

ORIGINAL

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
THE FAIRCHILD CORPORATION, <u>et al.</u> , ¹)	Case No. 09-10899 (CSS)
)	
Debtors.)	Jointly Administered
)	

**FINAL ORDER (A) AUTHORIZING POSTPETITION
FINANCING FROM PHOENIX BANNER LLC AND GRANTING
LIENS, SECURITY INTERESTS, AND SUPERPRIORITY
ADMINISTRATIVE CLAIMS PURSUANT TO 11 U.S.C. §§ 364(c);
AND (B) GRANTING RELATED RELIEF**

Upon the motion (the "Motion") dated March 18, 2009 of the above-captioned debtors and debtors in possession (collectively the "Debtors") pursuant to sections 105, 362, 363 and 364(c) of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Local Bankruptcy Rules for the District of Delaware (the "Local Rules"), and Rule 4001-2 of the Local Bankruptcy Rules for the District of Delaware (the "Local Rules"); seeking entry of the Interim Order (as defined below) and this final order (the "Final Order") (a) authorizing Banner Aerospace Holding Company I, Inc. ("Banner"), GCCUS, Inc. ("GCCUS"), Matrix Aviation, Inc. ("Matrix"), NASAM Incorporated ("NASAM"), Professional Aviation Associates, Inc. ("Aviation"), D A C International, Inc. ("DAC"), Professional Aircraft Accessories, Inc. ("Accessories") and Fairchild Realty, LLC ("Realty") (Banner, GCCUS, Matrix, NASAM, Aviation, DAC, Accessories and Realty are collectively the "DIP Borrowers")

¹ The last four digits of Fairchild's federal tax identification number are 8587. The mailing address for Fairchild is 1750 Tysons Boulevard, Suite 1400, McLean, VA 22102. Due to the large number of Debtors in these cases, for which the Debtors have requested joint administration, a complete list of the Debtors, the last four digits of their federal tax identification numbers and their addresses is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed noticing and claims agent at <http://chapter11.epiqsystems.com/fairchild>.

to obtain post-petition financing pursuant to section 364(c) of the Bankruptcy Code from Phoenix Banner LLC ("Phoenix or Lender") in an aggregate amount not to exceed \$4,000,000 (the "Phoenix DIP Facility"), and authorizing each of the Debtors other than the DIP Borrowers (collectively the "Guarantors") to guaranty the DIP Borrowers' obligations under the DIP Facility, pursuant to the terms of this Final Order, and that certain Debtor-in-Possession Subordinated Credit and Security Agreement by and among the DIP Borrowers and the Lender in the form attached to the Motion as **Exhibit A** (the "Phoenix DIP Agreement"), that certain DIP Guaranty and Security Agreement by and among the Lender and each Guarantor in the form attached to the Motion as **Exhibit B** (the "Phoenix DIP Guaranty Agreement"), and any related documents required to be delivered in connection with the Phoenix DIP Facility (such documents, together with the Phoenix DIP Agreement and the Phoenix DIP Guaranty Agreement, collectively, the "Phoenix DIP Credit Documents"); (b) authorizing the Debtors to continue to comply with and perform in all respects under the Phoenix DIP Credit Documents and to perform such other and further acts as may be required in connection with the Phoenix DIP Credit Documents; (c) granting valid, perfected and enforceable security interests, liens and superpriority claims (including a superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, and liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code) to the Lender to secure all obligations (i) of the Debtors under and with respect to the Phoenix DIP Facility, subject only to the security interests and liens granted under the PNC DIP Facility and the Permitted Liens (as defined in the Phoenix DIP Agreement) and (ii) of the Guarantors under and with respect to the Guarantees; (d) vacating and modifying the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the Lender to implement the terms of the Phoenix DIP Facility and this

Final Order; (e) requesting, pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, that an emergency interim hearing (the "Interim Hearing") on the Motion be held for the Court to consider entry of the Interim Order, which authorized the Debtors to borrow under the Phoenix DIP Facility, on an interim basis, up to an aggregate principal amount not to exceed \$361,000 (the "Interim Borrowing"); and (f) requesting, pursuant to Bankruptcy Rule 4001(b)(2) and 4001(c)(2), that this Court schedule a final hearing (the "Final Hearing") on the Motion within twenty (20) days of the Petition Date (as hereinafter defined) to consider entry of this Final Order approving the Phoenix DIP Facility on a final basis and authorizing the balance of the borrowings under the Phoenix DIP Credit Documents, and approve certain notice procedures with respect thereto; and thereof; (g) waiving the ten (10) day stay provisions of Federal Rule of Bankruptcy Procedure 6004(h); and (h) granting related relief; and the Interim Hearing having been held by this Court on March 20, 2009; and the Court having considered the Motion and all the pleadings relating thereto, including the Declaration of Donald E. Miller, Chief Restructuring Officer of Each of the Debtors in Support of First Day Pleadings (the "Miller Declaration"), filed contemporaneously with the Motion, and the record made by the Debtors at the Interim Hearing and Final Hearing; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest herein; and upon the record herein; and after due deliberation and consideration, and good and sufficient cause appearing therefor; it is hereby

FOUND AND DETERMINED that:

A. On March 18, 2009 (the "Petition Date"), each Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing these chapter 11 cases (the "Chapter 11 Cases"). The Debtors continue to operate their respective businesses

and are managing their respective properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have also filed simultaneously herewith a motion seeking joint administration of the Debtors' Chapter 11 Cases. An official committee of unsecured creditors (the "Committee") has not been appointed in these Chapter 11 Cases.

