

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
FORTUNOFF FINE JEWELRY AND	:	Case No. 08-10353 (JMP)
SILVERWARE, LLC, <u>et al.</u>	:	
	:	
Debtors.	:	Jointly Administered
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**FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363 AND 364
(1) APPROVING POST-PETITION FINANCING, (2) AUTHORIZING USE OF
CASH COLLATERAL, (3) GRANTING LIENS AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, (4) AUTHORIZING PAYMENT OF CLAIMS
OF PRE-PETITION SECURED LENDERS, AND (5) MODIFYING AUTOMATIC STAY**

THIS MATTER having come before the Court upon the Motion (the “Motion”) of Fortunoff Fine Jewelry and Silverware, LLC, M. Fortunoff of Westbury, LLC and Source Financing Corp., each a debtor and debtor in possession (collectively, the “Debtors”) in the above captioned Chapter 11 cases (collectively, the “Cases”) seeking, among other things, the entry of a final order (this “Final Order”), including authority to:

(i) Obtain credit and incur debt, on a final basis for a period (the “Final Period”) through and including June 4, 2008, unless terminated earlier, up to the aggregate principal amount of \$85,000,000 secured by first priority perfected liens (as defined in Section 101(37) of title 11 of the United States Code, as amended (the “Bankruptcy Code”) and referred to herein as “Liens”) on property of the Debtors’ estates pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code and with priority as to administrative expenses, as provided in Section 364(c)(1) of the Bankruptcy Code, subject to the terms and conditions herein.

(ii) (a) Establish that financing arrangement (as amended, modified and in effect from time to time, the “DIP Credit Facility”)¹ as provided in that certain Debtor-in-Possession Credit Agreement, substantially in the form attached to the Motion as Exhibit A (as amended, modified and in effect from time to time the “Credit Agreement”) by and among Bank of America, N.A. Administrative Agent and Collateral Agent (in such capacities, together with its successors and assigns in and to such capacities, the “DIP Agent”), or any successors or assigns to the DIP Agent, for itself and the Lenders (as defined in the Credit Agreement, and including the Credit Support Provider (as defined below) to the extent Loans are assigned to it pursuant to Paragraph 5 of the Credit Support Agreement (as defined below), the “DIP Lenders”) and the Debtors; and (b) incur the “Obligations” under and as defined in the Credit Agreement (collectively, the “DIP Obligations”).

(iii) Grant, pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, the DIP Agent (for the benefit of itself and the DIP Lenders) first priority perfected liens, subject only to the Carve Out (as defined below) and the Prior Permitted Liens (as defined below), upon all of the Debtors’ real and personal property as provided in and as contemplated by this Final Order, the DIP Credit Facility and the Credit Agreement.

(iv) Grant, pursuant to Section 364(d) of the Bankruptcy Code, to the Buyer (as defined below), perfected liens, subject only to the Liens granted in favor of the DIP Agent to secure the DIP Obligations, the Carve Out (as defined below), the Prior Permitted Liens (as defined below), the Pre-Petition Liens (as defined below) and the Credit Agreement Replacement Liens (as

¹ Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Credit Agreement (as defined below).

defined below) in favor of the Pre-Petition Agent to secure the Pre-Petition Obligations, but senior to any liens granted in favor of the Term D Agent (as defined below) for the benefit of the Term D Lenders (as defined below), upon all of the Debtors' real and personal property as provided in and as contemplated by this Final Order, the DIP Credit Facility and the Credit Agreement.

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

(vi) Authorize the use of "cash collateral" as such term is defined in Section 363 of the Bankruptcy Code (the "Cash Collateral") in which the Pre-Petition Agent and the Pre-Petition Lenders (each as defined below) and the Term D Agent and Term D Lenders (also as each defined below) have an interest.

(vii) Grant, pursuant to Sections 361, 363 and 364 of the Bankruptcy Code, as adequate protection for the Liens granted to the DIP Agent and the use of Cash Collateral, in favor of the Pre-Petition Agent and Pre-Petition Lenders (as each is defined below), (a) liens on all of the Debtors' currently owned or after-acquired property and proceeds thereof subject to the Liens granted the DIP Agent, Prior Permitted Liens (as defined below), and the Carve Out (as defined below) and (b) a superpriority administrative expense claim, subject to the superpriority administrative expense claim granted the DIP Agent and the Carve Out (as defined below).

(viii) Grant, pursuant to Sections 361, 363 and 364 of the Bankruptcy Code, as adequate protection for the Liens granted to the DIP Agent and the use of Cash Collateral, in favor of the

Term D Agent and Term D Lenders (as each is defined below), replacement liens as set forth in paragraph 26 below.

(ix) Modify the automatic stay to the extent necessary and required by the DIP Credit Facility.

(x) Enter into and perform their obligations under, and otherwise approve in all respects, that certain Credit Support Agreement, substantially in the form attached to the Motion as Exhibit B (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Support Agreement”) between Lord & Taylor LLC (the “Credit Support Provider”), the DIP Agent, the DIP Lenders and the Debtors.

The Court having held a hearing on the Motion on February 4, 2008 (the “Interim Hearing”) and having entered an order granting the relief requested in the Motion on an interim basis on February 5, 2008; and the Court having held a final hearing on the Motion on February 28, 2008 (the “Final Hearing”); and it appearing that absent the relief requested herein, the Debtors will suffer immediate and irreparable harm; and it further appearing that notice of the Final Hearing was sufficient under the circumstances and complied with the requirements of Bankruptcy Federal Rules of Procedure 4001(b), (c) and (d) and 9014; and for good cause shown:

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

A. On February 4, 2008 (the “Petition Date”), the Debtors each filed a voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtors’ cases have been administratively consolidated.

B. The Debtors have continued in the management and operation of their business and property as debtors in possession pursuant to Bankruptcy Code Sections 1107 and 1108. On February 7, 2008, the Office of the United States Trustee formed an official committee of unsecured creditors (the “Creditors’ Committee”). No trustee or examiner has been appointed in these Cases.

C. This Court has jurisdiction, pursuant to 28 U.S.C. § 1334, over these proceedings, and over the persons and property affected hereby. Consideration of this Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A), (D), (G), (K), (M) and (O).

D. An immediate need exists for the Debtors to obtain funds with which to purchase inventory, continue their operations, and administer and preserve the value of their estates. The ability of the Debtors to finance their operations requires the additional availability of working capital, the absence of which would immediately and irreparably harm the Debtors, their estates, and their creditors.

E. The Debtors contend that they have been unable to obtain unsecured credit allowable under Bankruptcy Code Section 503(b)(1) as an administrative expense.

