, the Existing Agreements or this Order, (d) assert or prosecute any action for preferences, fraudulent conveyances, other avoidance power claims or any other any claims, counterclaims or causes of action, objections, contests or defenses against the Pre-Petition Agents or any of the Pre-Petition Secured Lenders or their affiliates, representatives, attorneys or advisors in connection with matters related to the Existing Agreements, the Pre-Petition Debt or the Pre-Petition Collateral or (e) seek to modify any of the rights granted to the Agents, the DIP Lenders, the Pre-Petition Agents or the Pre-Petition Secured Lenders hereunder or under the DIP Documents or the Existing Agreements, in each of the foregoing cases without such party’s prior written consent, *provided* that advisors to the

Creditors' Committee may investigate the Pre-Petition Liens at an expense not to exceed \$250,000 incurred from and after the date of the entry of this Order, and *provided further* that motions or proceedings by the Debtors to enforce the terms of this Order or any provision of any DIP Document, or to prosecute any other right not limited, released or modified by or otherwise inconsistent with any provision of this Order (including, without limitation, the stipulations and acknowledgements hereof) or any provision of any DIP Document, shall not be considered a Lender Claim.

21. *Effect of Stipulations on Third Parties.* (a) Each stipulation and acknowledgment contained in this Order, including, without limitation, in paragraph 6 of this Order, shall be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) under all circumstances.

(b) Each stipulation and acknowledgement contained in this Order, including, without limitation, in paragraph 6 of this Order, shall be binding upon all other parties in interest, including, without limitation, the Creditors' Committee, except to the extent that (i) a party in interest has, subject to the limitations contained herein, including, *inter alia*, in paragraph 20, timely filed an adversary proceeding or contested matter asserting a Lender Claim with respect to such stipulation or admission by no later than the date that is 120 days (or such later date as has been agreed to, in writing, by the Pre-Petition Agents in their sole discretion) after the initial selection of counsel by the Creditors' Committee, and (ii) there is a final order in favor of the plaintiff sustaining any such Lender

Claim, *provided* that, as to the Debtors, all Lender Claims are hereby irrevocably waived and relinquished as of the date hereof.

(c) The success of any particular Lender Claim shall not alter the binding effect on each party in interest of any stipulation or acknowledgement not subject to such Lender Claim. Except to the extent (but only to the extent) a timely filed adversary proceeding or contested matter asserting a Lender Claim is successful, (i) the Pre-Petition Debt shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Cases and any subsequent chapter 7 cases, (ii) the Pre-Petition Agents' and the Pre-Petition Secured Lenders' liens on the Pre-Petition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected, not subject to recharacterization, subordination or avoidance and (iii) the Pre-Petition Debt, the Pre-Petition Agents' and the Pre-Petition Secured Lenders' liens on the Pre-Petition Collateral and the Pre-Petition Agents and the Pre-Petition Secured Lenders shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 or 11 trustee appointed or elected for any of the Debtors).

(d) Nothing in this Order vests or confers on any Person (as defined in the Bankruptcy Code), including, without limitation, the Creditors' Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, Lender Claims with respect to the Existing Agreements or the Pre-Petition Debt.

22. *Priorities Among Pre-Petition Secured Lenders.* Notwithstanding anything to the contrary herein or in any other order of this Court, in determining the relative priorities and rights of the Pre-Petition Secured Lenders (including, without limitation, the relative priorities and rights of the Pre-Petition Secured Lenders with respect to the Adequate Protection Obligations granted hereunder), such priorities and rights shall continue to be governed by the Existing Agreements.

23. *Collateral Agent.* To the extent Bank of America, in its role as Collateral Agent under the Existing Agreements, is the secured party under any account control agreements, is the mortgagee under any mortgage, is listed as loss payee under the Debtors' insurance policies as required under the Existing Agreements or is the secured party under any other Existing Agreement, Bank of America, in its role as Collateral Agent under the DIP Credit Agreement, is also deemed to be the secured party under such account control agreements, the mortgagee under any mortgage, loss payee under the Debtors' insurance policies and the secured party under any other Existing Agreement and shall act in that capacity and distribute any proceeds recovered or received first, for the benefit of the DIP Lenders in accordance with the DIP Credit Agreement and second, subsequent to indefeasible payment in full of all DIP Obligations, for the benefit of the Pre-Petition Secured Lenders under the Existing Agreements. Each Pre-Petition Agent shall serve as agent for the Collateral Agent for purposes of perfecting their respective security interests and liens on all DIP Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

24. *Certain Financial Covenants.* The Debtors will provide the Creditors' Committee (at the same time provided to the Agents) the proposed Final Budget (as defined in the DIP Credit Agreement which shall contain "Cash Receipts" and "Cash Disbursements" line items) and the proposed Agreed Variance (as defined in the DIP Credit Agreement). From and after the date of delivery of such information to the Creditors' Committee, the Creditors' Committee shall have five days to review such information and file any objection with the Court (upon notice to the Debtors and the Agents and with an opportunity to be heard) to the terms of the Final Budget and/or the Agreed Variance (it being understood that if the Creditors' Committee successfully prosecutes such objection, the Final Budget will be deemed not to be in effect for purposes of Section 8.01(k) of the DIP Credit Agreement).

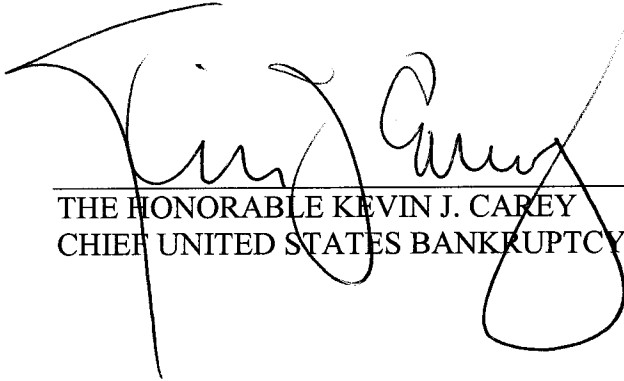
25. *Current Interest Payments.* The Pre-Petition Agents acknowledge that the Debtors have made, among other payments, current interest payments in accordance with the Cash Collateral Stipulation (as defined below) and the terms of this Order and, as a result, the Debtors are entitled to the benefits of, and the Pre-Petition Agents and Pre-Petition Lenders confirm the waiver of rights under, Section 362(d)(3) of the Bankruptcy Code solely to the extent such provision is applicable to these cases.

26. *Order Governs.* In the event of any inconsistency between the provisions of this Order and the DIP Documents, the provisions of this Order shall govern and shall supersede the Stipulation and Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 552 and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Granting Related Relief, and (IV) Scheduling Final

Hearing entered by the Court on August 5, 2008, as may be amended, supplemented or modified (the “**Cash Collateral Stipulation**”).

27. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the Agents, the DIP Lenders, the Pre-Petition Agents, the Pre-Petition Secured Lenders, the Creditors’ Committee appointed in these Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors) and shall inure to the benefit of the Agents, the DIP Lenders, the Pre-Petition Agents, the Pre-Petition Secured Lenders and the Debtors and their respective successors and assigns, *provided, however*, that the Agents and the DIP Lenders shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors.

Dated: Sept 23, 2008
Wilmington, Delaware



THE HONORABLE KEVIN J. CAREY
CHIEF UNITED STATES BANKRUPTCY JUDGE