B. The Court has jurisdiction in this proceeding and over the parties and property affected hereby in accordance with 28 U.S.C. §§ 157(b) and 1334. The subject of the Motion is a "core" proceeding as defined in 28 U.S.C. § 157(b) and venue is proper before this Court pursuant to 28 U.S.C. § 1408.

C. The Initial Hearing was held on March 20, 2009, and the Final Hearing on the Motion having been held by this Court on April 15, 2009.

D. The Debtors served notice of the Motion and the Final Hearing by facsimile or overnight mail to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtors' largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (iii) counsel to the Debtors' prepetition secured lenders; (iv) counsel to the Debtors' proposed postpetition secured lenders; (v) the Internal Revenue Service and all known state and local taxing authorities to which the Debtors are subject; (vi) all persons or entities that have asserted a lien or interest in any of the Borrower Collateral (as defined below); (vii) the Securities and Exchange Commission; (viii) the Office of the United States Attorney General for the District of Delaware; and (xi) the Pension Benefit Guaranty Corporation. The Notice provided by the Debtors of the Motion, the Final Hearing and the relief granted under this Final Order constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001(c) and Local Rule 4001-2(c).

E. Simultaneous with the submission of the Motion, the Debtors also filed a motion (the "PNC DIP Motion") seeking authority for Banner, GCCUS, Matrix, NASAM, Aviation, DAC, and Accessories (collectively the "Banner Debtors") to enter into the Senior DIP Financing Facility with PNC Bank, National Association (the "PNC Senior DIP Facility"). The PNC DIP Facility replaces similar financing provided to the Banner Debtors by PNC Bank, National Association ("PNC Bank") prior to the Petition Date. The proceeds of PNC DIP Facility are to be used solely for the purpose of providing working capital to the Banner Debtors, and are not available to other Debtors, except to the extent set forth in the PNC Senior DIP Facility and its related documents.

F. On March 24, 2009, this Court entered the Order (a) Authorizing Interim Postpetition Financing from Phoenix Banner LLC and Granting Liens, Security Interests, and Superpriority Administrative Claims pursuant to 11 U.S.C. §§ 364(c); (b) Scheduling a Final Hearing; and (c) Granting Related Relief (D.I. 57) (the "Interim Order"), pursuant to which, inter alia (a) the Debtors were authorized to obtain, on an interim basis, post-petition loans, advances and other financial accommodations from Lender in accordance with the terms and conditions of the Phoenix DIP Credit Documents, secured by first priority liens and security interests upon and in the DIP Collateral (as defined in the Interim Order), subject only to the Permitted Liens (as defined in the Phoenix DIP Agreement), and were granted a super-priority administrative claim against the Debtors subject only to the PNC Superpriority Claims (as defined in the Interim Order).

G. The Debtors other than the Banner Debtors have an immediate and critical need to obtain postpetition financing proposed under the Phoenix DIP Facility to provide working capital to fund administrative, professional and corporate overhead expenses and maximize values for

the benefit of creditors in these Chapter 11 Cases pending (a) the sale of the assets of the DIP Borrowers pursuant to the Asset Purchase Agreement (defined herein) or an alternate transaction and (b) the orderly disposition of the assets of the other Debtors. The access of the Debtors to sufficient working capital and liquidity through the incurrence of new indebtedness is vital to the preservation and maintenance of the going concern values of the Debtors and the Chapter 11 Cases. Without such credit, the Debtors would not be able to operate their businesses and the Debtors' estates would be irreparably harmed.

H. The Debtors other than the Banner Debtors have been unable to procure financing. Under the terms of the Phoenix DIP Facility, a portion of the funds being provided by the Lender will be available for the Banner Debtors to advance to the non-Banner Debtors in accordance with a budget attached to this Final Order. However, the Banner Debtors are primarily and principally obligated to repay all amounts due and owing to the Lender under the Phoenix DIP Facility. The Debtors are otherwise unable to procure financing in the form of unsecured credit or to incur unsecured debt allowable as an administrative expense under sections 364(a) and (b) and 503(b)(1) of the Bankruptcy Code. New credit is unavailable to the Debtors without providing the Lender (a) Superpriority Claims (defined herein) under section 364(c)(1) of the Bankruptcy Code and (b) liens and security interests pursuant to section 364(c)(2)-(3) of the Bankruptcy Code.

I. The Lender has indicated a willingness to provide the Debtors with certain financing commitments subject to (i) entry of this Final Order, (ii) the terms and conditions set forth in this Final Order and the Phoenix DIP Credit Documents, (iii) the terms and conditions of all "First Day Orders" being, in form and substance, reasonably satisfactory to the Lender, and (iv) findings by the Court that such postpetition financing is essential to the Debtors' estates, that

the terms of such financings were negotiated in good faith and at arm's length, and that the Lender's liens, security interests and Superpriority Claims, and other protections granted pursuant to this Final Order and the Phoenix DIP Credit Documents will not be affected by any subsequent reversal, modification, vacatur, or amendment of this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code. The Lender has acted in good faith in negotiating, consenting to and in agreeing to provide the postpetition financing contemplated by the Final Order and the Phoenix DIP Credit Documents and the reliance of the Lender on the assurance referred to above is in good faith.

