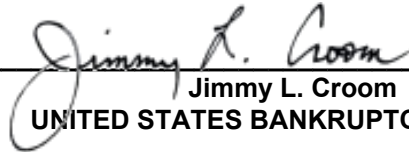




**Dated: June 13, 2014**  
**The following is SO ORDERED:**

  
Jimmy L. Croom  
UNITED STATES BANKRUPTCY JUDGE

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

**IN RE:**

**ISR GROUP, INCORPORATED,**

**DEBTOR.**

**Case No. 14-11077-JLC  
Chapter 11**

**FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364 AND 507 (1) APPROVING POST-PETITION FINANCING, (2) AUTHORIZING USE OF CASH COLLATERAL, (3) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (4) GRANTING ADEQUATE PROTECTION, AND (5) MODIFYING AUTOMATIC STAY**

THIS MATTER having come before the Court upon the motion (the "**Motion**") (Dk. No. 24) of ISR Group, Incorporated (the "**Debtor**") in the above-captioned Chapter 11 case (the "**Case**"), pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d) and 507 of title 11 of the United States Code, (11 U.S.C. §§ 101 *et seq.*, as amended, the "**Bankruptcy Code**"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for entry of an Interim Financing Order (the "**Interim Financing**

**Order**”) and a Permanent Financing Order (the “**Permanent Financing Order**”), seeking, among other relief:

(1) authorization for Debtor to obtain post-petition loans, advances and other financial accommodations from TCFI IG LLC (“**Lender**”), in accordance with the terms and conditions set forth in the Existing Credit Agreement (as defined below), as amended and ratified by the Amendment (as defined below), and in accordance with the Permanent Financing Order, secured by security interests in and liens upon all of the Collateral (as defined below) pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code;

(2) authorization for Debtor to enter into the Debtor in Possession Financing Amendment and First Amendment to Loan Agreement, dated of even date herewith, by and among the Debtor and Lender (the “**Amendment**” which was included in the Exhibits to the Motion and which has been amended to comply with the agreement reached at the final hearing and has been filed as an amended exhibit to the Motion as Dk. No. 153), which ratifies, extends, adopts and amends the Existing Credit Agreement and the other Existing Credit Documents (as defined below); an order vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the relief requested herein; and

(3) the grant to Lender of superpriority administrative claim status pursuant to Section 364(c)(1) of the Bankruptcy Code in respect of all Postpetition Obligations (as defined in the Amendment).

The United States Trustee and the Official Committee of Unsecured Creditors (the “**Committee**”) objected to the Motion (Dk Nos. 42 and 110, respectively). Subsequently, the

Office of the United States Trustee withdrew its objection, and the Committee, Debtor, and Lender reached an agreement resolving the Committee's objection.

The initial hearing on the Motion was held by this Court on May 8, 2014 (the "**Interim Hearing**"). On May 15, 2014, the Court entered the Interim Financing Order (Dk No. 91).

The final hearing on the Motion was held on May 29, 2014 and continued to May 30, 2014 (the "**Final Hearing**") and the Court having considered the Motion, the *Declaration of John Stuecheli in Support of the Chapter 11 Petitions and First Day Pleadings*, the exhibits attached thereto, and the evidence submitted or adduced and the arguments of counsel made at the Interim Hearing and the Final Hearing; and the Court having found that the notice of the Final Hearing has been provided in accordance with the Bankruptcy Rules and the Bankruptcy Code; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved by agreement or overruled by the Court; and it appearing to the Court that granting the relief requested is necessary to avoid immediate and irreparable harm to the Debtor and its estate, and otherwise is fair and reasonable and in the best interests of the Debtor, its estate, and its creditors and equity holders, and is essential for the continued operation of the Debtor's business; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. **Petition**. On April 29, 2014 (the "**Petition Date**"), Debtor filed a voluntary petition (the "**Petition**") under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its property as debtor and debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

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

C. Debtor's Stipulations. After consultation with its attorneys and advisors, and subject to Section 4.1 of this Permanent Financing Order, the Debtor hereby admits, stipulates, acknowledges and agrees that:

(i) *Existing Credit Documents.* Prior to the commencement of the Case, the Debtor entered into that certain Loan Agreement dated March 28, 2012 by Debtor and PNC Bank, National Association ("**PNC**") (as the same has heretofore been amended, supplemented, modified, extended, renewed, restated and/or replaced at any time prior to the Petition Date, the "**Existing Credit Agreement**," a copy of which is attached to the Motion as Exhibit A).<sup>1</sup> Pursuant to the Loan Sale Agreement (the "**Assignment**") dated as of April 22, 2014, by and among PNC and Lender, PNC assigned, sold and delegated all of its rights and obligations under the Existing Credit Agreement to Lender. The Assignment was a valid, binding and enforceable assignment of the Existing Credit Agreement's rights and obligations from PNC to Lender. Prior to the Petition Date, PNC made loans, advances and provided other financial accommodations to Debtor pursuant to the terms and conditions set forth in (1) the Existing Credit Agreement, and (2) all other agreements, documents and instruments executed and/or delivered with, to, or in favor of PNC, including, without limitation, ISDA Master Agreement (with associated schedule and confirmation), all security agreements, notes,

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<sup>2</sup> Capitalized terms used but not otherwise defined in this Order shall have the respective meanings ascribed thereto in the Motion and the Credit Agreement (as defined herein).

guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments executed and/or delivered in connection therewith or related thereto, as assigned by PNC to Lender pursuant to the Assignment (all of the foregoing, together with the Existing Credit Agreement, as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated and/or replaced at any time prior to the Petition Date, collectively, the “**Existing Credit Documents**”).

(ii) *Pre-Petition Obligations Amount.* As of the Petition Date, the aggregate amount of all obligations owing by Debtor and ISR Group Holdings, Inc., the Debtor’s parent corporation, to Lender under and in connection with the Existing Credit Documents was not less than \$17,444,444.04, plus interest accrued and accruing thereon, together with all costs, fees, expenses (including attorneys’ fees and legal expenses) and other charges accrued, accruing or chargeable with respect thereto (collectively, and as such term is more fully defined in the Amendment, the “**Pre-Petition Obligations**”). The Pre-Petition Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of the Debtor and ISR Group Holdings, Inc. and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and Debtor does not possess and shall not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the Pre-Petition Obligations, subject to the provisions of section 4.1 hereof.