F. The Debtors contend that they are also unable to obtain secured credit, allowable only under Bankruptcy Code Sections 364(c)(2), 364(c)(3) and 364(d) on more favorable terms and conditions than those provided in the Credit Agreement and this Order. The Debtors

contend that they are unable to obtain credit for borrowed money without the Debtors granting (a) to the DIP Agent (i) Liens on all of the assets of the Debtors pursuant to Bankruptcy Code Sections 364(c)(2), 364(c)(3) and 364(d) and (ii) superpriority administrative expense claim status pursuant to Bankruptcy Code Sections 503(b) and 507(b) as provided in Section 364(c)(1) of the Bankruptcy Code (such superpriority administrative expense claim having priority as provided herein) and as provided by this Order; and (b) to the Buyer the Buyer Liens (as defined below) on all of the assets of the Debtors pursuant to Bankruptcy Code Section 364(d) subject only to Liens granted in favor of the DIP Agent to secure the DIP Obligations, the Carve Out (as defined below) and the Prior Permitted Liens (as defined below) and the Pre-Petition Liens and Credit Agreement Replacement Liens (as defined below) in favor of the Pre-Petition Agent and Pre-Petition Lenders, but senior to any liens granted in favor of the Term D Agent for the benefit of the Term D Lenders, such Term D Lenders having consented or are deemed to consent to the Buyer Liens.

G. The ability of the Debtors to finance their operations and the availability of sufficient working capital through the incurrence of indebtedness for borrowed money and other financial accommodations is vital to the Debtors' ability to preserve and maintain the Debtors' going concern value and their ability to consummate a successful reorganization.

H. The relief requested in the Motion is necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the management and preservation of their property.

I. It is in the best interest of Debtors' estates to be allowed to establish the DIP Credit Facility contemplated by the Loan Documents.

J. The terms and conditions of the DIP Credit Facility and the fees paid and to be paid thereunder are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration.

K. The Credit Agreement was negotiated in good faith and at arms length between the Debtors, DIP Agent, and DIP Lenders. Credit to be extended under the DIP Credit Facility will be so extended in good faith, and for valid business purposes and uses, the consequence of which is that the DIP Agent and the DIP Lenders (including the Credit Support Provider following an Assignment pursuant to Section 5 of the Credit Support Agreement) are entitled to the protection and benefits of Bankruptcy Code Section 364(e).

L. Prior to the Petition Date, Fortunoff Fine Jewelry and Silverware, LLC and M. Fortunoff of Westbury, LLC entered into a certain Amended and Restated Credit Agreement dated August 13, 2007 (as amended and in effect, the "Pre-Petition Credit Agreement") with, among others, Bank of America, N.A. as Administrative Agent and Collateral Agent (in such capacities, the "Pre-Petition Agent") for certain "Lenders" (as defined therein) (the "Pre-Petition Lenders") pursuant to which the Pre-Petition Lenders extended a working capital facility providing for revolving credit loans and letters of credit. Source Financing Corp. guaranteed all the obligations pursuant to the Pre-Petition Credit Agreement pursuant to a certain Guaranty dated as of July 22, 2005 (the "Pre-Petition Guaranty"). The Debtors stipulate and agree that as of the Petition Date, the Debtors were each indebted to the Pre-Petition Lenders in the approximate principal sum of \$67,000,000 in "Revolving Loans" and "Tranche A-1 Loans" (each as defined in the Pre-Petition Credit Agreement), issued and outstanding Letters of Credit in the amount of \$3,500,000, together with all financial accommodations or services including,

without limitation, any obligations relating to cash management, depository, investments, hedging arrangements and other banking and financial services provided by the Pre-Petition Lenders or their affiliates) accrued interest, costs, fees, and professional fees and expenses, and all other “Obligations” as defined in the Pre-Petition Credit Agreement (collectively, hereinafter the “Pre-Petition Obligations”).

M. Prior to the Petition Date, the Debtors executed and delivered to the Pre-Petition Agent certain Amended and Restated Security Agreements, an Amended and Restated Intellectual Property Security Agreement, and an Amended and Restated Pledge Agreement (collectively, the “Pre-Petition Collateral Documents”) pursuant to which the Debtors granted the Pre-Petition Agent liens and security interest in substantially all their personal property. The Debtors stipulate and agree that the Pre-Petition Obligations are secured by security interests in and liens (collectively, the “Pre-Petition Liens”) on substantially all of the Debtors’ personal property of every kind and nature including, without limitation, accounts, chattel paper, commercial tort claims, deposit accounts, documents, inventory, general intangibles, equipment, goods, fixtures, instruments, investment property, letters of credit rights, software, supporting obligations, money, stock, cash and cash equivalents relating thereto, proceeds, accessions, substitutions, replacements, rents, profits, and products of the aforementioned property all as more fully set forth in the Pre-Petition Collateral Documents (the “Pre-Petition Collateral”), with priority over all other liens except for certain permitted liens permitted by the Pre-Petition Credit

Agreement (to the extent any such permitted liens are valid, properly perfected, unavoidable and senior, they are referred to herein as the “Prior Permitted Liens”).²

N. Prior to the Petition Date, Fortunoff Fine Jewelry and Silverware, LLC and M. Fortunoff of Westbury, LLC entered into a certain Term D Loan Agreement dated as of February 23, 2007 (as amended and in effect, the “Term D Loan Agreement”) with, among others, Trimaran Fund Management, L.L.C., as Administrative Agent and Collateral Agent (in such capacities, the “Term D Agent”) for certain “Lenders” (as defined therein) (the “Term D Lenders”) pursuant to which the Term D Lenders extended a term loan facility. Source Financing Corp. guarantied all the obligations under the Term D Loan. The Debtors stipulate and agree that as of the Petition Date, the Debtors were each indebted to the Term D Lenders in the approximate principal sum of \$17,400,000 with all accrued interest, costs, fees, and professional fees and expenses, and all other “Obligations” as defined in the Term D Loan Agreement (collectively, hereinafter the “Term D Obligations”).

O. Prior to the Petition Date, the Debtors executed and delivered to the Term D Agent certain security documents, including a Security Agreement, the Facility Guarantors Collateral Documents, the Intellectual Property Security Agreement (collectively, the “Term D Collateral Documents”) pursuant to which the Debtors granted the Term D Agent liens and security interest in substantially all their personal property. The Debtors stipulate and agree that the Term D Obligations are secured by security interests in and liens (collectively, the “Term D Liens”) on substantially all of the Debtors’ personal property of every kind and nature including,

² Nothing herein shall constitute a finding or ruling by this Court that the Prior Permitted Liens are valid and perfected. Moreover, any party in interest including but not limited to the Debtors, the DIP Agent, the Pre-Petition Agent, and the Creditors’ Committee may challenge the validity, priority, perfection and extent of any such lien and or security interest.

without limitation, accounts, chattel paper, commercial tort claims, deposit accounts, documents, inventory, general intangibles, equipment, goods, fixtures, instruments, investment property, letters of credit rights, software, supporting obligations, money, stock, cash and cash equivalents relating thereto, proceeds, accessions, substitutions, replacements, rents, profits, and products of the aforementioned property all as more fully set forth in the Term D Collateral Documents (the “Term D Collateral”).