J. The Banner Debtors are prepared to grant, in good faith, pursuant to section 364(c)(3) of the Bankruptcy Code in favor of the Lender valid, perfected and enforceable postpetition security interests and liens on substantially all of the assets of the DIP Borrowers as such property is designated in the Phoenix DIP Credit Documents (the "Borrower Collateral"), acquired either prepetition or postpetition, and a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code to the extent of any amounts owing to the Lender under the DIP Facility, in all cases subject only to the prior security interests and liens granted to PNC under the PNC DIP Facility and the Permitted Liens. The non-Banner Debtors are prepared to grant, in good faith, pursuant to section 364(c)(3) of the Bankruptcy Code in favor of the Lender valid, perfected and enforceable postpetition security interests and liens on substantially all of the assets of the Guarantors as such property is designated in the Phoenix DIP Credit Documents (the "Guarantor Collateral," and together with the Borrower Collateral, collectively, the "DIP Collateral"), acquired either prepetition or postpetition, and a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code to the extent of any amounts owing to the Lender under the Phoenix DIP Facility.

K. The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Rule 4001-2(c). Good cause has been shown for immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Rule 4001-2(c). In particular, the authorization herein for the Debtors to execute the Phoenix DIP Facility and to obtain financing on a secured basis, is necessary to provide the Debtors with the necessary liquidity to (a) minimize the disruption to the Debtors' ongoing businesses and operations, (b) preserve and maximize the value of the Debtors' estates, and (c) avoid immediate and irreparable harm to the Debtors and their estates, their businesses, their employees, assets and creditors.

L. The ability of the Debtors to finance their respective operations and the availability to the Debtors of sufficient working capital and other financial and general corporate liquidity through the incurrence of new indebtedness for borrowed money is in the best interests of the Debtors and their respective estates. The financing authorized hereunder is vital to avoid immediate and irreparable harm to the Debtors' businesses, properties and estates and to allow the orderly continuation of the Debtors' businesses during these Chapter 11 Cases.

M. Based on the record made at the Interim Hearing and Final Hearing on the Motion and the Miller Declaration, the terms of this Final Order are fair, just, and reasonable under the circumstances, are ordinary and appropriate for secured financing to debtors-in-possession, are the result of the Debtors' exercise of prudent business judgment consistent with applicable fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

N. Based on the record made at the hearing on the Motion and the Miller Declaration, the terms and conditions of this Final Order have been negotiated in good faith and at arms' length by and among the Debtors and the Lender, with all parties represented by

counsel, and any credit extended and loans made to the Debtors pursuant to this Final Order shall be deemed to have been extended, issued, made, used or provided, as the case may be, in good faith as required by, and within the meaning of, section 364(e) of the Bankruptcy Code.

IT IS HEREBY ORDERED THAT:.

1. Disposition. The Motion is granted in accordance with Bankruptcy Rule 4001 to the extent provided in this Final Order. Any objections to the Motion that have not previously been withdrawn or resolved are hereby overruled. This Final Order shall become effective and binding upon all parties in interest immediately upon its entry. To the extent the terms of the Phoenix DIP Credit Documents differ in any material terms from this Final Order, this Final Order shall control.

2. Authorization to Borrow. The Debtors are hereby authorized to continue to comply with and perform in all respects the Phoenix DIP Credit Documents, including the Phoenix DIP Agreement, the Phoenix DIP Guaranty Agreement, and such additional documents and instruments as may be reasonably required by the Lender in order to implement the terms or effectuate the purposes of this Final Order. Pursuant to Sections 364(c) of the Bankruptcy Code and the terms of this Final Order, the Debtors are authorized to borrow and obtain from the Lender postpetition financing up to the maximum aggregate amount of \$4,000,000 (the "Post-Petition Advances"), in accordance with the budget set forth on Exhibit 1 attached hereto (the "Budget"), this Final Order, and the Phoenix DIP Credit Documents; provided, however, that the maximum borrowings for the DIP Borrowers may make available to non-Banner Debtors under the Post-Petition Advances shall be no more than \$3,000,000. The Phoenix DIP Credit Documents shall continue to constitute legal, valid and binding obligations of the Debtors in accordance with their terms.

3. Phoenix DIP Facility Superpriority Claims. Subject only to the superpriority administrative claims of PNC Bank provided by the PNC DIP Facility (the "PNC Superpriority Claims") and a Carve-Out (defined herein), in addition to the liens and security interests granted to the Lender pursuant to this Final Order, pursuant to section 364(c)(1) of the Bankruptcy Code, all Post-Petition Advances shall constitute allowed superpriority administrative expense claims (the "Superpriority Claims"), with priority over any and all administrative expenses, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including without limitation, all administrative expenses or other claims arising under sections 326, 328, 503(b), 507(a), 507(b) and 726 of the Bankruptcy Code, which Superpriority Claims, subject to the PNC Superpriority Claims and the Carve-Out, shall be payable from and have recourse to all pre- and postpetition property of the Debtors and all proceeds thereof. Notwithstanding the foregoing, the Lender shall not assert a Superpriority Claim against the proceeds of the following assets: (1) residential real estate located at 20 Praire Drive, North Babylon, NY; (2) artwork in corporate offices located at 1750 Tyson Boulevard, McLean, Virginia 22102; (3) judgment in the United States Bankruptcy Court for the Southern District of New York, against Revere Copper & Brass, Inc., et al, Case #82-12073 in the amount of \$1,813,600; and (4) claims of Holdings estate against the Estate of Jeffrey Steiner; ^{Eric Steiner or} ~~any of the defendants~~ provided further, however, that Lender shall be permitted to assert its claim as an administrative expense claim against the proceeds of the foregoing assets.