(iii) *Pre-Petition Collateral.* As of the Petition Date, the Pre-Petition Obligations were fully secured pursuant to the Existing Credit Documents by valid, perfected, enforceable and non-avoidable first priority security interests and liens granted by the Debtor and ISR Group Holdings Inc. to Lender upon all of the Pre-Petition Collateral, subject only to

the liens specifically identified or permitted in the Existing Credit Agreement or applicable law to the extent that such security interests, liens or encumbrances are (a) valid, perfected and non-avoidable security interests, liens or encumbrances existing as of the Petition Date, and (b) senior to and have not been or are subject to being subordinated to Lender's liens on and security interests in the Pre-Petition Collateral or otherwise avoided, and, in each instance, only for so long as and to the extent that such encumbrances are and remain senior and outstanding (the "**Permitted Encumbrances**"). The Debtor will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of Lender's liens, claims or security interests in the Pre-Petition Collateral, subject to the provisions of section 4.1 hereof.

(iv) *Proof of Claim.* The Pre-Petition Obligations and the liens, rights, priorities and protections granted to or in favor of Lender as set forth herein and in the Existing Credit Documents are hereby deemed a timely filed proof of claim on behalf of Lender in the Case.

D. Findings Regarding the Post-petition Financing.

(i) *Post-petition Financing.* The Debtor has requested from Lender, and Lender is willing to extend, certain loans, advances and other financial accommodations on the terms and conditions set forth, in this Permanent Financing Order and the Credit Documents (as defined below).

(ii) *Need for Post-Petition Financing.* The Debtor does not have sufficient available sources of working capital, including cash collateral, to operate its business in the ordinary course of its business without the financing requested under the Motion. The Debtor's ability to restart its business operations to pay employees, and ultimately, to reorganize requires post-petition financing in the amount set out in the Credit Documents. Likewise, the

Debtor's ability to maximize the value of its assets for its creditors hinges on approval of the Permanent Financing Order and Credit Documents. Accordingly, the Debtor has an immediate need to obtain post-petition financing in order to, among other things, permit it to resuscitate its business and preserve and maximize the value of its assets in order to provide to all creditors of the Debtor the highest possible recovery.

(iii) *No Credit Available on More Favorable Terms.* The Debtor is unable to obtain financing from sources other than Lender on terms more favorable than the Existing Credit Agreement. The Debtor has been unable to obtain unsecured credit allowable under Bankruptcy Code Section 503(b)(1) as an administrative expense. The Debtor has also been unable to obtain credit: (a) having priority over that of administrative expenses of the kind specified in Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the Debtor and its estate that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtor and its estate that is subject to a lien. Financing on a post-petition basis is not otherwise available without granting the Lender, (1) perfected security interests in and liens on (each as provided herein) all of the DIP Collateral (as defined in the Amendment) (2) superpriority claims, and (3) the other protections set forth in this Permanent Financing Order.

(iv) *Budget.* The Debtor has prepared and delivered to Lender a revised Budget, as defined in the Amendment, and which Amendment and its schedules, including the Budget, are hereby incorporated for all purposes in this Order. Such Budget has been thoroughly reviewed by the Debtor's management and sets forth, among other things, the Projected Information for the periods covered thereby. The Debtor represents that the Budget is achievable in accordance with the terms of the Credit Documents and this Order. Lender is relying upon the Debtor's compliance with the Budget in accordance with the Amendment, the

other Credit Documents and this Order in determining to enter into the post-petition financing arrangements provided for herein.

(v) *Business Judgment and Good Faith Pursuant to Section 364(e).*

The terms of the Credit Documents and this Order are fair, just and reasonable under the circumstances, are ordinary and appropriate for secured financing to debtors-in-possession, reflect the prudent business judgment of the Debtor, consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The terms and conditions of the Credit Documents and this Order have been negotiated in good faith and at arms' length by and Debtor and the Lender, on the other hand, with all parties being represented by counsel. Any credit extended under the terms of this Order shall be deemed to have been extended in good faith by the Lender as that term is used in Section 364(e) of the Bankruptcy Code.

(vi) *Good Cause.* The relief requested in the Motion is necessary, essential and appropriate, and is in the best interest of and will benefit the Debtor, its creditors and its estate, as its implementation will, among other things, provide the Debtor with the necessary liquidity to (a) minimize disruption to the Debtor's business and on-going operations, (b) preserve and maximize the value of the Debtor's estate for the benefit of all the Debtor's creditors, and (c) avoid immediate and irreparable harm to the Debtor, its creditors, its business, its employees, and its assets.

(vii) *Notice.* The telephonic, facsimile, overnight mail and/or hand delivery notice of the Final Hearing, seeking entry of the Permanent Financing Order granting the Motion, has been provided to certain parties in interest, including: (i) the U.S. Trustee; (ii) the United States Securities and Exchange Commission; (iii) the Office of the United States Attorney for the Western District of Tennessee; (iv) the Internal Revenue Service; (v) the Debtor's twenty (20) largest unsecured creditors; (vi) counsel to the Lender; and (vii) all parties



that have submitted written requests for notice in the Case. The parties have made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to permit the relief set forth in this Permanent Financing Order, and no other or further notice is or shall be required.

(viii) *Immediate Entry*. Sufficient cause exists for immediate entry of this Order pursuant to Bankruptcy Rules 4001(c)(2). Absent entry of this Permanent Financing Order, the Debtor's business, properties and estate will be immediately and irreparably harmed. Accordingly, this Court concludes that entry of this Permanent Financing Order is necessary to avoid immediate and irreparable harm to the Debtor, and is in the best interests of the Debtor's estate and creditors. Any objections that were made (to the extent such objections have not been withdrawn) are hereby overruled.

(ix) Based upon the foregoing, and after due consideration and good cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:**

Section 1. Authorization and Conditions to Financing.

1.1 Motion Granted on a Final Basis. The Motion is **GRANTED** on a final basis, subject to the terms and conditions set forth herein.

1.2 Authorization to Borrow and Use Loan Proceeds. Debtor is hereby authorized and empowered to immediately borrow, obtain and incur indebtedness and obligations owing to Lender pursuant to the terms and conditions of this Permanent Financing Order, the Existing Credit Agreement, as ratified and amended by the Amendment and its attached Schedules (the "Credit Agreement," as such term is more fully defined in the Amendment), and the other Existing Credit Documents, as ratified and amended by the Amendment (the "Credit Documents," as such term is more fully defined in the Amendment),

in such amounts as may be made available to Debtor by Lender in accordance with the Budget. Subject to the terms and conditions contained in this Permanent Financing Order and the Credit Documents, including Section 4.15 of the Amendment, Debtor shall use the proceeds of the loans and any other credit accommodations provided to or for the benefit of Debtor pursuant to this Permanent Financing Order, the Credit Agreement or the other Credit Documents for, inter alia, the payment of employee salaries, payroll, taxes, and all other expenses specified in the Budget for other operating and working capital purposes, in the ordinary course of Debtor's business in accordance with the Credit Documents and for the various items to be paid pursuant to the proposed Settlement Agreement and Plan Support Agreement. The Budget also includes payment of the projected fees of the U.S. Trustee, any projected filing fees, and, subject to Section 2.3 of this Permanent Financing Order, Allowed Professional Fees (as defined below).