P. The Debtors entered into a certain Asset Purchase Agreement dated February 3, 2008 (the “APA”) with, among others, H Acquisition, LLC (the “Buyer”), pursuant to which the Buyer proposes to purchase from the Debtors all of the Acquired Assets (as defined in the APA). Pursuant to the APA, the Buyer or an affiliate thereof also agreed to make available a \$10 million letter of credit for the purpose of maintaining the Debtors’ inventory. As security for the payment and performance by the Debtors of the Payment Obligations (as defined in the APA), the Debtors granted (subject to entry of this Final Order) to the Buyer security interests in all of the Collateral, which security interests are subject only to the Liens in favor of the DIP Agent to secure the DIP Obligations and the Prior Permitted Liens, and the Pre-Petition Liens and Credit Agreement Replacement Liens (as defined below) in favor of the Pre-Petition Agent and Pre-Petition Lenders, but senior, pursuant to section 364(d) of the Bankruptcy Code, to the liens granted in favor of the Term D Agent for the benefit of the Term D Lenders.

Q. All amounts on deposit in the Debtors’ banking, checking, and other deposit accounts constitute cash collateral within the meaning of Section 363 of the Bankruptcy Code, in which the Pre-Petition Collateral Agent has a security interest in order to secure the Pre-Petition Obligations.

R. Net proceeds of the sale or other disposition of the Collateral (as defined below) shall be applied: (a) first, to permanently reduce the Pre-Petition Obligations; (b) second, to reduce the DIP Obligations (with exceptions to be mutually agreed) in accordance with the Credit Agreement; (c) to reduce the Payment Obligations, if any, in accordance with the APA; and (d) fourth, to reduce the Term D Obligations. Payment of the Pre-Petition Obligations in accordance with this Final Order is necessary as the Pre-Petition Agent and the Pre-Petition Lenders will not otherwise consent to the priming of the Pre-Petition Liens. Such payment will not prejudice the Debtors or their estates, because payment of such amounts is subject to the rights of parties-in-interest under paragraph 9 below.

S. As a result of the grant of the Liens to the DIP Lenders, and the use of Cash Collateral authorized herein, the Pre-Petition Agent is entitled to receive, for the benefit of the Pre-Petition Lenders, adequate protection pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code for any diminution in the value of its interest in the Debtors' interest in the Pre-Petition Collateral (including the Cash Collateral) resulting from the Debtors' use, sale or lease of the Pre-Petition Collateral (including the Cash Collateral) during the Cases. As adequate protection, the Pre-Petition Agent, for the benefit of the Pre-Petition Lenders, will receive: (1) the Credit Agreement Replacement Liens, (2) the Pre-Petition Superpriority Claim and (3) the Pre-Petition Indemnity Account (each as defined below).

T. As a result of the grant of the Liens to the DIP Lenders and the use of cash collateral authorized herein, the Term D Agent is entitled to receive, for the benefit of the Term D Lenders adequate protection pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code for any diminution in the value of its interest in the Debtors' interest in the collateral securing the Debtors' obligations to the Term D Agent and the Term D Lenders resulting from

the Debtors' use, sale or lease of such collateral during the Cases. As adequate protection, the Term D Agent, for the benefit of the Term D Lenders, will receive the Term D Replacement Liens (as defined below), upon the terms and conditions herein.

U. Notice of the Final Hearing has been provided by the Debtors to all parties that received notice of the Interim Hearing, the United States Trustee, counsel for all statutory committees, including the Creditors' Committee, the Internal Revenue Service, the DIP Agent, the Pre-Petition Agent, Term D Agent, the Buyer, the Credit Support Provider, the Debtors' landlords on real property leases, all secured creditors of record, and any other party which has filed a request for notice with the Court and served such request on the Debtors' counsel and constitutes sufficient and adequate notice in accordance with Bankruptcy Rule 4001(c) and Bankruptcy Code Section 102(1), as required by Bankruptcy Code Section 364(c) and (d) in light of the importance of the nature of the relief requested in the Motion. No further notice of the relief sought in the Motion is required for the entry of this Final Order.

V. Good and sufficient cause has been shown for the entry of this Final Order. Among other things, the entry of this Final Order will enable the Debtors to continue the operation of their businesses, maximize the value of their properties and assets and will be in the best interest of the Debtors, their creditors and their estates.

NOW, THEREFORE, on the Motion of the Debtors and the record before the Court with respect to the Motion, and with the consent of the Debtors, the Pre-Petition Agent, the Pre-Petition Lenders, the Term D Agent, the Term D Lenders, the Buyer, the DIP Agent, and the DIP Lenders to the form and entry of this Order, and good cause appearing,

IT IS ON THIS 28th day of February 2008 ORDERED that:

1. The Motion is granted in accordance with the terms of this Final Order.

APPROVAL OF AND AUTHORIZATION AS TO BORROWING

2. The terms and the conditions of the DIP Credit Facility are hereby approved on a final basis. The Debtors are authorized to:

- (a) Establish the DIP Credit Facility.

- (b) Execute each of the Loan Documents (as defined in the Credit Agreement) to which any Debtor is a party.

- (c) Borrow up to the lesser of: (i) \$85,000,000, and (ii) Availability (as defined in the Credit Agreement) during the Final Period.

- (d) Enter into and perform their obligations under the Credit Support Agreement, the terms of which are hereby approved.

3. The Debtors are hereby authorized, empowered, and directed to do and perform all acts, pay all fees and expenses and to make, execute, and deliver all instruments and documents which may be requisite or necessary for the performance by the Debtors under the Loan Documents and the creation and perfection of the Liens described in and provided for by this Final Order and the Loan Documents and to assure the priority thereof as contemplated herein.

4. The Debtors are hereby authorized to grant to the DIP Agent (for the benefit of the Secured Parties (as defined in the Credit Agreement)) and pursuant to the Loan Documents

and this Order the DIP Agent (for the benefit of the Secured Parties) is granted, valid, binding, enforceable and perfected Liens in and to the following (collectively, the “Collateral”):

All real and personal property of the Debtors, including without limitation, inventory, accounts, chattel paper, commercial tort claims, deposit accounts, documents, equipment, fixtures, general intangibles (including, without limitation, tax refunds, trademarks, and tradenames), instruments, investment property, letter of credit rights, software, supporting obligations, money, stock, cash, cash equivalents, stock, chattel paper, and goods (respectively as defined in the Uniform Commercial Code), all real estate, all proceeds from the sale, disposition, or assignment of any leasehold interest, and all other “Collateral” (as defined in the Loan Documents), all of the foregoing now owned or in which the Debtors have any interest (and without regard to whether acquired prior or subsequent to the Petition Date) or hereafter acquired or in which the Debtors obtain an interest; and the products and proceeds thereof (but excluding any avoidance action under Chapter 5 of the Bankruptcy Code and any proceeds thereof, other than recoveries pursuant to Section 549 of the Bankruptcy Code on account of the Pre-Petition Collateral).