4. Phoenix DIP Facility Liens. As security for the full and timely payment of the Post-Petition Advances and the obligations of the Debtors under the Phoenix DIP Credit Documents, the Lender is hereby granted a valid, perfected and enforceable first priority lien upon and a security interest in all of the Borrower Collateral, whether now existing or thereafter acquired, pursuant to section 364(c)(3) of the Bankruptcy Code, subject only to Permitted Liens

(as defined in the Phoenix DIP Agreement) including (i) the liens and security interests in favor of PNC Bank pursuant to PNC Senior DIP Facility, and (ii) all valid, perfected and non-avoidable prepetition liens upon the DIP Collateral. As security for the full and timely payments of Post-Petition Advances and the obligations of the non-Banner Debtors under the Guarantees, the Lender is hereby granted a valid, perfected and enforceable lien upon and a security interest in all of the Guarantor Collateral whether now existing or thereafter acquired, pursuant to section 364(c) of the Bankruptcy Code. Notwithstanding anything to the contrary in this Final Order, the liens granted to Lender in this Final Order shall be subject to the valid, perfected, and unavoidable liens, if any, held by Bank of America, N.A. and Banc of America Securities LLC as of the Petition Date and shall be and at all times will remain subject and subordinate to any such liens held by Bank of America, N.A. and Banc of America Securities LLC and Lender shall not take any action or interfere with the exercise of any rights of Bank of America, N.A. and Banc of America Securities LLC related to such prepetition valid, perfected and unavoidable liens, if any; provided, however, that Lender's rights to contest or challenge Bank of America, N.A.'s and Banc of America Securities LLC's claims and/or liens are preserved and reserved. In addition, to the extent Bank of America and Banc of America Securities LLC hold valid, perfected, and unavoidable liens as of the Petition Date, and subject to Lender's rights to challenge or contest Bank of America, N.A.'s and Banc of America Securities LLC's claims and/or liens, Lender cannot force Bank of America, N.A. or Banc of America Securities LLC to liquidate the certificates of deposit in such accounts and/or deposits or otherwise force Bank of America, N.A. or Banc of America Securities LLC to liquidate their respective contingent secured claims until all letters of credit issued by Bank of America, N.A. and Banc of America Securities LLC for the benefit of the Debtors are drawn or the original returned to Bank of

For the avoidance of doubt, the liens granted to Lender in this Final Order shall not extend to Avoidance Actions under Chapter 5 of the Bankruptcy Code (the "Avoidance Actions")

America, N.A. undrawn, or the Debtors cease using accounts at Bank of America, N.A. and Banc of America Securities LLC in connection with their cash management system. Notwithstanding the foregoing, the Lenders shall not have a lien in the following assets: (1) residential real estate located at 20 Praire Drive, North Babylon, NY; (2) artwork in corporate offices located at 1750 Tyson Boulevard, McLean, Virginia 22102; (3) judgment in the United States Bankruptcy Court for the Southern District of New York, against Revere Copper & Brass, Inc., et al, Case #82-12073 in the amount of \$1,813,600; and (4) claims of Holdings estate against the Estate of Jeffrey Steiner^{Eric Steiner or}; ~~and/or the estate of Jeffrey Steiner~~ provided further, however, that Lender shall be permitted to assert an administrative expense claim against the proceeds of the foregoing assets.

5. Nullifying Prepetition Restrictions on Postpetition Lien Grants. Notwithstanding anything to the contrary contained in any prepetition agreement, contract, lease, document, note or instrument to which any Debtor is a party or under which any Debtor is obligated, any provision that restricts, limits or impairs in any way any Debtor's ability or right to grant liens or security interests upon any of the Borrower Collateral (including, among other things, any anti-lien granting or anti-assignment clauses in any leases or other contractual arrangements to which any Debtor is a party) under the Phoenix DIP Agreement or this Final Order or otherwise enter into and comply with all of the terms, conditions and provisions thereof (all such provisions being collectively referred to as the "Restrictive Clauses") shall not be effective and shall be unenforceable against any such Debtor and the Lender to the maximum extent permitted under the Bankruptcy Code and other applicable law. Such Restrictive Clauses shall not, to the maximum extent permitted under the Bankruptcy Code and applicable law, render any contract or lease unable to be assumed and/or assigned by any Debtor, or in any way impair or limit the

ability or right of any Debtor to assume and assign any contract or lease under Bankruptcy Code § 365 or 1123.

6. Carve-Out. Upon the occurrence and during the continuation of an event of default under the terms of the Phoenix DIP Agreement, to the extent funds are not available to pay administrative expenses in full, the Lender's liens on the DIP Collateral and Superpriority Claims shall be subject to the payment of the Carve-Out. For purposes of this Final Order, the "Carve Out" means the following: (a) fees pursuant to 28 U.S.C. § 1930(a)(6); (b) fees payable to the clerk of the Bankruptcy Court and any agent thereof; and (c) professional fees and expenses incurred by the DIP Borrowers' professionals and the professionals of an official committee of unsecured creditors (the "Committee"), if one is appointed (collectively, the "Professionals"), subsequent to the delivery by the Lender of a written notice (the "Carve Out Trigger Notice") expressly stating that the Carve-Out has been invoked (regardless of when such fees and expenses become allowed by order of the Court), plus all accrued but unpaid fees and expenses of the Professionals incurred prior to the delivery of a Carve-Out Trigger Notice to the extent previously or subsequently allowed by the Court, in an aggregate amount not in excess of \$332,000, subject to the right of the Lender and any other party-in-interest to object to the award of such fees and expenses; *provided*, however, that all Professionals are required to first attempt to recover any incurred but unpaid fees and expenses from any and all assets or their proceeds that do not constitute DIP Collateral prior to attempting to recover such unpaid fees and expenses from the Carve Out; and *provided further*, however, that (i) the Carve-Out Expenses shall not include, apply to, or be available for any fees or expenses incurred by any party, including the DIP Borrowers, the Guarantors, the Committee (if one is appointed) or any Professional in connection with the initiation or prosecution of any claims, challenges, defenses, objections or

causes of action against the Lender or PNC objecting to, or taking any action to delay, the proposed sale to the Lender of the DIP Borrowers' assets or challenge the legality, validity, priority, perfection of PNC's prepetition liens and security interests and (ii) Carve-Out Expenses in an amount not to exceed \$50,000 may include expenses incurred by Professionals of a party with requisite standing for the purpose of investigating (but not challenging) the validity, perfection, extent, priority and enforceability of the prepetition claims, security interests and liens of PNC Bank.

7. Use of Proceeds. Subject to the terms and conditions set forth in this Final Order and the Phoenix DIP Credit Documents, and the Budget, the Post-Petition Advances may be used as follows: (i) \$1,000,000 to pay fees and expenses in connection with the Phoenix DIP Facility and the administration of the Chapter 11 Cases of DIP Borrowers and to provide for the DIP Borrowers to fund working capital for their business operations after the Petition Date; and (ii) \$3,000,000 to allow the DIP Borrowers to provide liquidity in support to the other Debtors.

8. Budget. Attached hereto as Exhibit 1 is the Budget for the period (the "Budget Period") commencing on the Petition Date and ending thirteen weeks after the Petition Date. The Budget reflects on a line-item basis the Debtors' anticipated cumulative cash receipts and expenditures and all necessary and required cumulative expenses which the Debtors expect to incur during the Budget Period (on a weekly basis), and the amounts of such expenses that are expected to be paid with funds advanced by Lender under the Phoenix DIP Facility. The Budget may be increased or decreased by up to 10% of the total amount thereof, by agreement between the Lender and the DIP Borrowers without further notice or hearing.

9. Maturity Date – Termination. The Phoenix DIP Facility and all lending commitment under the Phoenix DIP Agreement (the "DIP Commitments") shall terminate on the

earliest to occur (the “Maturity Date”) of: (i) 100 days after the Petition Date; (ii) the consummation of the sale to the Lender of substantially all of the assets and businesses of the DIP Borrowers pursuant to section 363 of the Bankruptcy Code, the Asset Purchase Agreement, the Bidding Procedures Order and the Sale Order (as such terms are defined in the Phoenix DIP Agreement); (iii) the date of consummation of the sale to any person other than the Lender of all or substantially all or any portion of the assets of the DIP Borrowers pursuant to section 363 of the Bankruptcy Code and the Bidding Procedures or under a plan confirmed in these Chapter 11 Cases; (iv) the date of the consummation of a plan of liquidation or reorganization in any of the Chapter 11 Cases; (v) the date of termination of the Asset Purchase Agreement in accordance with its terms; and (vi) the occurrence of an Event of Default under the Phoenix DIP Agreement (including, without limitation, any failure to comply with the terms of the Budget or this Final Order) and a determination by the Lender, as a result of such Event of Default, to terminate the DIP Commitments and/or declare all Post-Petition Advances and all other amounts due under the Phoenix DIP Agreement. The Debtors shall indefeasibly repay the Post-Petition Advances in full in cash upon the Maturity Date. The date on which the DIP Commitments shall have terminated and the Post-Petition Advances shall have been indefeasibly repaid in full in cash is referred to herein as the “DIP Facility Termination Date.”

10. Restrictions on Debtors. Except for the (a) valid, perfected liens of PNC Bank granted pursuant to the PNC Senior DIP Facility, (b) the valid, perfected liens of PNC Bank, granted pursuant to the Prepetition PNC Secured Facility, and (c) the Permitted Liens, the liens in favor of the Lender shall not be subject or subordinate to or made *pari passu* with any other lien or security interest. The liens in favor of the Lender shall not be subject to priming under 11 U.S.C. § 364(d) or any other section or pursuant to any law, except as otherwise ordered by the

Court following a hearing on notice to the Lender. Thus, the liens and security interests of the Lender granted under this Final Order in the DIP Collateral shall be first and senior in priority to all other interests and liens of every kind, nature, and description whether created consensually, by an order of the Court, or otherwise, except as otherwise set forth in this Final Order or in the DIP Facility Agreement, except as otherwise ordered by the Court following a hearing on notice to the Lender.

11. Additional Perfection Measures. This Final Order shall be sufficient and conclusive evidence of the priority, perfection, validity and enforceability of the postpetition liens and security interests granted herein, effective as of the Petition Date, without any further act and without regard to any other federal, state, or local requirements or law requiring notice, filing, registration, recording, or possession of the DIP Collateral or other act to validate or perfect such security interest or lien. Nevertheless, the Lender is hereby authorized to file or record any of these documents in any jurisdiction or take any other necessary action for such purpose. The Lender need not execute, record, or file of this Final Order, a mortgage, security agreement, financing statement, notice of lien, control agreement, pledge agreement, copyright filing, trademark agreement, or similar instrument in order to provide notice of the valid and perfected liens and security interests granted hereunder.