### 1.3 Credit Documents

1.3.1 Authorization. Debtor is hereby authorized to enter into, execute, deliver, perform, and comply with all of the terms, conditions and covenants of the Credit Agreement, the other Credit Documents and all other agreements, documents and instruments executed or delivered in connection with or related to the Credit Agreement, the other Credit Documents or this Permanent Financing Order, including, without limitation, the Amendment, pursuant to which, inter alia, Debtor ratifies, reaffirms, extends, assumes, adopts, amends, and restates the Existing Credit Agreement and the other Existing Credit Documents to which it is a party.

1.3.2 Approval. The Credit Documents (including, without limitation, the Credit Agreement) are approved to the extent necessary to implement the terms and provisions of this Permanent Financing Order. All of such terms, conditions and covenants

shall be sufficient and conclusive evidence of the borrowing arrangements by and among Debtor and Lender, and of Debtor's assumption and adoption of all of the terms, conditions, and covenants of the Credit Agreement and the other Credit Documents for all purposes, including, without limitation, to the extent applicable, the payment of all Obligations<sup>2</sup> arising thereunder, including, without limitation, all principal, interest, commissions, letter of credit fees, servicing fees, commitment fees, closing fees, early termination fees, and other fees and expenses, including, without limitation, all of Lender's consultant fees, professional fees, attorney fees and legal expenses, as more fully set forth in the Credit Documents; provided that copies of the invoices (with appropriate redactions) have been delivered to the Office of the United States Trustee and counsel to any official committee(s) appointed in the case and those parties have five (5) business days to review and object.

1.3.3 Amendment. Subject to the terms and conditions of the Credit Agreement and the other Credit Documents, Debtor and Lender may amend, modify, supplement or waive any provision of the Credit Documents (a "**DIP Amendment**") without further approval or order of the Court so long as (i) such DIP Amendment is not material (for purposes hereof, a "material" DIP Amendment shall mean, any DIP Amendment that operates to increase the interest rate other than as currently provided in the Credit Documents, increase the Availability (as defined in the Credit Agreement), add specific new events of default or enlarge the nature and extent of default remedies available to the Lender following an event of default, or otherwise modify any terms and conditions in any Credit Document in a manner materially less favorable to Debtor) and is undertaken in good faith by Lender and Debtor; (ii) the Debtor provides prior written notice of the DIP Amendment (the "**DIP Amendment**")

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<sup>2</sup> "Obligations" is defined in the Credit Agreement and includes the Pre-Petition Obligations and Postpetition Obligations.

**Notice**”) to (a) the U.S. Trustee and (b) counsel to any official committee appointed in the Case under Section 1102 of the Bankruptcy Code (collectively, the “**Committee(s)**”); (iii) Debtor files the DIP Amendment Notice with the Court; and (iv) no objection to the DIP Amendment is filed with the Court within two (2) business days from the later of the date the DIP Amendment Notice is served or the date the Amendment Notice is filed with the Court in accordance with this Section. Any material DIP Amendment to the Credit Documents must be approved by the Court to be effective.

1.4 Payment of Prepetition Debt. The Debtor is authorized to pay Lender in respect of all Pre-Petition Obligations in accordance with Sections 1.5 and 1.6 of this Permanent Financing Order.

1.5 Payments and Application of Payments. The Debtor is authorized to make all payments and transfers of estate property to Lender as provided, permitted and/or required under the Credit Agreement and the other Credit Documents, which payments and transfers, subject to Section 4.1 herein, shall not be avoidable or recoverable from Lender under Section 547, 548, 549, 550, 553 or any other Section of the Bankruptcy Code, or any other claim, charge, assessment, or other liability, whether by application of the Bankruptcy Code, other law or otherwise. All proceeds of the Collateral received by Lender, and any other amounts or payments received by Lender in respect of the Obligations, shall be applied or deemed to be applied by Lender in accordance with the Credit Agreement, the other Credit Documents and this Permanent Financing Order first to all Pre-Petition Obligations, until such Pre-Petition Obligations are indefeasibly paid in full and completely satisfied, and then to the Postpetition Obligations. Without limiting the generality of the foregoing, the Debtor is authorized, without further order of this Court, provided that copies of the invoices have been delivered to the Office of the U.S. Trustee and counsel to any Committee(s) appointed in the

Case and those parties have five (5) business days to review and object, to pay or reimburse Lender for all present and future costs and expenses subject to the terms and conditions set forth in the Amendment, all professional fees, consultant fees and legal fees and expenses paid or incurred by Lender in connection with the financing transactions as provided in this Permanent Financing Order and the Credit Documents, all of which shall be and are included as part of the Obligations and secured by the Collateral.

1.6 Continuation of Pre-petition Procedures. All pre-petition practices and procedures for the payment and collection of proceeds of the Collateral, the turnover of cash, the delivery of property to Lender and the funding pursuant to the Credit Documents are hereby approved and shall continue without interruption after the commencement of the Case.

Section 2. Liens and Superpriority Administrative Claim Status.

2.1 Liens.

2.1.1 Lien Granting. To secure the prompt payment and performance of any and all Obligations of Debtor to Lender of whatever kind, nature or description, absolute or contingent, now existing or hereafter arising, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, Lender shall have and is hereby granted, effective as of the Petition Date, continuing valid, binding, enforceable, non-avoidable and automatically and properly perfected post-petition security interests and liens, superior to all other liens, claims or security interests that any creditor of the Debtor's estate may have (but subject to certain claims entitled to priority, including the Permitted Liens and Claims (as defined below), as and to the extent expressly provided in Section 2.1.2 below), in and upon all of the Pre-Petition Collateral and the DIP Collateral (the Pre-Petition Collateral and the DIP Collateral, together the "**Collateral**"). In accordance with Sections 552(b) and 361 of the Bankruptcy Code, the value, if any, in any of the Collateral, in excess of the amount of Obligations secured by such

Collateral after satisfaction of the Postpetition Obligations of Debtor to Lender, shall constitute additional security for the repayment of the Pre-Petition Obligations and adequate protection for the use by Debtor, and the diminution in the value, of the Collateral existing on the Petition Date.