The Liens granted herein shall be subject to the Carve Out (as defined in Paragraph 17 below) and Prior Permitted Liens and shall secure all DIP Obligations incurred by the Debtors pursuant to the Loan Documents. The Liens granted herein shall, pursuant to Section 364(d), be senior to the Pre-Petition Liens and any Liens granted by the Debtors to the Term D Agent for the benefit of the Term D Lenders. Upon (i) this Final Order becoming final and non-appealable and (ii) the expiration of the Challenge Period Termination Date (as defined below), all pre-petition liens

and security interests of the Pre-Petition Agent and the Pre-Petition Lenders in the Pre-Petition Collateral shall be deemed to be assigned (and not terminated or released to the extent so assigned) to the DIP Agent and the DIP Lenders as additional collateral security for so much of the DIP Obligations as shall at any time have been used to repay or refinance the Pre-Petition Obligations, and such assignment shall be in addition to, and shall not limit, prejudice or impair in any way any of the claims or Liens of the DIP Agent and the DIP Lenders in the Collateral granted pursuant to the Credit Agreement and this Final Order. In no event shall the DIP Lenders have any liability in connection with such assignment or the Pre-Petition Liens so assigned.

5. The Debtors are hereby authorized to grant to the Buyer (for the benefit of the Buyer and any of its affiliates) valid, binding, enforceable and perfected Liens in and to the Collateral (the “Buyer Liens”) to secure the Payment Obligations. The Buyer Liens granted herein shall be subject to the Liens in favor of the DIP Agent to secure the DIP Obligations, the Carve Out (as defined in Paragraph 17 below), the Prior Permitted Liens and the Pre-Petition Liens and Credit Agreement Replacement Liens in favor of the Pre-Petition Agent and Pre-Petition Lenders, but senior, pursuant to section 364(d) of the Bankruptcy Code, to any Liens granted by the Debtors to the Term D Agent for the benefit of the Term D Lenders.

6. The automatic stay imposed under Bankruptcy Code Sections 362(a)(3), (4) and (6) is hereby modified as necessary to permit the Debtors to grant the aforesaid Liens and to perform the Debtors’ liabilities and obligations to the DIP Agent and the DIP Lenders under the DIP Credit Facility.

7. Each officer of the Debtors, acting singly, and such other individuals as may be so authorized by the members or board of directors, as applicable, of each of the Debtors, likewise acting singly, is hereby authorized to execute and deliver each of the Loan Documents and the Credit Support Agreement, such execution and delivery to be conclusive of their respective authority to act in the name of and on behalf of the Debtors.

8. Subject to the terms and conditions of the DIP Credit Facility, (i) the Debtors may utilize the proceeds of the DIP Credit Facility for the purposes set forth in the Credit Agreement, subject to the Budget annexed hereto as Exhibit 1; and (ii) all outstanding letters of credit which the Pre-Petition Lenders have issued or caused to be issued for the benefit of the Debtors shall be deemed to have been issued under the Credit Agreement and shall constitute Letters of Credit under the Credit Agreement and Loan Documents without the necessity of reissuance of such Letter of Credit.

9. The Debtors hereby on behalf of themselves and their estates and their successors: (i) release and discharge the Pre-Petition Agent, the Pre-Petition Lenders, the Term D Agent and the Term D Lenders together with their affiliates, agents, attorneys, officers, directors and employees, from any and all claims and causes of action arising out of, based upon or related to the Pre-Petition Credit Agreement, Pre-Petition Guaranty, Pre-Petition Collateral Documents, Term D Loan Agreement, Term D Collateral Documents and all other instruments and documents executed or delivered in connection therewith, (ii) waive any and all claims, defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and avoidability (under Sections 510, 544, 545, 547, 548, 549, 550, 552 or 553 of the Bankruptcy Code or otherwise) of the Pre-Petition Obligations and Term D Obligations or the respective security interests, mortgages, deeds of trust and liens granted to

secure the Pre-Petition Obligations and Term D Obligations, and (iii) agree, without further Court order, to the allowance of the claims of the Pre-Petition Agent, the Pre-Petition Lenders, the Term D Agent and the Term D Lenders as fully secured claims in an amount not less than the Pre-Petition Obligations and Term D Obligations, respectively, pursuant to Sections 502 and 506 of the Bankruptcy Code. The release, discharge, waivers and agreements set forth in this Paragraph 9 will be deemed effective upon the date this Order is entered, and shall be binding upon on all parties (including the Creditors' Committee, any creditor, or any subsequently appointed trustee).

10. Intentionally Omitted.

11. The Liens to be created and granted to the DIP Agent, as provided herein, are created pursuant to Bankruptcy Code Sections 364(c)(2), 364(c)(3) and 364(d). With the exception of property of the estates which is subject to Prior Permitted Liens, the Liens to be created and granted to the DIP Agent, as provided herein, are first, prior, perfected and superior to any security, mortgage, or collateral interest or lien or claim to the Collateral, subject only to the Carve Out set forth in Paragraph 16 below.

12. This Final Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the Liens and the Buyer Liens upon the Collateral, without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the Liens of the DIP Agent and the Buyer Liens in and to the Collateral or to entitle the DIP Agent or the Buyer to the priorities granted herein, provided, however, the DIP Agent or the Buyer may file or record financing statements or other instruments to evidence and

to perfect the Liens authorized hereby, provided further, however, no such filing or recordation shall be necessary or required in order to create or perfect any such Lien or Buyer Liens. Any and all deeds of trust, mortgages, UCC-1 financing statements or other documents or instruments evidencing or securing or perfecting any lien or collateral interest granted by the Debtors to the Pre-Petition Agent shall be deemed to secure the Obligations under the Credit Agreement and other Loan Documents without the necessity of amending same.

13. The DIP Agent or the Buyer, in its discretion, may file a xerographic copy of this Final Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtors have real or personal property, and in such event, the subject filing or recording officer shall file or record such copy of this Order, which shall not be subject to stamp tax or similar tax as set forth in Section 1146 of the Bankruptcy Code.

14. The Credit Agreement and each of the Loan Documents shall constitute and evidence the valid and binding obligations of the Debtors, which obligations shall be enforceable against the Debtors in accordance with their terms.

ADMINISTRATIVE CLAIM

15. The Obligations under the Credit Agreement shall be an allowed administrative expense claim (the “DIP Super-Priority Claim”) with priority (except as otherwise provided in Paragraph 17 below) under Bankruptcy Code Section 364(c)(1) and otherwise over all administrative expense claims and unsecured claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code Sections 105, 326,

330 (except as otherwise provided in Paragraph 17 below), 328, 331, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726(b), 1113 and 1114.