12. Except as may be inconsistent with the provisions of this Final Order, the terms, conditions, and provisions of this Final Order are in addition to and without prejudice to the rights of the Lender to pursue any and all rights and remedies under the Bankruptcy Code, the Interim Order, the Phoenix DIP Credit Documents, or any other applicable agreement or law, including, without limitation, rights to seek adequate protection and/or additional or different adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any

request for use of cash collateral, oppose the grant of any interest in the DIP Collateral, or oppose the request for or grant of priority in favor of any other party, to object to any sale of assets, to object to any proposed plan of reorganization, to object to applications for allowance and/or payment of compensation of professionals or other parties seeking compensation or reimbursement from Debtor's estate, and to recover interest and fees pursuant to section 506(b) of the Bankruptcy Code.

13. Restrictions on Debtors. At all times during the Chapter 11 Cases and whether or not an event of default under the Phoenix DIP Credit Documents and this Final Order ("Event of Default") has occurred, the Debtors irrevocably waive any right that they may have to seek authority, except as otherwise ordered by the Court following a hearing on notice to the Lender (i) to obtain post-petition loans or other financial accommodations other than from the Lender (excluding the financing provided pursuant to the PNC Senior DIP Facility), pursuant to the terms of the Phoenix DIP Credit Documents and this Final Order, except if the sale of the assets of the Banner Debtors and Realty to the Lender does not close; (ii) to challenge the application of any payments authorized by this Final Order pursuant to section 506(b) of the Bankruptcy Code or otherwise; (iii) to propose or support a plan of reorganization that does not provide for the indefeasible payment in full and satisfaction of all obligations under the Phoenix DIP Credit Documents upon consummation of such plan, unless otherwise agreed to in writing by the Lender; or (iv) to seek relief under the Bankruptcy Code, including without limitation, under section 105, to the extent any such relief would in any way restrict or impair the rights and remedies of the Lender as provided in this Final Order, the Phoenix DIP Credit Documents, or the Lender's exercise of such rights or remedies; provided, however, that the Lender may otherwise consent in writing.

14. Restrictions on DIP Collateral. Except in the ordinary course of business or pursuant to the sale of the assets of the Banner Debtors and Realty under the Asset Purchase Agreement between Phoenix Banner LLC and the Banner Debtors and Realty (the "Asset Purchase Agreement") that is subject of the Debtors' motion (the "Sale Motion") to sell substantially all of the assets of DIP Borrowers as described in the Motion, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral pursuant to section 363(b) of the Bankruptcy Code or otherwise (a "Disposition Event") unless (a) the Lender consents in writing, except as otherwise ordered by the Court following a hearing on notice to the Lender; or (b) all obligations owed to the Lender under this Final Order and/or the Phoenix DIP Credit Documents will be indefeasibly paid in full from the proceeds of the Disposition Event or otherwise, or Lender's Liens attach to the proceeds in accordance with the Intercreditor Agreement. In the event a Disposition Event occurs as to which neither of the exceptions described in (a) and (b) above, applies, the Lender shall have no further obligation to make Post-Petition Advances or other financial accommodations to the Debtors. Notwithstanding anything contained in this Final Order or the Phoenix DIP Credit Documents, it shall be a default under this Final Order and the Phoenix DIP Credit Documents if the Debtors file a motion seeking approval of a Disposition Event without Lender's written consent.

15. Lender's Right to Credit Bid. The Lender may set off all or any portion of the principal, interest and other amounts due under the Phoenix DIP Facility against the purchase price under the Asset Purchase Agreement and such set off shall be deemed to be payment in full of all or such portion of such principal, interest or other amounts due under the Phoenix DIP Facility.

16. Further Restrictions on Use of Post-Petition Advances. Notwithstanding anything in this Final Order or in any other order by this Court to the contrary, the Post-Petition Advances may not be used to (a) object, contest, or raise any defense to the validity, perfection, priority, extent, or enforceability of any amount due under this Final Order, the Phoenix DIP Credit Documents, the PNC Senior DIP Facility, or the liens or claims granted under this Final Order or the PNC DIP Order (as defined below); (b) assert any claims or defenses or causes of action against the Lender or PNC Bank or their agents, affiliates, representatives, attorneys, or advisors; (c) seek to modify any of the rights granted to the Lender hereunder or under the Phoenix DIP Credit Documents or to PNC Bank under the PNC DIP Order or the documents executed in connection with the PNC Senior DIP Facility; or (d) challenge the validity, perfection, extent, priority and enforceability of the prepetition claims, security interests and liens of PNC Bank. .

17. Insurance Policies. The Lender shall continue to be, and shall continue to be deemed to be, without any further action or notice, named as an additional insured and loss payee on each insurance policy maintained by the Debtors which in any way relates to the Borrower Collateral. The Debtors are authorized and directed to take any action necessary to have the Lender continue as an additional insured and loss payee on each insurance policy.

18. Events of Default. The following events shall constitute Events of Default under this Final Order: (a) the Debtors' failure to materially comply with any of the terms and provisions of this Final Order, the Final Order, the Bidding Procedures Order or the Phoenix DIP Credit Documents including failure to adhere to the Budget; (b) any stay, reversal, vacatur, rescission, or other modification of the terms of this Final Order; (c) the occurrence of any event under the Asset Purchase Agreement, and the passage of any grace or cure period applicable to such event without such event having been remedied or cured, giving the Lender the right to