2.1.2 Lien Exclusions. Notwithstanding the foregoing, nothing contained in this Order or the Amendment shall be deemed to grant Lender a post-petition lien in any cause of action of Borrower against any third party, including any cause of action arising under sections 544, 545, 547, 548 and 549 of Title 11, United States Code, or the proceeds from any such cause of action, with the sole exception of the Retained Causes of Action. Furthermore, in the event that the Lender does not close on the Sale Transaction, then nothing contained herein shall be deemed to grant Lender a post-petition lien on any asset that did not constitute Pre-Petition Collateral. The assets described in this Section 2.1.2 shall be referred to as the “**Excluded Assets.**”

2.1.3 Lien Priority. The pre-petition and post-petition liens and security interests granted by Debtor to Lender under the Credit Documents and this Permanent Financing Order in the Collateral shall be and shall continue to 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, including, without limitation, liens or interests granted in favor of third parties in conjunction with Section 363, 364 or any other Section of the Bankruptcy Code or other applicable law; provided, however, that Lender’s liens on and security interests in the Collateral shall be subject only to (i) the Permitted Liens and (ii) the Carve Out Expenses (as defined below) solely to the extent provided for in Sections 2.3, 2.4 and 2.5 of this Permanent Financing Order (the foregoing clauses (i) and (ii) are collectively referred to herein as the “**Permitted Liens and Claims**”).

2.1.4 Lien Perfection. This Permanent Financing Order shall be sufficient and conclusive evidence of the priority, perfection and validity of the 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 Collateral, or other act to validate or perfect such security interest or lien, including without limitation, control agreements with any financial institution that is a party to any agreement related to an Account Control Agreement consisting of Collateral (a "**Perfection Act**"). Notwithstanding the foregoing, if Lender shall, in its sole discretion, elect for any reason to file, record or otherwise effectuate any Perfection Act, Lender is authorized to perform such act, and the Debtor is authorized to perform such act to the extent necessary or required by Lender, which act or acts shall be deemed to have been accomplished as of the date and time of entry of the Interim Financing Order or this Permanent Financing Order (as applicable) notwithstanding the date and time actually accomplished, and in such event, the subject filing or recording office is authorized to accept, file or record any document in regard to such act in accordance with applicable law. Lender may choose to file, record or present a certified copy of this Permanent Financing Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file or record such certified copy of this Permanent Financing Order in accordance with applicable law. Should Lender so choose and attempt to file, record or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive or alter the validity, enforceability, attachment, or perfection of the post-petition liens and security interests granted herein by virtue of the entry of this Permanent Financing Order.

2.1.5 Nullifying Pre-Petition Restrictions to Post-Petition Financing.

Notwithstanding anything to the contrary contained in any pre-petition agreement, contract, lease, document, note or instrument to which Debtor is a party or under which the Debtor is obligated, except as otherwise permitted under the Credit Documents, any provision that restricts, limits or impairs Debtor from in any way granting Lender security interests in or liens upon any of the Debtor's assets or properties (including, among other things, any anti-lien granting or anti-assignment clauses in any leases or other contractual arrangements to which Debtor is a party) under the Credit Agreement, the other Credit Documents or this Permanent Financing Order, or otherwise entering into and complying with all of the terms, conditions and provisions hereof or the Credit Documents shall not (i) be effective and/or enforceable against the Debtor or Lender, or (ii) adversely affect the validity, priority or enforceability of the liens, security interests, claims, rights, priorities and/or protections granted by Debtor to Lender pursuant to this Permanent Financing Order or the Credit Documents.

2.2 Superpriority Administrative Expense. For all Obligations now existing or hereafter arising pursuant to this Permanent Financing Order, the Credit Documents or otherwise, Lender is granted an allowed superpriority administrative claim pursuant to Section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities and indebtedness of Debtor, whether now in existence or hereafter incurred by Debtor, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 364(c)(1), 546(c), 726 or 1114 of the Bankruptcy Code (the "**Superpriority Claim**"), provided, however, the Superpriority Claim shall be subject only to the Permitted Liens and Claims and to the extent expressly set forth in this Permanent Financing Order and in no event be payable from the Excluded Assets.



2.3 Carve Out Expenses.

2.3.1 Carve Out Expenses. Lender's liens, claims and security interests in the Collateral and their Superpriority Claim shall be subject only to the right of payment of the following expenses (collectively, the "**Carve Out Expenses**"):

- a. statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6);
- b. fees payable to the Clerk of this Court; and
- c. subject to the terms and conditions of this Permanent Financing Order, the unpaid, budgeted and outstanding reasonable fees and expenses actually incurred on or after the Petition Date through confirmation of a plan, and approved or permitted by an order of the Court pursuant to Sections 326, 328, 330, or 331 of the Bankruptcy Code (collectively, the "**Allowed Professional Fees**"), by attorneys, accountants and other professionals retained by the Debtor and Committee (collectively, the "**Estate Professionals**"). The aggregate sum of the Allowed Professional Fees of the Estate Professionals shall be referred to as the "**Professional Fee Carve Out**".

2.3.2 Excluded Professional Fees. Notwithstanding anything to the contrary in this Permanent Financing Order, neither the Professional Fee Carve Out nor the proceeds of any Collateral shall be used to pay any Allowed Professional Fees or any other fees or expenses incurred by any Professional in connection with any of the following: (a) an assertion or joinder in or any investigation into any claim, counter-claim, action, proceeding, application, motion, objection, defense or other contested matter seeking any order, judgment, determination or similar relief: (i) challenging the legality, validity, priority, perfection, or enforceability of the Obligations or Lender's liens on and security interests in the Collateral, (ii)

invalidating, setting aside, avoiding or subordinating, in whole or in part, the Obligations or Lender's liens on and security interests in the Collateral, or (iii) preventing, hindering or delaying Lender's assertion or enforcement of any lien, claim, right or security interest or realization upon any Collateral in accordance with the terms and conditions of this Permanent Financing Order, (b) a request to use the Cash Collateral (as such term is defined in Section 363 of the Bankruptcy Code) without the prior written consent of Lender in accordance with the terms and conditions of this Permanent Financing Order, (c) a request for authorization to obtain Debtor-in-Possession financing or other financial accommodations pursuant to Section 364(c) or Section 364(d) of the Bankruptcy Code, other than from Lender, without the prior written consent of Lender, (d) the commencement or prosecution of any action or proceeding of any claims, causes of action or defenses against Lender or any of their respective officers, directors, employees, agents, attorneys, affiliates, successors or assigns, including, without limitation, any attempt to recover or avoid any claim or interest from Lender under Chapter 5 of the Bankruptcy Code, or (e) any act which results in the occurrence of an Event of Default, which is not waived or cured, under the Credit Documents or this Permanent Financing Order; provided, however, that the Committee may use up to the full amount of its budgeted professional fees (\$75,000.00) for such purposes in the event that the Lender does not close on an acquisition of substantially all of the assets of the Debtor as contemplated in Debtor's Amended Motion for Entry of an Order Approving the Sale of Substantially all of the Debtor's Assets Free and Clear of Claims, Liens, and Encumbrances, and Granting Related Relief (a "**Sale Transaction**").