16. Except for:

(a) the Carve Out; and

(b) collateral interests in property of the estates which was subject to Prior

Permitted Liens having priority over the Liens of the DIP Agent,

no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Bankruptcy Code Sections 328, 330 and 331 that have been or may be incurred in these proceedings, or in any case or cases pursuant to Chapter 7 of the Bankruptcy Code into which these Cases may be converted, or in any other proceedings related thereto (hereinafter, any “Successor Cases”), and no priority claims to the Collateral are, or will be, senior to, prior to, or on a parity with the Obligations, or with any other claims of the DIP Agent, the DIP Lenders or the Buyers arising hereunder.

17. Subject to the terms and conditions contained in this paragraph 17, the DIP Liens and the Credit Agreement Replacement Liens (as defined below) are subordinate only to: (i) (a) allowed administrative expenses pursuant to 28 U.S.C. Section 1930(a)(6); (b) allowed fees and expenses of any Chapter 7 trustee appointed for any Debtor’s Chapter 7 Case not to exceed \$100,000; and (c) allowed reasonable fees and expenses of attorneys and financial advisors employed by the Debtors and any official committee(s) of creditors pursuant to Sections 327 and 1103 of the Bankruptcy Code, including the Creditors’ Committee (collectively, the “Case Professionals”), and fees and expenses of the Debtors’ claims agent (collectively, (i)(a), (b) and

(c) being the “Fee and Expense Carve Out”) and (ii) the sum of \$100,000 to be used solely and exclusively by the Creditors’ Committee in the Cases without restriction other than as limited by this paragraph 17 (the “Committee Carve Out,” together with the Fee and Expense Carve Out, the “Carve Out”). The Committee Carve Out shall be irrevocable and shall be funded at the closing from the proceeds of any sale or sales in the Cases, and shall be held in a segregated, interest-bearing account controlled by counsel for the Creditors’ Committee. For purposes of clause (i)(c), (A) if, at the time of reference, an Event of Default (as defined in the Credit Agreement) has not occurred, the amount of the Fee and Expense Carve Out shall be the amount of professional fees for which a Reserve (as defined in the Credit Agreement) has been implemented in the Borrowing Base Certificate (as defined in the Credit Agreement) most recently delivered to the DIP Agent, except that no payment may be made to any Case Professional absent an order of the Bankruptcy Court allowing such payment, and (B) if, at the time of reference, an Event of Default has occurred and is continuing, the amount of the Fee and Expense Carve Out (the “Fee and Expense Carve Out Amount”) shall be limited to \$200,000 (which amount shall be allocated to the Case Professionals and claims agent), plus the lesser of, as of the date of the occurrence of such Event of Default, (a) any fees and expenses of Case Professionals and the Debtors’ claims agent, in an amount not to exceed \$1,800,000 (which amount shall be allocated to the Case Professionals and claims agent), that are set forth in the Budget which are actually incurred but are unpaid as of the occurrence of an Event of Default for which a Reserve has been implemented in the Borrowing Base Certificate (as defined in the Credit Agreement) most recently delivered to the DIP Agent, and (b) the aggregate actual amount of the fees and expenses incurred by (x) the Case Professionals and allowed but unpaid provided in each case such fees and expenses are ultimately approved by the Bankruptcy Court,

or such lesser amount as so approved, and (y) the Debtors' claims agent. The DIP Lenders shall fund the Fee and Expense Carve Out Amount upon the occurrence of an Event of Default, unless such Event of Default has been waived by the DIP Agent or an overadvance would result as a result of such funding under the Credit Agreement. The DIP Lenders' obligation to fund or otherwise pay the Carve Out, including allowed professional fees, shall be added to and made a part of the DIP Obligations, secured by the Collateral, and the DIP Lenders shall be entitled to all of the rights, claims, liens, priorities and protections under this Final Order, the Credit Agreement, the Bankruptcy Code, and/or applicable law in connection therewith. Any and all payments made by the DIP Lenders pursuant to the Carve Out shall be immediately added to and included as part of the outstanding principal balance of the DIP Credit Facility. So long as no Event of Default has occurred, the Debtors shall, to the extent provided in the Budget, be permitted to pay fees, compensation and reimbursement of expenses allowed and payable (including any such fees and expenses that are accrued but unpaid and ultimately allowed) under Bankruptcy Code Sections 330, 331 and/or 503, as the same may be due and payable. Any such amounts so paid shall not reduce the Carve Out Amount. The Carve Out may be used in the Cases by the Case Professionals for any and all purposes, except as excluded herein, including investigation, review and analysis of claims held by the Prepetition Lenders except that the Carve Out shall exclude any fees and expenses (x) incurred in connection with the assertion or joinder in any claim, counter-claim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (A) invalidating, setting aside, avoiding, or subordinating, in whole or in part, (i) the Obligations, (ii) the Pre-Petition Obligations, (iii) the Term D Obligations, (iv) the Pre-Petition DIP Agent's Lien in the Pre-Petition Collateral, (iv) the DIP Agent's or DIP Lenders'

Liens in the Collateral or (v) the Term D Agent's or Term D Lenders' Liens in the Term D Collateral, or (B) preventing, hindering or delaying, whether directly or indirectly, the DIP Agent's or DIP Lenders' assertions or enforcement of their Liens, security interest or realization upon any Collateral, (y) in using Cash Collateral of the DIP Agent or the DIP Lenders, selling or otherwise disposing of any other Collateral, or incurring any Indebtedness not permitted under the Credit Agreement, without the DIP Agent's express written consent, or (z) fees and expenses of a Chapter 7 trustee in excess of the amount set forth in clause (b) above arising after the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code. Without limiting the DIP Lenders' rights under the Credit Agreement and this Final Order, the DIP Agent shall implement a Reserve (as such term is defined in the Credit Agreement) in respect of the Fee and Expense Carve Out in accordance with the terms and conditions of the Credit Agreement. Such Reserve shall reduce the amount of Loans and Letters of Credit otherwise available to the Borrowers under the DIP Credit Agreement. Except as otherwise provided in this paragraph, nothing contained in this Final Order shall be deemed a consent by the Pre-Petition Agent, Pre-Petition Lenders, DIP Agent or DIP Lenders to any charge, lien, assessment or claim against the Collateral under Section 506(c) of the Bankruptcy Code or otherwise. The DIP Agent reserves the right to object to any Professional fees and nothing herein shall be construed to obligate the Pre-Petition Agent, Pre-Petition Lenders, DIP Agent or DIP Lenders, in any way, to pay the professional fees or United States Trustee fees, or to assure that the Debtors have sufficient funds on hand to pay any professional fees or United States Trustee fees. The Term D Replacement Liens shall be subordinate to the Pre-Petition Liens, the Carve Out, the DIP Liens, the Credit Agreement Replacement Liens, the Buyer Liens, and the funding of the Pre-Petition Indemnity Account. The Buyer Liens shall be subordinate to the Pre-Petition Liens, the Carve Out, the DIP

Liens, the Credit Agreement Replacement Liens, and the funding of the Pre-Petition Indemnity Account.