terminate the Asset Purchase Agreement; (d) the DIP Borrowers or the Guarantors file, support or fail to oppose a motion seeking, or the Bankruptcy Court enters, an order (i) dismissing the Chapter 11 Cases and not containing a provision for termination of the Lender's commitment and payment in full in cash of all obligations upon entry of such order, (ii) converting the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (iii) appointing a chapter 11 trustee in the Chapter 11 Cases, (iv) appointing an examiner having enlarged or expanded powers relating to the operation of the businesses of the DIP Borrowers or the Guarantors (beyond those set forth under Section 1106(a)(3) and (4) of the Bankruptcy Code under Section 1106(b) of the Bankruptcy Code, (v) granting a superpriority claim or a lien *pari pasu* or senior to that of the Lender granted pursuant to this Final Order or the Final Order (except for Permitted Liens), (vi) obtaining additional debtor-in-possession financing or other financial accommodations pursuant to section 364(c) or (e) of the Bankruptcy Code, (vii) staying or reversing this Final Order, the Bidding Procedures Order or the Sale Order without the prior written consent of the Lender, (viii) granting relief from the automatic stay (or any other injunction having similar effect) so as to allow a third party to proceed against any material property or assets of the DIP Borrowers or the Guarantors, or (ix) except as contemplated by this Final Order or the DIP Facility Agreement, granting any other relief that is adverse to the Lender's interests under any loan document or its remedies hereunder or its interest in the DIP Collateral; (e) (i) the DIP Borrowers or the Guarantors file a plan in the Chapter 11 Cases which does not provide for termination of the Lender's commitment and payment in full in cash of all obligations on or before the effective date of such plan or which is inconsistent with this Final Order, the Bidding Procedures Order or the Sale Order, or which is not supported by the Lender, or (ii) an order is entered by the Bankruptcy Court confirming a plan in the Chapter 11 Cases

which does not contain a provision for termination of the Lender's commitment and payment in full in cash of all obligations of the DIP Borrowers under the DIP Facility and the release of the Lender in full from all claims of the DIP Borrowers and the Guarantors on or before the effective date of such plan upon entry thereof, unless the Lender has consented thereto; (f) the DIP Borrowers fail to file, within one (1) business day after the Petition Date a motion in support of the Bidding Procedures Order; (g) the Sale Order shall not have been entered within sixty (60) days after the Petition Date; (h) the Sale Order shall not have become a final order within ten (10) days after being entered by the Bankruptcy Court; provided, however, that if during such 10-day period, the Sale Order becomes subject to an appeal or request for reargument, rehearing or similar review, an Event of Default shall only be deemed to occur if the Bankruptcy Court or other court of competent jurisdiction enters an order staying the Sale Order; (i) the Bidding Procedures Order shall not have been entered by the Bankruptcy Court on or before April 15, 2009; (j) the sale of the assets of the DIP Borrowers pursuant to the Asset Purchase Agreement shall not have occurred within seventy-five (75) days after the Petition Date; (k) the Debtors' attempt to obtain court approval to amend or otherwise modify the Budget without the Lender's consent; (l) the Debtors seek relief under the Bankruptcy Code, including without limitation, under section 105, to the extent any such relief would in any way restrict or impair the rights and remedies of the Lender as provided in this Final Order, the Phoenix DIP Credit Documents, or the Lender's exercise of such rights or remedies; provided, however, that the Lender may otherwise consent in writing; (m) the DIP Borrowers or the Guarantors file, support or fail to oppose a motion seeking to, or the Bankruptcy Court enters an order, that will, prevent, hinder, or otherwise delay the Lender's or PNC Bank's assertion, enforcement, or realization in or on the DIP Collateral or PNC Bank's Collateral, respectively, in accordance with this Final Order or the

Phoenix DIP Agreement; (n) the DIP Borrowers or the Guarantors file, support or fail to oppose a motion seeking, or the Bankruptcy Court enters, an order approving any request for approval of a Disposition Event unless the Lender consents in writing; (o) if, on or before April 15, 2009, a final PNC DIP order² providing that PNC's prepetition liens and security interests are deemed legal, valid, binding, in full force and effect, non-avoidable, and perfected subject to the rights of any party in interest with requisite standing (including any Chapter 7 trustee appointed within 45 days from the Petition Date) to seek to challenge the extent, legality, validity, perfection, or enforceability of PNC's prepetition liens and security interests if no challenge to PNC's prepetition liens and security interests is commenced on or before May 13, 2009; provided, however, that any party in interest, including without limitation the Committee, shall deliver to PNC, Debtors and Phoenix, and PNC, Debtors and Phoenix shall receive on or before May 8, 2009, a notice describing in detail the nature and basis of any Objection arising out of, relating to or in connection with the prepetition liens and security interests such party, or the Committee, as the case may be, intends to bring on or before May 13, 2009; or (p) the DIP Borrowers or the Guarantors file, support or fail to oppose a motion seeking, or the Bankruptcy Court enters, an order dismissing any or all of the Debtors' Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise that does not provide that the Superpriority Claims under section 364(c)(1) of the Bankruptcy Code and the Lender's liens on and security interests in the DIP Collateral shall continue in full force and effect notwithstanding such dismissal until the Debtors' obligations under the Phoenix DIP Credit Documents are indefeasibly paid and satisfied in full. Notwithstanding anything contained in this Final Order and the Phoenix DIP Credit Documents with respect to the Budget, amounts not used in one budget category may be carried over into any other category or budget item. In addition, if and to the extent a permitted expense

² A "final PNC DIP Order" is an order approving, on a final basis, the PNC Senior DIP Facility.

falls due in a week other than that for which it had been anticipated in the Budget, the Debtors may, without additional approval of the Lender, pay such amount to the extent not paid during its budgeted week in the weeks following the week scheduled for the payment of such expense in the Budget.

19. Automatic Stay Upon Event of Default. Without further order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the Lender to exercise, upon the occurrence and during the continuance of an Event of Default (as defined in Article 8 of the Phoenix DIP Agreement), all rights and remedies provided for the Phoenix DIP Credit Documents. Upon the occurrence of an Event of Default, the Lender shall be entitled on five (5) business days notice to the Debtors, counsel to the Committee, if any, and counsel to the U.S. Trustee to take any action and exercise all rights and remedies provided to it by this Final Order and/or applicable law as the Lender may deem appropriate in its sole discretion to, among other things, proceed against and realize upon the DIP Collateral and/or any other assets and properties of the Debtors' estates upon which the Lender has been or may hereafter be granted liens and security interests to obtain the full and indefeasible repayment of all obligations under the Phoenix DIP Credit Documents. The rights and remedies of the Lender specified herein are cumulative and not exclusive of any rights the Lender may have under the Phoenix DIP Credit Documents or otherwise, and are subject to the PNC Senior DIP Facility and the Carve-Out.

20. Waiver of Section 506(c) Surcharge. The Debtors irrevocably waive and shall not assert any surcharge claim, under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Lenders upon the DIP Collateral.

21. Marshalling. The Lender's right to seek the equitable remedy of marshalling is preserved, however, in no event shall the Lender be subject to the equitable doctrine of marshaling or any similar doctrine with respect to the DIP Collateral.

22. Binding Effect. This Final Order shall be binding on the Lender, the Debtors, all parties in interest in Debtors' Chapter 11 Cases, and the Debtors' successors and assigns (including any trustee or other fiduciary appointed for or on behalf of the Debtors, their estates, or any subsequently converted case(s)). This Final Order shall also inure to the benefit of the Lender, the Debtors, and their successors and assigns.

23. No obligation, payment, transfer or grant of any security under the Phoenix DIP Credit Documents or this Final Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or any applicable non-bankruptcy law, or subject to any defense, setoff, recoupment or counterclaim

24. Survival. The provisions of this Final Order and any and all rights, remedies, privileges, benefits in favor of the Lender, provided or acknowledged in this Final Order, and any claims, liens and security interests granted pursuant to this Final Order, and any actions taken pursuant thereto, (a) shall be effective immediately upon entry of this Final Order, pursuant to Bankruptcy Rules 6004(h) and 7062, and (b) shall continue in full force and effect, and shall survive entry of any such other order, including without limitation any order which may be entered (i) confirming any plans of reorganization, (ii) converting Debtors' Chapter 11 Cases to cases under any other chapter under the Bankruptcy Code, or (iii) dismissing Debtors' Chapter 11 Cases. This Court shall retain jurisdiction, notwithstanding such dismissal, to enforce the Superpriority Claim and liens and security interests in the DIP Collateral to the fullest extent permitted under law.

25. The provisions of this Final Order shall remain in full force and effect unless modified or vacated by subsequent order of this Court upon a hearing following notice to the Lender. Pursuant to section 364(e) of the Bankruptcy Code, if any or all of the provisions of this Final Order are modified, vacated, or stayed by subsequent order of this Court, such stay, modification or vacation shall not affect the validity and the enforceability of any lien, security interest, priority, benefit, or application of payment authorized hereby with respect to any indebtedness of the Debtors to the Lender.

26. Use of Proceeds. Subject to the terms and conditions set forth in this Final Order, the Phoenix DIP Credit Documents, and the Budget, the Post-Petition Advances may be used to pay fees and expenses associated with the DIP Facility, as provided in the Phoenix DIP Credit Documents, fund general corporate and working capital requirements of the Debtors (including, without limitation, the Debtors' ongoing administrative expenses in the Chapter 11 Cases), in each case in accordance with the Budget and the terms of the Phoenix DIP Credit Documents, provided further, that the aggregate amount of Post-Petition Advances that will be available to the Debtors from time to time prior the Maturity Date (as defined herein at paragraph 9) shall be subject to the limitations on borrowing availability set forth in the DIP Facility Agreement.

27. Non-material Modifications. The Debtors are hereby authorized, without further order of this Court, to enter into agreements with the Lender providing for any non-material modifications to the Budget or the Phoenix DIP Agreement, or any other modification to the Phoenix DIP Agreement necessary to conform the Phoenix DIP Agreement with this Final Order; provided, however, that any such non-material modification or amendment to the Budget or the Phoenix DIP Agreement shall be provided to counsel to any Committee and counsel to the U.S. Trustee; provided however, that amendments or modifications that shorten the Maturity

Date or increase the fees payable under the Phoenix DIP Facility shall be accomplished only pursuant to further order of the Court.

28. Controlling Effect of Order. To the extent any provision of this Order conflicts with any provision of the Motion, any prepetition agreement or any document executed in connection with the Phoenix DIP Facility, the provisions of this Order shall control. In the event of a conflict between the terms and provisions of (i) any financing order (the "PNC DIP Order") entered by the Court in connection with the PNC DIP Motion or the PNC DIP Facility, and (ii) this Order or the Phoenix DIP Credit Documents, then in each case the terms and provisions of the PNC DIP Order shall govern. In addition, the terms and provisions of the Phoenix DIP Credit Documents and this Order are under and subject to the terms and provisions of the Intercreditor Agreement between the PNC Bank and Phoenix.

Dated: April 15, 2009
Wilmington, Delaware



UNITED STATES BANKRUPTCY JUDGE

29. Nothing herein will effect the ~~rights of the~~ PBGC's
line, ~~the PBGC~~, as of the Petition Date.