2.4 Carve Out Reserve. At Lender's sole discretion, Lender may, at any time and in any increment up to the aggregate amount of the Professional Fee Carve Out and the other Carve Out Expenses in accordance with the Credit Agreement, establish a Reserve against the amount of all credit accommodations that would otherwise be made available to Debtor

pursuant to the lending formulae contained in the Credit Agreement in respect of the Professional Fee Carve Out and the other Carve Out Expenses.

2.5 Payment of Carve Out Expenses.

2.5.1 Debtor shall be permitted to pay Allowed Professional Fees of the Estate Professionals in accordance with the Budget.

2.5.2 Lender's obligation to fund or otherwise pay the Professional Fee Carve Out and the other Carve Out Expenses shall be added to and made a part of the Obligations, secured by the Collateral, and entitle Lender to all of the rights, claims, liens, priorities and protections under this Permanent Financing Order, the Credit Documents, the Bankruptcy Code or applicable law. Payment of any Carve Out Expenses, whether by or on behalf of Lender, shall not, and shall not be deemed to, reduce the Obligations, and shall not and shall not be deemed to subordinate any of Lender's liens and security interests in the Collateral or their Superpriority Claim to any junior pre- or post-petition lien, interest or claim in favor of any other party. Except as otherwise provided herein with respect to the Professional Fee Carve Out and the other Carve Out Expenses, Lender shall not, under any circumstance, be responsible for the direct payment or reimbursement of any fees or disbursements of any Professionals incurred in connection with the Case under any chapter of the Bankruptcy Code, and nothing in Section 2.3, 2.4 or 2.5 of this Permanent Financing Order shall be construed to obligate Lender in any way, to pay compensation to or to reimburse expenses of any Professional, or to ensure that the Debtor has sufficient funds to pay such compensation or reimbursement.

2.6 Use of Cash Collateral; Adequate Protection.

2.6.1 Authorization to Use Cash Collateral. Subject to the terms and conditions of this Permanent Financing Order, the Credit Agreement and the other Credit Documents, and in accordance with the Budget, Debtor shall be and is hereby authorized to use,

until the expiration of Lender's commitment to lend under the Credit Agreement and the other Credit Documents, the Cash Collateral (as defined in Section 363 of the Bankruptcy Code) subject to the pre-petition liens and security interests granted to the Lender. Nothing in this Permanent Financing Order shall authorize the disposition of any assets of the Debtor or its estate outside the ordinary course of business, or Debtor's use of Cash Collateral or other proceeds resulting therefrom, except as permitted in this Permanent Financing Order, the Credit Agreement, the other Credit Documents and in accordance with the Budget.

2.6.2 Replacement Liens. As adequate protection for the diminution in value of their interests in the Pre-Petition Collateral (including Cash Collateral) on account of the Debtor's use of such Pre-Petition Collateral (including Cash Collateral), the imposition of the automatic stay and the subordination to the Carve Out-Expenses, the Lender is hereby granted pursuant to Sections 361 and 363 of the Bankruptcy Code, valid, binding, enforceable and perfected replacement liens upon and security interests in all Collateral (the "**Replacement Lien**"). The Replacement Lien shall be junior and subordinate only to the Permitted Liens and Claims and the liens and security interests granted to Lender in the Collateral securing the Postpetition Obligations and shall otherwise be senior to all other security interests in, liens on, or claims against any of the Collateral.

2.6.3 Section 507(b) Priority Claim. As adequate protection for the diminution in value of their interests in the Pre-Petition Collateral (including Cash Collateral) on account of the Debtor's use of such Pre-Petition Collateral (including Cash Collateral), the imposition of the automatic stay and the subordination to the Carve-Out-Expenses, the Lender is hereby granted as and to the extent provided by Section 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in the Case and any conversion thereof to a case under chapter 7 to the extent of such diminution in value (the "**Adequate Protection**").

**Superpriority Claim**”). The Adequate Protection Superpriority Claim shall be junior only to the Carve-Out Expenses and shall otherwise have priority over all administrative expense claims under 11 U.S.C. §§ 503(b), 506(c), and 507(b) and unsecured claims against Debtor and its estate now existing or hereafter arising, however, in no event shall the Adequate Protection Superpriority Claim be payable from the Excluded Assets.

2.6.4 Adequate Protection. As adequate protection, Debtor is hereby authorized to provide adequate protection to Lender, in its capacity as post-petition lender, in the form of: (a) payment of fees and other amounts due under the Existing Credit Documents, at the times specified therein, to Lender, (b) ongoing accrual of interest on the DIP Facility, and (c) payment of fees, costs and expenses, including, without limitation, reasonable legal and other professionals’ fees and expenses, of Lender as required under the Existing Credit Documents.

Section 3. Events of Default, Rights and Remedies, and Relief from Stay.

3.1 Events of Default. The occurrence of any of the following events shall constitute an “**Event of Default**” under this Permanent Financing Order:

a. Debtor’s failure to comply with the terms, conditions or provisions under this Permanent Financing Order, or an event of default as defined and described elsewhere in this Permanent Financing Order occurs; or

b. An “Event of Default” under the Credit Agreement or any of the other Credit Documents.

3.2 Rights and Remedies Upon Event of Default. Upon the occurrence of and during the continuance of an Event of Default, which is not waived or cured, (i) the Debtor shall be bound by all restrictions, prohibitions and other terms as provided in this Permanent Financing Order, the Credit Agreement and the other Credit Documents, and (ii) Lender shall be

entitled to take any act or exercise any right or remedy (subject to Section 3.4 below) as provided in this Permanent Financing Order or any Credit Document, including, without limitation, declaring all Obligations immediately due and payable, accelerating the Obligations, ceasing to extend loans or provide or arrange for Letter of Credit Obligations on behalf of Debtor, setting off any Obligations with Collateral or proceeds in Lender's possession, and enforcing any and all rights with respect to the Collateral. Lender shall have no obligation to lend or advance any additional funds to or on behalf of Debtor, or provide any other financial accommodations to Debtor, immediately upon or after the occurrence of an Event of Default or upon the occurrence of any act, event, or condition that, with the giving of notice or the passage of time, or both, would constitute an Event of Default; provided, however, notwithstanding the foregoing, Lender shall be obligated to fund all statutory fees payable to the U.S. Trustee, all fees payable to the Clerk of this Court and all Allowed Professional Fees of Estate Professionals, which are included in the revised Budget, notwithstanding the occurrence of an Event of Default.