18. Unless the DIP Agent and Pre-Petition Agent have provided their prior written consent or all Pre-Petition Obligations and Obligations have been paid in full in cash (or will be paid in full in cash from proceeds of indebtedness described in subparagraph (a) below incurred pursuant to an order approving such indebtedness), all commitments to lend have terminated, all Letters of Credit (as defined in the Credit Agreement) have been cash secured as required by the Loan Documents, all obligations under the Loan Documents which survive termination have been cash secured to the reasonable satisfaction of the Pre-Petition Agent and DIP Agent and the Pre-Petition Indemnity Account (as defined below) has been established, there shall not be entered in these proceedings, or in any Successor Cases (other than this Final Order), any order which authorizes any of the following:

(a) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the Collateral and/or entitled to priority administrative status which is equal or senior to that granted to the Pre-Petition Agent or DIP Agent herein; or

(b) the enforcement of any claimed security, mortgage, or collateral interest or other lien of any person other than of the DIP Agent on all or any portion of the Collateral; or

(c) the Debtors' return of goods constituting Collateral pursuant to Section 546(h) of the Bankruptcy Code.

19. Except as otherwise provided in Paragraph 17, no cost or expense which may be incurred in connection with or on account of the preservation and/or disposition of any Collateral or which otherwise could be chargeable to the Pre-Petition Agent, the Pre-Petition Lenders, the DIP Agent, the DIP Lenders, the Term D Agent, the Term D Lenders or the Buyer or the Pre-Petition Collateral, or the Term D Collateral pursuant to Bankruptcy Code Sections 105, 506(c), 552 or otherwise, shall be so chargeable. The Pre-Petition Agent, the Pre-Petition Lenders, the DIP Agent, the DIP Lenders, the Term D Agent, the Term D Lenders, and the Buyer shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Pre-Petition Agent, the Pre-Petition Lenders, the DIP Agent, the DIP Lenders, the Term D Agent, the Term D Lenders or the Buyer with respect to proceeds, product, offspring or profits of any of the Pre-Petition Collateral, the Collateral or Term D Collateral.

20. Without limiting the provisions and protections of Paragraph 19, above, if at any time prior to the repayment in full of all Pre-Petition Obligations and Obligations and the termination of the DIP Agent’s and DIP Lenders’ obligation to make loans and advances under the Credit Agreement and the Loan Documents, including subsequent to the confirmation of any plan with respect to any or all of the Debtors, the Debtors or any Trustee subsequently appointed shall obtain credit or incur debt pursuant to Bankruptcy Code Sections 364(b), 364(c) or 364(d), then all of the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent in reduction of the Pre-Petition Obligations and Obligations.

21. All Pre-Petition Obligations and Obligations of the Debtors are due and payable upon the earliest to occur of (“Termination Event”):

- (a) June 4, 2008;
- (b) the occurrence of an Event of Default (as defined in the Credit Agreement);
- (c) the date upon which the Debtors receive the first proceeds from the sale of any of their assets in a sale conducted pursuant to Section 363 of the Bankruptcy Code; or
- (d) the effective date of any plan for the Debtors confirmed pursuant to Bankruptcy Code Section 1129.

Unless and until the Pre-Petition Obligations and Obligations are repaid in full in cash, all commitments to lend have terminated, all Letters of Credit have been cash secured as required by the Loan Documents, and all obligations under the Loan Documents which survive termination have been cash secured to the reasonable satisfaction of the Pre-Petition Agent and DIP Agent, and the Pre-Petition Indemnity Account has been established, the protections afforded to Pre-Petition Agent, Pre-Petition Lenders, DIP Agent and the DIP Lenders pursuant to this Order and under the Loan Documents and the Credit Support Agreement, and any actions taken pursuant thereto, shall survive the entry of any order confirming a plan or converting these cases into Successor Cases, and the Pre-Petition Liens, Credit Agreement Replacement Liens, Liens and the Buyer Liens in and to the Collateral, the DIP Super-Priority Claim, and the Pre-Petition Superpriority Claim shall continue in these proceedings and in any Successor Cases, and such Liens, Buyer Liens, Term D Liens, Term D Replacement Liens, DIP Super-Priority Claim and the Pre-Petition Superpriority Claim shall maintain their priority as provided by this Final Order.

22. The time and manner of payment of the Pre-Petition Obligations and Obligations pursuant to the Credit Agreement and the Pre-Petition Liens, Credit Agreement Replacement Liens and Buyer Liens in and to the Collateral and the Super-Priority Claims shall not be altered or impaired by any plan which may hereafter be confirmed or by any further order which may hereafter be entered.

23. The Debtors may use the proceeds of the loans and advances made pursuant to the DIP Credit Facility only for the purposes specifically set forth in the Credit Agreement and strictly in accordance with the Budget annexed hereto as Exhibit 1. Notwithstanding anything herein, or in the Credit Agreement to the contrary no such loans or advances or any proceeds of the Collateral may be used by the Debtors, the Creditors' Committee or any other person or entity to object to or contest in any manner, or raise any defenses to, the validity, extent, perfection, priority or enforceability of the Pre-Petition Obligations, the Obligations, or any liens or security interests with respect thereto or any other rights or interests of the Pre-Petition Agent, Pre-Petition Lenders, DIP Agent, DIP Lenders, Term D Agent or the Term D Lenders, or to assert any claims or causes of action, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code, against the Pre-Petition Agent, Pre-Petition Lenders, DIP Agent, or DIP Lenders.

USE OF CASH COLLATERAL AND ADEQUATE PROTECTION

24. Pursuant to the terms and conditions of this Final Order, the DIP Credit Facility and the Credit Agreement, and in accordance with the Budget (as the same may be modified from time to time consistent with the terms of the Credit Agreement, and subject to such variations as permitted in Section 6.14 of the Credit Agreement), the Debtors are authorized to use the Cash Collateral of the Pre-Petition Lenders (during the period commencing on the

Petition Date and terminating upon the occurrence of a Termination Event); provided, however, during the Remedies Notice Period (as defined below) the Debtors may use Cash Collateral solely to meet payroll obligations, provided that any such payments are made in a manner consistent with the Budget.

25. As adequate protection pursuant to Sections 361 and 363 of the Bankruptcy Code, for the diminution in value arising out of the Debtors' use, sale, depreciation or disposition of the Pre-Petition Collateral including Cash Collateral and the granting of the Liens to the DIP Agent and the Buyer pursuant to Bankruptcy Code Section 364(d):

A. the Pre-Petition Agent, for the benefit of the Pre-Petition Lenders, is hereby granted valid, perfected and enforceable security interests and replacement liens in the Collateral (the "Credit Agreement Replacement Liens"), which shall be junior only to the Liens granted to the DIP Agent, the Prior Permitted Liens and the Carve Out as provided herein.

B. the Pre-Petition Agent and the Pre-Petition Lenders shall have an allowed superpriority administrative expense claim (the "Pre-Petition Superpriority Claim") which shall be junior solely to the DIP Superpriority Claim granted to the DIP Agent and the Carve Out in any case under Sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Sections

105, 326, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726(b), 1113 and 1114 of the Bankruptcy Code.

C. the Debtors shall establish an account in the control of the Pre-Petition Agent (the “Pre-Petition Indemnity Account”), into which, upon the first occurrence of a Termination Event, \$250,000 of proceeds of any sale, lease or other disposition of any of the Collateral held by any of the Debtors shall be deposited as security for any reimbursement, indemnification or similar continuing obligations of the Debtors in favor of the Pre-Petition Agent or the Pre-Petition Lenders under the Pre-Petition Credit Agreement (the “Pre-Petition Indemnity Obligations”); provided, however, that the Pre-Petition Indemnity Account shall terminate and all remaining amounts held therein shall be released to the Debtors (and shall be applied in accordance with this Final Order and the DIP Credit Agreement) upon the earliest to occur of: (a) forty-five (45) days after the Challenge Period Termination Date if, as of such date, no party has filed or asserted an adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in paragraph 9 hereof, or (b) the date the Bankruptcy Court enters a final order closing the Debtors’ cases. The Pre-Petition Indemnity Obligations shall be secured by a first priority lien on the Pre-Petition Indemnity Account which shall be pari passu with the Credit Agreement Replacement Liens.

D. all products and proceeds of the Collateral regardless of whether such Collateral came into existence prior to the Petition Date, shall be remitted directly to the Pre-Petition Agent and applied by the Pre-Petition Agent (in its sole

discretion) to the Pre-Petition Obligations until the Pre-Petition Obligations are paid in full, subject only to the Carve Out and Prior Permitted Liens. Thereafter, all such products and proceeds shall be remitted to: (i) the DIP Agent for application to the Obligations outstanding pursuant to the Credit Agreement, as determined in the DIP Agent's sole discretion, subject only to the Carve Out and Prior Permitted Liens; and (ii) to reduce the Payment Obligations in accordance with the APA.

E. all Letters of Credit issued under the Pre-Petition Loan Agreements for the account of any of the Debtors shall be deemed to have been issued under, and shall constitute "Letters of Credit" and obligations under, the Credit Agreement, without the necessity of any reissuance of such Letters of Credit.

F. the Debtors shall provide cash collateral to the Pre-Petition Agent in an amount reasonably determined by the Pre-Petition Agent in order to secure all obligations of the Debtors to Bank of America, N.A. pursuant to any Hedging Agreements (as defined in the Pre-Petition Credit Agreement) issued in connection with the Pre-Petition Credit Agreement.

G. the Credit Agreement Replacement Liens shall be junior in all respects to the DIP Agent's Liens upon and in the Collateral and shall be subject only to the Carve Out.

ADEQUATE PROTECTION FOR THE TERM D LENDERS

26. As adequate protection pursuant to Sections 361 and 363 of the Bankruptcy Code, for the diminution in value arising out of the Debtors' use, sale, depreciation, or disposition of the collateral of the Term D Agent and the Term D Lenders and the granting of the Liens to the DIP Agent pursuant to Bankruptcy Code Section 364(d), the Term D Agent, for the benefit of the Term D Lenders, is hereby granted valid, perfected and enforceable security interests and replacement liens (the "Term D Replacement Liens") in the Collateral, which shall be junior to the Liens granted to the DIP Agent, the Pre-Petition Lenders, the Credit Agreement Replacement Liens, the Prior Permitted Liens, the Carve Out, Buyer Liens and the funding of the Pre-Petition Indemnity Account as provided herein, and shall be subject in all respects to the terms and provisions of the Subordination Agreement (as defined in the Pre-Petition Credit Agreement). In addition, the Term D Lenders may receive up to \$250,000 for professional fees and expenses, to the extent allowed by the Court.

27. As a condition to such grant of adequate protection, (a) the Term D Agent and the Term D Lenders shall be deemed to have consented to any sale or disposition of Collateral approved, arranged for or by the DIP Agent, and shall terminate and release upon any such sale or disposition all of its liens on and security interests in such Collateral, including the Term D Liens and the Term D Replacement Liens; and (b) the Term D Agent and the Term D Lenders shall deliver or cause to be delivered, at the Debtors' cost and expense, any termination statements, releases or other documents necessary to effectuate and/or evidence the release and termination of the Term D Lenders' liens on or security interests in any portion of the Collateral subject to any sale or disposition approved or arranged for by the DIP Agent. The Term D Liens will attach to the remaining proceeds, if any, after payment in full of the DIP Obligations, Pre-

Petition Obligations, Pre-Petition Indemnity Obligations, Buyer Liens and Carve Out in order of priority under this Order.

EVENTS OF DEFAULT

28. Any automatic stay otherwise applicable to the Pre-Petition Agent, DIP Agent, Pre-Petition Lenders, and DIP Lenders is hereby modified so that after the occurrence of any Event of Default (as defined in the Credit Agreement) and at any time thereafter upon five (5) business days prior written notice given by hand or by facsimile transmission (the “Remedies Notice Period”) of such occurrence, in each case given to each of the Debtors, counsel and special conflicts counsel for the Creditors’ Committee, the Buyer, the Term D Agent and the United States Trustee (the “Remedies Notice Parties”), the Pre-Petition Agent, DIP Agent, the Lenders and Pre-Petition Lenders, shall be entitled to exercise their rights and remedies in accordance with the Pre-Petition Loan Documents and the Loan Documents. Immediately following the giving of notice by the DIP Agent of the occurrence of an Event of Default: (i) the Debtors shall continue to deliver and cause the delivery of the proceeds of Collateral to the Pre-Petition Agent and DIP Agent as provided in the Credit Agreement and this Final Order; (ii) the Pre-Petition Agent and DIP Agent shall continue to apply such proceeds in accordance with the provisions of this Final Order and of the Credit Agreement; (iii) the Debtors shall have no right to use any of such proceeds, nor any other cash collateral (as defined in Bankruptcy Code Section 363(a)) other than towards the satisfaction of the Pre-Petition Obligations, Obligations and the Carve Out; and (iv) any obligation otherwise imposed on the DIP Agent or the DIP Lenders to provide any loan or advance to the Debtors pursuant to the DIP Credit Facility shall be suspended. During the Remedies Notice Period, any or all of the Remedies Notice Parties shall be entitled to an emergency hearing before this Court solely for the purpose of contesting

whether an Event of Default has occurred. If any or all of the Remedies Notice Parties do not contest the right of the Pre-Petition Agent, Pre-Petition Lenders, DIP Agent and DIP Lenders, to exercise their remedies based upon whether an Event of Default has occurred within such time period, or if any or all of the Remedies Notice Parties do timely contest the occurrence of an Event of Default and the Court after notice and hearing declines to stay the enforcement thereof, the automatic stay as to the Pre-Petition Agent, Pre-Petition Lenders, DIP Agent and DIP Lenders shall automatically terminate at the end of such Remedies Notice Period.