3.3 Expiration of Commitment. Upon the expiration of Debtor's authority to borrow and obtain other credit accommodations from Lender pursuant to the terms of this Permanent Financing Order and the Credit Documents (except if such authority shall be extended with the prior written consent of Lender, which consent shall not be implied or construed from any action, inaction or acquiescence by Lender), unless an Event of Default set forth in Section 3.1 above occurs sooner and which Event of Default has not been waived or cured and the automatic stay has been lifted or modified pursuant to Section 3.4 of this Permanent Financing Order, all of the Obligations shall immediately become due and payable and Lender shall be automatically and completely relieved from the effect of any stay under Section 362 of the Bankruptcy Code, any other restriction on the enforcement of its liens upon

and security interests in the Collateral or any other rights granted to Lender pursuant to the terms and conditions of the Credit Documents or this Permanent Financing Order, and after providing five (5) business days written notice of an Event of Default to counsel for the Debtor and counsel for any official committee and the United States Trustee, Lender shall be and is hereby authorized, in its sole discretion, to take any and all actions and remedies provided to it in this Permanent Financing Order, the Credit Documents or applicable law which Lender may deem appropriate and to proceed against and realize upon the Collateral or any other property of the Debtor's estate.

3.4 Relief from Automatic Stay. The automatic stay provisions of Section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified and vacated without further notice, application or order of the Court to the extent necessary to permit Lender, after providing five (5) business days written notice as set forth in section 3.3 above, to perform any act authorized or permitted under or by virtue of this Permanent Financing Order or the Credit Documents, including, without limitation, (a) to implement the post-petition financing arrangements authorized by this Permanent Financing Order and pursuant to the terms of the Credit Documents, (b) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the Collateral, and (c) to assess, charge, collect, advance, deduct and receive payments with respect to the Obligations, including, without limitation, all interests, fees, costs and expenses permitted under the Credit Documents, and apply such payments to the Obligations pursuant to the Credit Documents and this Permanent Financing Order. In addition, and without limiting the foregoing, upon the occurrence of an Event of Default, which is not waived or cured, and after providing five (5) business days prior written notice (the "**Enforcement Notice**") to (a) counsel for the Debtor, (b) counsel for the Committee (if appointed), and (c) the U.S. Trustee, Lender

shall be entitled to take any action and exercise all rights and remedies provided to it by this Permanent Financing Order, the Credit Documents or applicable law as Lender may deem appropriate in its sole discretion to, among other things, proceed against and realize upon the Collateral or any other assets or properties of Debtor's estate upon which Lender has been or may hereafter be granted liens or security interests to obtain the full and indefeasible repayment of all Obligations. Nothing contained in this Permanent Financing Order (including Section 3 hereof) shall prevent the Debtor or any committee appointed in this case from requesting a hearing to contest or challenge the existence or continuance of an Event of Default.

Section 4. Representations, Covenants and Waivers.

4.1 Objections to Pre-Petition Obligations. In the event that Lender closes on the Sale Transaction, then no party interest may seek to object to, challenge, contest or otherwise invalidate or reduce, whether by setoff, recoupment, counterclaim, deduction, disgorgement or otherwise, (a) the existence, validity or amount of the Pre-Petition Obligations, (b) the extent, legality, validity, perfection or enforceability of Lender's pre-petition liens and security interests in the Pre-Petition Collateral, (c) Lender's right to apply proceeds of DIP Collateral against Obligations in satisfaction of Lender's liens as provided for in this Permanent Financing Order. In the event that Lender does not close on the Sale Transaction, any action, claim or defense (hereinafter, an "**Objection**") that seeks to object to, challenge, contest or otherwise invalidate or reduce, whether by setoff, recoupment, counterclaim, deduction, disgorgement or otherwise, (a) the existence, validity or amount of the Pre-Petition Obligations, (b) the extent, legality, validity, perfection or enforceability of Lender's pre-petition liens and security interests in the Pre-Petition Collateral, (c) Lender's right to apply proceeds of DIP Collateral against Obligations in satisfaction of Lender's liens as provided for in this Permanent Financing Order, (provided, however, that the only grounds for such Objection is that the Pre-Petition Obligations were not fully secured by the Pre-Petition Collateral as of the Petition Date



and such application unduly advantaged Lenders), or (d) the Debtor's stipulations set forth in this Permanent Financing Order, including the release of all claims against the Lender, shall be filed with the Court (x) by the Committee, or (y) by any party in interest with requisite standing (including a chapter 7 trustee) no later than August 14, 2014, at 5:00 pm Central time. The Committee is expressly authorized to file an Objection in accordance with this Section 4.1 without further order of this Court. If any such Objection is timely filed and successfully pursued, nothing in this Permanent Financing Order shall prevent the Court from granting appropriate relief with respect to the Pre-Petition Obligations or Lender's liens on the Pre-Petition Collateral. If the Lender closes on the sale, or no Objection is timely filed, or if an Objection is timely filed but denied, (a) the Pre-Petition Obligations shall be deemed allowed in full, shall not be subject to any setoff, recoupment, counterclaim, deduction or claim of any kind, and shall not be subject to any further objection or challenge by any party at any time, and Lender's liens and security interest in the Pre-Petition Collateral as provided in this Permanent Financing Order shall be deemed legal, valid, perfected, enforceable, and non-avoidable for all purposes and of first and senior priority, subject to only the Permitted Liens and Claims, and (b) the Debtor's stipulations set forth in this Permanent Financing Order shall be binding on all parties, and Lender and each of its respective participants, agents, officers, directors, employees, attorneys, professionals, successors, and assigns shall be deemed released and discharged from any and all claims and causes of action related to or arising out of the Existing Credit Documents or any action or inaction of Lender prior to the date hereof, including but not limited to, actions or inactions of Lender in Lender's capacity as equity owner of the Debtor, and shall not be subject to any further objection or challenge by any party at any time. Nothing contained in this Section 4.1 or otherwise shall or shall be deemed or construed to expand, impair, prejudice or waive any rights, claims or protections afforded to Lender in connection with all post-petition financing and credit accommodations provided by Lender to Debtor in reliance on Section 364(e) of the Bankruptcy Code and in accordance with the terms and provisions of this Permanent Financing Order and the Credit Documents.

4.2 Debtor's Waivers. At all times during the Case, and whether or not an Event of Default has occurred, the Debtor irrevocably waives any right that it may have to seek authority (i) to use Cash Collateral of Lender under Section 363 of the Bankruptcy Code, except as otherwise expressly provided for herein, (ii) to obtain post-petition loans or other financial accommodations pursuant to Section 364(c) or 364(d) of the Bankruptcy Code, other than from Lender or as may be otherwise expressly permitted pursuant to the Credit Agreement, provided, however, that the Debtor may obtain post-petition financing if (a) such financing is used to indefeasibly pay in full the Obligations in accordance with the terms of the Credit Documents and this Permanent Financing Order or (b) the Obligations have been previously satisfied through the closing of the Sale Transaction or otherwise, (iii) to challenge in a pleading filed in the Case the application of any payments authorized by this Permanent Financing Order as pursuant to section 506(b) of the Bankruptcy Code, or to assert in a pleading filed in the Case that the value of the Pre-Petition Collateral is less than the Pre-Petition Obligations, (iv) to propose, support or have a plan of reorganization or liquidation that does not provide for the indefeasible payment in cash in full and satisfaction of all Obligations on the effective date of such plan in accordance with the terms and conditions set forth in the Amendment, (v) to file a pleading in the Case which challenges, contests or otherwise seeks to impair or objects to the validity, extent, enforceability or priority of Lender's pre-petition and post-petition liens and claims (subject to the rights of the Committee under Section 4.1 of this Permanent Financing Order), (vi) to assert in a pleading filed in the Case that the value of the Pre-Petition Collateral is less than the Pre-Petition Obligations or (vii) to seek relief under the Bankruptcy Code, including without limitation, under section 105 of the Bankruptcy Code, to the extent any such relief would in any way restrict or impair the rights and remedies of Lender as provided in this Permanent Financing Order and the Credit Documents or Lender's exercise of such rights or

remedies; provided, however, that Lender may otherwise consent in writing, but no such consent shall be implied from any other action, inaction, or acquiescence by Lender. For the avoidance of doubt, any trustee appointed or elected in the Case shall, until the expiration of the period provided herein for asserting challenges, and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this section (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtor's estate), be deemed to be a party other than the Debtor and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtor in this Permanent Financing Order.

4.3 Section 506(c) Claims. No costs or expenses of administration which have or may be incurred in the Case shall be charged against Lender, their respective claims or the Collateral pursuant to Section 506(c) of the Bankruptcy Code without the prior written consent of Lender, and no such consent shall be implied from any other action, inaction or acquiescence by Lender.

4.4 Collateral Rights. Until all of the Obligations shall have been indefeasibly paid and satisfied in full:

4.4.1 absent a further order from this Court, no other party shall foreclose or otherwise enforce any junior lien or claim in any Collateral; and

4.4.2 upon and after the occurrence of an Event of Default, and subject to Lender obtaining relief from the automatic stay as provided for herein, in connection with a liquidation of any of the Collateral, Lender (or any of its employees, agents, consultants, contractors or other professionals) shall have the right, subject to applicable non-bankruptcy law and, at the sole cost and expense of Debtor, to (collectively, the "Access Rights"): (i) enter upon, occupy and use any real or personal property, fixtures, equipment, leasehold interests or

warehouse arrangements owned or leased by Debtor and (ii) use any and all trademarks, tradenames, copyrights, licenses, patents or any other similar assets of Debtor, which are owned by or subject to a lien of any third party and which are used by Debtor in its business; provided, that, for purposes of this Permanent Financing Order, the Lender's exercise of its Access Rights shall be limited to (i) access and use permitted in accordance with applicable state law, (ii) the consent of the applicable landlord, lessor or owner, or (iii) a further order of this Court (which may be obtained on shortened notice) authorizing such access and use. Lender will be responsible for the payment of any applicable fees, rentals, royalties or other amounts due such lessor, licensor or owner of such property for the period of time that Lender actually uses the equipment or the intellectual property (but in no event for any accrued and unpaid fees, rentals or other amounts due for any period prior to the date that Lender actually occupies or uses such assets or properties).

4.5 Release. Upon closing of the Sale Transaction, in consideration of Lender making post-petition loans, advances and providing other credit and financial accommodations to the Debtor pursuant to the provisions of the Credit Documents and this Permanent Financing Order, Debtor, on behalf of itself and its successors, assigns and other legal representatives, (collectively, the "**Releasors**"), absolutely, unconditionally and irrevocably releases, remises and forever discharges Lender, and each of Lender's successors and assigns, and Lender's agents, officers, directors, members, shareholders, affiliates, employees, attorneys, and professionals (collectively, the "**Releasees**") of and from any and all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever, of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which

Releasors may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any nature, cause or thing whatsoever which arises at any time on or prior to the day and date of the Ratification including, without limitation, for or on account of, or in relation to, or in any way in connection with the Credit Agreement, or actions or inactions of Lender in Lender's capacity as equity owner of the Debtor, provided that such release does not apply in cases of fraud, gross negligence or willful misconduct of any Releasee. In addition, upon the indefeasible repayment of all Obligations owed to Lender by Debtor and termination of the rights and obligations arising under the Credit Documents, the applicable Financing Order, as the case may be (which payment and termination shall be on terms and conditions acceptable to Lender), Lender shall be released from any and all obligations, liabilities, actions, duties, responsibilities and causes of action arising or occurring in connection with or related to the Credit Documents or the applicable Financing Order (including, without limitation, any obligation or responsibility (whether direct or indirect, absolute or contingent, due or not due, primary or secondary, liquidated or unliquidated) to pay or otherwise fund the Carve-Out Expenses), on terms and conditions acceptable to Lender.

Section 5. Other Rights and Obligations.

5.1 No Modification or Stay of This Permanent Financing Order.

Notwithstanding (i) any stay, modification, amendment, supplement, vacating, revocation or reversal of this Permanent Financing Order, the Credit Documents or any term hereunder or thereunder or (ii) the dismissal or conversion of the Case (each, a "**Subject Event**"), (a) the acts taken by Lender in accordance with this Permanent Financing Order, and (b) the Postpetition Obligations incurred or arising prior to Lender's actual receipt of written notice from Debtor expressly describing the occurrence of such Subject Event shall, in each instance, be governed in all respects by the original provisions of this Permanent Financing Order, and the acts taken

by Lender in accordance with this Permanent Financing Order, and the liens granted to Lender in the Collateral, and all other rights, remedies, privileges, and benefits in favor of Lender pursuant to this Permanent Financing Order and the Credit Documents shall remain valid and in full force and effect. The foregoing shall not be construed to expand the rights and protections of section 364(e) of the Bankruptcy Code. Lender is hereby granted all of the rights and protections of section 364(e) with regard to, *inter alia*, the Obligations, the liens granted in the Collateral, and the priorities granted to such liens and claims pursuant to this Permanent Financing Order.

5.2 Power to Waive Rights and Duties to Third Parties. Lender shall have the right to waive any of the terms, rights and remedies provided or acknowledged in this Permanent Financing Order in respect of Lender (the “**Lender Rights**”), and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any Lender Right(s). Any waiver by Lender of any Lender Rights shall not be or constitute a continuing waiver. Any delay in or failure to exercise or enforce any Lender Right shall neither constitute a waiver of such Lender Right, subject Lender to any liability to any other party, nor cause or enable any other party to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtor to Lender.

5.3 Disposition of Collateral. Debtor shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Collateral without the prior express written consent of Lender (and such consent shall not be implied in any way from any action, inaction or acquiescence by Lender) and an order of this Court, except for sales of Debtor’s Inventory in the ordinary course of business and as otherwise expressly permitted in the Amendment; provided, however, that the Lender may consent to the filing of a motion to approve replacement debtor-in-possession financing which comports with the provisions of Section 5.7

of this Permanent Financing Order and indefeasibly pays in full the Obligations in accordance with the terms of the Credit Documents and this Permanent Financing Order. Debtor shall remit to Lender, or cause to be remitted to Lender, all proceeds of the Collateral for application by Lender to the Obligations, in such order and manner as Lender may determine in its discretion, in accordance with the terms of this Permanent Financing Order, the Credit Agreement and the other Credit Documents.

5.4 Inventory. Debtor shall not, without the prior express written consent of Lender, (a) enter into any agreement to return any inventory to any of its creditors for application against any pre-petition indebtedness under any applicable provision of Section 546 of the Bankruptcy Code, or (b) consent to any creditor taking any setoff against any of its pre-petition indebtedness based upon any such return pursuant to Section 553(b)(1) of the Bankruptcy Code or otherwise.

5.5 Credit Bid. Lender shall be authorized to credit bid the full amount of the Obligations in connection with the Sale Transaction or any other disposition of the Debtors' assets

5.6 Reservation of Rights. The terms, conditions and provisions of this Permanent Financing Order are in addition to and without prejudice to the rights of Lender to pursue any and all rights and remedies under the Bankruptcy Code, the 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 or granting of any interest in the Collateral or priority in favor of any other party, to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of Professionals or other parties seeking compensation or reimbursement from the Debtor's estate.

5.7 Binding Effect.

5.7.1 The provisions of this Permanent Financing Order and the Credit Documents, the Obligations, Superpriority Claim and any and all rights, remedies, privileges and benefits in favor of Lender provided or acknowledged in this Permanent Financing Order, and any actions taken pursuant thereto, shall be effective immediately upon entry of this Permanent Financing Order pursuant to Bankruptcy Rules 6004(h) and 7062, shall continue in full force and effect, and to the extent permitted by applicable law, shall survive entry of any such other order, including without limitation any order which may be entered confirming any plan of reorganization, converting the Case to any other chapter under the Bankruptcy Code, or dismissing the Case.

5.7.2 Notwithstanding any subsequent dismissal of the Case: (a) the Lender's liens on and security interests in the Collateral shall continue in full force and effect notwithstanding such dismissal until the Obligations are indefeasibly paid and satisfied in full, and (b) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the liens in the Collateral.

5.7.3 In the event this Court modifies any of the provisions of this Final Financing Order or the Credit Documents (a) such modifications shall not affect the rights or priorities of Lender pursuant to this Final Financing Order with respect to the Collateral or any portion of the Obligations which arises or is incurred or is advanced prior to such modifications, and (b) this Final Financing Order shall remain in full force and effect except as specifically amended or modified by the Court.

5.7.4 This Permanent Financing Order shall be binding upon Debtor, all parties in interest in the Case and their respective successors and assigns, including any trustee or other fiduciary appointed in the Case or any subsequently converted bankruptcy case of



Debtor. This Permanent Financing Order shall also inure to the benefit of Lender, Debtor and their respective successors and assigns.

5.8 Restrictions on Cash Collateral Use, Additional Financing, and Plan Treatment. All post-petition advances and other financial accommodations under the Credit Agreement and the other Credit Documents are made in reliance on this Permanent Financing Order. It shall be an immediate event of default under Section 3.1 of this Permanent Financing Order if, at any time in the Case or in any subsequently converted case under Chapter 7 of the Bankruptcy Code, the Court enters an order which (a) authorizes the use of cash collateral of Debtor in which or Lenders have an interest, or the sale, lease, or other disposition of property of Debtor's estate in which Lender has a lien or security interest, except as expressly permitted hereunder or in the Credit Documents, or (b) authorizes under Section 364 of the Bankruptcy Code the obtaining of credit or the incurring of indebtedness secured by a lien or security interest which is equal or senior to a lien or security interest in property in which Lender holds a lien or security interest, or which is entitled to priority administrative claim status which is equal or superior to that granted to Lender herein; unless, in each instance (i) Lender shall have given its express prior written consent with respect thereto, no such consent being implied from any other action, inaction or acquiescence by Lender, or (ii) such other order requires that all Obligations shall first be indefeasibly paid and satisfied in full in accordance with the terms of the Credit Agreement and the other Credit Documents, including, without limitation, all debts and obligations of Lender which arise or result from the obligations, loans, security interests and liens authorized herein, on terms and conditions acceptable to Lender. The security interests and liens granted to or for the benefit of Lender hereunder and the rights of Lender pursuant to this Permanent Financing Order and the Credit Documents with respect to the Obligations and the Collateral are cumulative and shall not be altered, modified, extended, impaired, or affected

by any plan of reorganization or liquidation of Debtor unless any such plan or reorganization or liquidation provides for the indefeasible payment in full of all Obligations on the effective date of the plan in accordance with the terms and conditions set forth in the Amendment, or if Lender shall expressly consent in writing that the Obligations shall not be repaid in full upon confirmation thereof, shall continue after confirmation and consummation of any such plan.

5.9 No Owner/Operator Liability. In determining to make any loan under the Credit Agreement, the other Credit Documents or any Financing Order, or in exercising any rights or remedies as and when permitted pursuant to the Credit Documents or any Financing Order, Lender shall not be deemed to be in control of the operations of the Debtor or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute).

5.10 Marshalling. In no event shall Lender be subject to the equitable doctrine of “marshalling” or any similar doctrine with respect to the Collateral.

5.11 Term and Termination. Notwithstanding any provision of this Permanent Financing Order to the contrary, the term of the financing arrangements among Debtor and Lender authorized by this Permanent Financing Order may be terminated pursuant to the terms of the Credit Agreement.

5.12 Limited Effect. In the event of a conflict between the terms and provisions of any of the Credit Documents and this Permanent Financing Order, the terms and provisions of this Permanent Financing Order shall govern, interpreted as most consistent with the terms and provisions of the Credit Documents.

5.13 Objections Overruled. All objections to the entry of this Permanent Financing Order are, to the extent not withdrawn, hereby overruled.

Submitted for entry:

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