29. If the Pre-Petition Agent, Pre-Petition Lenders, DIP Agent or DIP Lenders exercise any of their rights and remedies upon the occurrence of an Event of Default under the Pre-Petition Loan Documents or Loan Documents (as applicable), the DIP Agent may retain one or more agents to sell, lease or otherwise dispose of the Collateral. In any exercise of their rights and remedies upon an Event of Default under the Loan Documents, the Agents and Lenders are authorized to proceed under or pursuant to the Loan Documents.

30. In the exercise of the DIP Agent's rights and remedies upon Event of Default,

(a) the DIP Agent may, by written notice to the Debtors, require the Debtors to file a motion seeking to retain one or more agents to sell, lease or otherwise dispose of the Collateral on terms acceptable to the DIP Agent. The Debtors shall file such motion within ten (10) days of the DIP Agent's request and shall diligently prosecute such motion; and/or

(b) the DIP Agent may, by written notice to the Debtors, require the Debtors to file a motion or motions seeking to sell, assume, assign or otherwise dispose of any or all of the real estate (including, without limitation, leasehold interests) of the Debtors

pursuant to Sections 363 and 365 of the Bankruptcy Code, on terms acceptable to the DIP Agent. The Debtors shall file such motion or motions within ten (10) days of the DIP Agent's request and shall diligently prosecute such motion; and/or

(c) the DIP Agent may proceed under or pursuant to the Credit Agreement and other Loan Documents.

All proceeds realized from any of the foregoing (subject only to the Carve Out and any Prior Permitted Liens) shall be turned over for application as follows: (i) first, to the Pre-Petition Agent to permanently reduce the Pre-Petition Obligations, (ii) second, to the DIP Agent to reduce the Obligations, in accordance with the provisions of the Credit Agreement, other Loan Documents, and this Final Order, (iii) third, to reduce the Payment Obligations, if any, in accordance with the APA; and (iv) fourth, to reduce the Term D Obligations.

31. Nothing included herein shall prejudice, impair, or otherwise affect the Pre-Petition Agent's, DIP Agent's, Pre-Petition Lenders' or DIP Lenders' rights to seek any other or supplemental relief in respect of the Debtors nor the DIP Agent's or DIP Lenders' rights, as provided in the Credit Agreement, to suspend or terminate the making of loans under the Credit Agreement.

MISCELLANEOUS PROVISIONS

32. If any provision of this Final Order is hereafter modified, vacated or stayed by subsequent order of this or any other Court for any reason, such modification, vacation or stay shall not affect the validity of any Obligations incurred pursuant to this Final Order and prior to the later of (a) the effective date of such modification, vacation or stay, or (b) the entry of the

order pursuant to which such modification, vacation or stay was established, nor the validity, priority or enforceability of any Lien granted by the Debtors to the DIP Agent, the Pre-Petition Agent, the Buyer or the Term D Agent.

33. The payments made, and the Liens and Super-Priority Claims granted to the DIP Agent and DIP Lenders under the DIP Credit Facility and this Final Order and the Liens granted to the Buyer under the APA and this Final Order, and the priority thereof, shall be binding on the Debtors, any successor trustee for the Debtors, the Creditors' Committee and all creditors of the Debtors, as provided in Bankruptcy Code Section 364(e).

34. All depository banks, blocked account banks and credit card processors shall continue to comply for the benefit of the DIP Agent and the DIP Lenders, with the terms and conditions of any Blocked Account Agreement, DDA Notifications or Credit Card Notifications received or in existence as of the Petition Date whether or not, and as if, an additional agreement or notification is executed or furnished in connection with the Credit Agreement.

35. All custom brokers used by the Debtors are hereby appointed as agent for the DIP Agent to receive and retain possession of all bills of lading, documents and other documents of title (collectively, the "Title Documents") heretofore or at any time hereafter issued for any goods, inventory or other property of the Debtors which are received by the custom broker for processing (collectively, the "Property") and to receive and retain possession of all such Property, such receipt and retention, or possession of the Title Documents and Property being for the purpose of more fully perfecting and preserving the DIP Agent's Liens in the Title Documents and the Property. Each and every custom broker will maintain possession of the Title Documents and, where appropriate, the Property, subject to the Liens of the DIP Agent

until receipt of express direction from the DIP Agent or an order of the Bankruptcy Court directing them otherwise.

36. The DIP Agent's failure to seek relief or otherwise exercise its rights and remedies under the DIP Credit Facility or this Final Order shall not constitute a waiver of any of the DIP Agent's rights hereunder, thereunder, or otherwise.

37. Except as provided herein, this Final Order does not create any rights for the benefit of any third party, creditor or any direct, indirect, or incidental beneficiary.

38. The Debtors and the DIP Agent (after having obtained the approval of the Lenders as provided in the Credit Agreement and upon five (5) business days prior written notice given by hand or by facsimile transmission, in each case given to each of counsel and special conflicts counsel for the Creditors' Committee, the Buyer, the Term D Agent and the United States Trustee) may amend or waive any provision of the DIP Credit Facility, provided that such amendment or waiver, in the judgment of the Debtors and the DIP Agent, is either non-prejudicial to the rights of third parties or is not material. Except as otherwise provided herein, no waiver, modification or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by the Debtors and the DIP Agent (after having obtained the approval of the Lenders as provided in the Credit Agreement) and approved by the Bankruptcy Court.

39. The terms of this Final Order and the Credit Agreement and any actions pursuant thereto, including but not limited to the Liens, Credit Agreement Replacement Liens, and Buyer Liens granted thereunder, shall survive the entry of any order: (a) confirming any plan of reorganization in these Cases; (b) dismissing any or all of the Cases; (c) converting any or all of the Cases to any other Chapter under the Code; (d) withdrawing of the references of any Case or

all of the Cases from the Bankruptcy Court; and (e) abstention from handling or retaining of jurisdiction of any Case or all of the Cases in the Bankruptcy Court.

40. In the event of any inconsistency between the terms and conditions of any Loan Document and of this Final Order, the provisions of this Final Order shall govern and control.

41. The Debtors shall, within three (3) business days hereof, serve by U.S. mail copies of the notice of entry of this Final Order, together with a copy of this Final Order to (i) parties having been given notice of the Final Hearing, (ii) any other party which has filed a request for notice with this Court and served such request upon the Debtors' counsel, (iii) counsel for any statutory committee, (iv) all creditors who have recorded a UCC-1 financing statement on the personal property of the Debtors or a Lien on any of the Debtors' real estate, (iv) all immediate landlords that are direct parties to leases with the Debtors, (v) the Internal Revenue Service, and (vi) the United States Trustee.

42. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective immediately upon entry.

43. The requirement under Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York for the filing of a memorandum of law is waived.

SO ORDERED by the Court this 29th day of February, 2008.

s/ James M. Peck
HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE