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7
8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SANTA ANA DIVISION

11
12 In re:

Case No. 8:10-bk-26547-RK

13 KRYSTAL KOACH, INC.,

Chapter 11

14 Debtor and
15 Debtor-in-Possession.

**STIPULATION REGARDING USE OF
CASH COLLATERAL AND TO
PROVIDE ADEQUATE PROTECTION**

16
17 Date:
18 Time:
19 Place:
20

21 This Stipulation regarding Use of Cash Collateral and to Provide Adequate
22 Protection ("Stipulation") is entered into by and between Krystal Koach, Inc., a California
23 corporation, Debtor and Debtor-in-Possession (the "Debtor"), and Comerica Bank ("Comerica"),
24 with reference to the following facts:
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RECITALS

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2 A. The above-captioned bankruptcy case was commenced on November 19
3 2010 (the "Petition Date"), when the Debtor filed its petition under Chapter 11 of 11 U.S.C. § 101
4 et seq. (the "Bankruptcy Code"). The Debtor remains in possession of its assets as a debtor-in-
5 possession and continues to operate its business pursuant to Sections 1107 and 1108 of the
6 Bankruptcy Code.

7 B. The Debtor and Comerica entered into a Second Amended and Restated
8 Loan and Security Agreement (Accounts and Inventory) dated as of February 20, 2007, pursuant
9 to which Comerica agreed to provide revolving loans to the Debtor based upon a stated formula,
10 as more particularly set forth therein (the "Pre-Petition Revolving Loans").

11 C. The Second Amended and Restated Loan and Security Agreement
12 (Accounts and Inventory) dated as of February 20, 2007 has been modified pursuant to the terms
13 of the following agreements: (1) a First Modification to Second Amended and Restated Loan and
14 Security Agreement dated as of April 20, 2009, and (2) a Second Modification to Second
15 Amended and Restated Loan and Security Agreement dated as of December 23, 2009 (as
16 amended, collectively, the "Loan Agreement"). A true and correct copy of the Loan Agreement
17 together with all modifications thereto is attached hereto as Exhibit "A", which are incorporated
18 herein in full by this reference.
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20 D. The Debtor is also obligated to Comerica pursuant to a Variable Rate-
21 Installment Note dated as of October 31, 2007 (as amended, the "Note") in the original principal
22 amount of \$1,997,560.10, issued by the Debtor to the order of Comerica, pursuant to which
23 Comerica provided the Debtor with an installment loan (the "Pre-Petition Installment Loan" and
24 together with the Pre-Petition Revolving Loans, the "Pre-Petition Loans"). A true and correct
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1 copy of the Note is attached hereto as Exhibit "B", which is incorporated herein in full by this
2 reference.

3 F. The Debtor is also obligated (the "Pre-Petition Swap Obligations") to
4 Comerica pursuant to an ISDA Master Agreement dated as of October 31, 2007 (as amended, the
5 "ISDA") by and between the Debtor and Comerica and all related Confirmations (as defined in the
6 ISDA), including, without limitation, a Confirmation dated as of October 31, 2007 by and between
7 the Debtor and Comerica with a notional amount of \$1,997,560.10 (the "Confirmation"). A true
8 and correct copy of the ISDA and Confirmation are attached hereto as Exhibit "C", which are
9 incorporated herein in full by this reference.
10

11 F. The Debtor is also obligated (the "Pre-Petition L/C Obligations") to
12 Comerica pursuant to an agreement regarding letter of credit/letter of credit application dated as of
13 September 8, 2000 (as amended, the "L/C Agreement") pursuant to which the Debtor agreed to
14 repay Comerica for any and all amounts for which Comerica may become liable under the
15 Irrevocable Standby Letter of Credit No. 561344 dated as of September 8, 2000 (as amended, the
16 "L/C") in the amended principal amount of \$907,314 issued by Comerica for the benefit of
17 Lumberman's Underwriting Alliance for the account of the Debtor. A true and correct copy of the
18 L/C Agreement and L/C are attached hereto as Exhibit "D", which are incorporated herein in full
19 by this reference.
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21 G. Edward P. Grech, an individual ("Mr. Grech") and Comerica entered into an
22 Amended and Restated Private Access Line Variable Rate-Note dated as of April 20, 2009 in the
23 original principal amount of \$8,000,000, issued by Mr. Grech to the order of Comerica, pursuant
24 to which Comerica provided Mr. Grech with certain revolving credit facilities (the "Grech
25 Loans").
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1 H. The Debtor guaranteed (the "Pre-Petition Grech Guaranty Obligations") the
2 Grech Loans and all other obligations of Mr. Grech to Comerica pursuant to the following
3 documents (collectively, the "Debtor Grech Guaranties"): (1) a Guaranty dated as of November
4 16, 2005 by the Debtor in favor of Comerica; (2) a Guaranty dated as of September 19, 1995 by
5 the Debtor in favor of Comerica; (3) a Guaranty dated as of July 9, 2002 by the Debtor in favor of
6 Comerica; (4) a Guaranty dated as of June 24, 1996 by the Debtor in favor of Comerica; (5) a
7 Guaranty dated as of March 22, 1995 by the Debtor in favor of Comerica; (6) a General
8 Continuing Guaranty dated as of August 1, 1992 by the Debtor in favor of Comerica; (7) a
9 Guaranty dated as of February 2, 1996 by the Debtor in favor of Comerica; and (8) a Guaranty
10 dated as of June 16, 1999 by the Debtor in favor of Comerica.
11

12 I. Imperial Highway, LLC ("Imperial") and Comerica entered into: (i) a Term
13 Loan Agreement dated as of July 12, 2005 (as the same has been or may be amended,
14 supplemented, replaced, restated or otherwise modified from time to time, the "Imperial Loan
15 Agreement"), (ii) a Note Secured by Deed of Trust dated as of July 12, 2005 (as the same has been
16 or may be amended, supplemented, replaced, restated or otherwise modified from time to time, the
17 "Imperial Note A") in the original principal amount of \$5,950,000.00 issued by Imperial to the
18 order of Comerica, and (iii) a Note Secured by Deed of Trust dated as of August 15, 2006 (as the
19 same has been or may be amended, supplemented, replaced, restated or otherwise modified from
20 time to time, the "Imperial Note B") in the original principal amount of \$1,625,000.00 issued by
21 Imperial to the order of Comerica, pursuant to which Comerica provided Imperial with certain
22 term credit facilities (the "Imperial Loans").
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24

25 J. Imperial is also obligated (the "Imperial Swap Obligations") to Comerica
26 pursuant to an ISDA Master Agreement, dated as of June 27, 2006 (as the same has been or may
27 be amended, supplemented, replaced, restated or otherwise modified from time to time, the
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1 "Imperial ISDA") by and between Imperial and Comerica and all related Confirmations (as
2 defined in the Imperial ISDA), including without limitation: (i) a Confirmation dated as of June
3 28, 2006 by and between Imperial and Comerica with an initial notional amount of \$1,950,000.00,
4 and (ii) a Confirmation dated as of June 28, 2006 by and between Imperial and Comerica with an
5 initial notional amount of \$4,550,000.00.

6 K. The Debtor guaranteed (the "Pre-Petition Imperial Guaranty Obligations")
7 the Imperial Swap Obligations, the Imperial Loans and all other obligations of Imperial to
8 Comerica pursuant to the following documents (collectively, the "Debtor Imperial Guaranties"):
9 (i) a Guaranty dated as of August 15, 2006, and (ii) a Guaranty dated as of July 12, 2005 (jointly
10 and severally entered into with Mr. Grech and Mr. Grech's trust) (v) a Guaranty dated as of
11 February 20, 2001 (jointly and severally entered into with Mr. Grech and Mr. Grech's trust).

12 L. The Loan Agreement, Note, ISDA, Confirmation, L/C Agreement, L/C,
13 Debtor Grech Guaranties, Debtor Imperial Guaranties, Security Agreements (defined below), all
14 other Loan Documents as defined in the foregoing documents and any other document executed in
15 connection with any of the Pre-Petition Obligations shall be collectively referred to herein as the
16 "Pre-Petition Loan Documents").

17 M. The following amounts are owing under the Pre-Petition Loan Documents
18 as of November 19, 2010:

19 1. Pre-Petition Revolving Loans – The outstanding balance of principal
20 and interest owing to Comerica in the form of revolving loans as of the Petition Date is at least
21 \$7,398,301.81 plus additional interest, reasonable attorneys' fees, appraisal fees and other
22 reasonable expenses;
23

24 2. Pre-Petition Installment Loan – The outstanding balance of principal
25 and interest owing to Comerica in the form of installment loans as of the Petition Date is at least
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1 \$878,762.36 plus additional interest, reasonable attorneys' fees, appraisal fees and other reasonable
2 expenses;

3 3. Pre-Petition Swap Obligations – The outstanding termination
4 obligations owing under the ISDA and Confirmation is at least \$42,000, if terminated on such
5 date;

6 4. Pre-Petition L/C Obligations – The outstanding undrawn amount
7 with respect to letters of credit issued by Comerica for the account of the Debtor is at least
8 \$907,000.00;

9 5. Pre-Petition Grech Guaranty Obligations – The outstanding amount
10 owing under the Debtor Grech Guaranties is at least \$5,574,637.75, plus additional interest,
11 reasonable attorneys' fees, appraisal fees and other reasonable expenses; and

12 6. Pre-Petition Imperial Guaranty Obligations – The outstanding
13 amount owing under the Debtor Imperial Guaranties is at least \$7,364,319.73, plus additional
14 interest, reasonable attorneys' fees, appraisal fees and other reasonable expenses.
15

16
17 N. The Pre-Petition Loans, Pre-Petition Swap Obligations, Pre-Petition L/C
18 Obligations, Pre-Petition Grech Guaranty Obligations, Pre-Petition Grech Guaranty Obligations
19 and all other obligations of the Debtor to Comerica (collectively, the "Pre-Petition Obligations")
20 are secured by a security interest in all personal property of the Debtor, wherever located
21 (collectively, the "Pre-Petition Collateral") as evidenced by the following documents (collectively,
22 the "Security Agreements"): (1) the Loan Agreement; (2) a Security Agreement (All Assets) dated
23 as of July 13, 1994 by the Debtor in favor of Comerica; (3) a Security Agreement datcd as of July
24 9, 2002 by the Debtor in favor of Comerica; (4) a Security Agreement (All Assets) dated as of
25 September 19, 1995 by the Debtor in favor of Comerica; (5) a Security Agreement (All Assets)
26 dated as of August 26, 1997 by the Debtor in favor of Comerica; (6) a Security Agreement
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1 (Machinery and Equipment) dated as of November 10, 1993 by the Debtor in favor of Comerica;
2 (7) a Security Agreement dated as of August 1, 1992 by the Debtor in favor of Comerica; (8) a
3 Security Agreement (Machinery and Equipment) dated as of August 18, 1993 by the Debtor in
4 favor of Comerica; (9) a Security Agreement (Machinery and Equipment) dated as of September
5 22, 1993 by the Debtor in favor of Comerica; and (10) a Security Agreement (All Assets) dated as
6 of June 24, 1996 by the Debtor in favor of Comerica. A true and correct copy of the Security
7 Agreements are attached hereto as Exhibit "E", which are incorporated herein in full by this
8 reference.
9

10 O. The Pre-Petition Obligations are further secured by a security interest in the
11 "Collateral" as defined in the Intellectual Property Security Agreement dated as of December 23,
12 2009, by the Debtor in favor of Comerica, recorded on January 12, 2010, in the United States
13 Patent and Trademark Office on Reel/Frame 023768/0607 and 004130/0083, a true and correct
14 copy of which is attached hereto as Exhibit "F".
15

16 P. Comerica perfected its security interest in the Pre-Petition Collateral by
17 filing a UCC-1 Financing Statement with the California Secretary of State's office. A true and
18 correct copy of a certified UCC search report evidencing the perfection of Comerica's security
19 interest is attached hereto as Exhibit "G".
20

21 Q. The Pre-Petition Obligations are also secured by a security interest in all
22 personal property of Mr. Grech, as more particularly described in the following agreements: (1) a
23 Security Agreement (Collateral Pledge) dated as of August 1, 1993 by Mr. Grech in favor of
24 Comerica; (2) a Security Agreement (Collateral Pledge) dated as of December 1, 1993 by Mr.
25 Grech in favor of Comerica; and (3) a Security Agreement (All Assets) dated as of July 13, 1994
26 by Mr. Grech in favor of Comerica.
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1 R. The Pre-Petition Obligations are also guaranteed by Imperial pursuant to a
2 Limited Recourse Guaranty dated as of December 23, 2009 (as amended, the "Imperial
3 Guaranty").

4 S The obligations of Imperial under the Imperial Guaranty are secured by a
5 security interest in the "Trust Estate" as defined in and pursuant to a Deed of Trust, Security
6 Agreement and Fixture Filing with Assignment of Rents and Leases to Secure Guaranty dated as
7 of December 24, 2009, by Imperial in favor of Comerica, recorded on January 6, 2010 in the
8 Official Records of the County of Orange, State of California, as Instrument No. 2010000004967.
9

10 T. All proceeds of the Debtor's Pre-Petition Collateral, including work in
11 progress, inventory, accounts receivable and deposit accounts in existence at the time of the
12 Debtor's bankruptcy filing and wherever located now are Comerica's cash collateral pursuant to
13 Section 363 of the Bankruptcy Code. This Stipulation is intended to authorize the Debtor to use
14 Comerica's cash collateral for the Budget Period (described below), while providing adequate
15 protection of Comerica's interest therein pursuant to Section 363 of the Bankruptcy Code.
16

17 U. The Debtor requires continued use of Comerica's cash collateral in order to
18 continue the operation of, and maintain the going concern value of, the Debtor's business. Subject
19 to Court approval of this Stipulation, Comerica is willing to permit the Debtor to use Comerica's
20 cash collateral for the eight-week period beginning on the Petition Date (the "Budget Period")
21 upon the terms and conditions as provided for herein and upon the provision of adequate
22 protection. Accordingly, the Debtor and Comerica seek authority to establish a basis upon which
23 the Debtor may use Comerica's cash collateral in accordance with the terms set forth herein and to
24 provide for the adequate protection of Comerica's security interest in the collateral utilized by the
25 Debtor.
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1 V. In order to provide Comerica with adequate protection from a loss,
2 decrease, diminution or decline in the value of the assets of the Debtor and the property of the
3 Debtor's estate caused or resulting from the use, sale or lease thereof by the Debtor in accordance
4 with Section 363(e) of the Bankruptcy Code, or from the consequences of the automatic stay
5 imposed by Section 362 of the Bankruptcy Code ("Post-Petition Loss"), Comerica is entitled to
6 adequate protection under Sections 361 and 363(e) of the Bankruptcy Code in the form of a first
7 priority (subject only to Chassis Liens (as defined below) and any other liens which had priority
8 over Comerica's liens on the Petition Date (if any) security interest in all assets of the Debtor's
9 property, cash payments and other protections contained in this Stipulation, as well as a super-
10 priority administrative claim under Section 507(b), subject to the limitations set forth in Section 9
11 herein.
12

13 **AGREEMENT**

14 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED as follows:
15

16 1. Acknowledgement of Pre-Petition Loan Documents. The Debtor has
17 reviewed the Pre-Petition Loan Documents in light of the circumstances surrounding Comerica's
18 pre-petition financing of the Debtor. Based upon that review and subject to the rights of other
19 parties in interest to object as provided below, the Debtor hereby stipulates that:

20
21 a) The Pre-Petition Loan Documents are valid and enforceable
22 agreements in accordance with their terms;

23
24 b) The Pre-Petition Obligations are the valid, enforceable, allowable
25 and unavoidable obligations of the Debtor, that such Pre-Petition Obligations are not subject to
26 claims of subordination or recharacterization, that there are no claims, set-offs or defenses to the
27 Pre-Petition Obligations, and that the Pre-Petition Obligations are now due and owing;

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1 c) Comerica's lien on, and security interest in, the Pre-Petition
2 Collateral is valid, unavoidable, perfected and, except in relation to the potentially prior liens or
3 security interests listed in Schedule 1(c) attached hereto (collectively, the "Chassis Liens"), first in
4 priority; and

5
6 d) As of the Petition Date, the Pre-Petition Obligations consisted of
7 \$22,165,021.65 of principal and accrued and unpaid interest, plus any pre-petition costs, expenses
8 or attorneys fees incurred by Comerica that are recoverable under the terms of the Pre-Petition
9 Loan Documents.

10

11 2. Objection by Parties in Interest. No later than 30 days following the entry
12 of a final order on the use of cash collateral (the "Challenge Period"), any party in interest with
13 standing to appear in this proceeding (other than the Debtor) may file and serve upon the Debtor
14 and Comerica any objection to the Pre-Petition Obligations or to Comerica's lien on and security
15 interest in the Pre-Petition Collateral as set forth above. The final hearing on the use of cash
16 collateral shall occur not later than 30 days after the Petition Date. If no objections are timely
17 filed and served within the Challenge Period, the Pre-Petition Obligations shall be deemed valid,
18 enforceable, allowable and unavoidable, and not subject to subordination or recharacterization,
19 and Comerica's lien on and security interest in the Pre-Petition Collateral shall be deemed valid,
20 enforceable, unavoidable, perfected and first in priority as set forth above subject only to the
21 Chassis Liens. In addition, the claim of Comerica shall be deemed allowed, with no right to seek
22 reconsideration of such allowance of claim.

23

24 3. Release of Comerica Regarding Pre-Petition Obligations. The Debtor is
25 aware of no grounds and does not assert any pre-petition claims or causes of action against
26 Comerica. In consideration for the accommodations provided hereunder, but subject to the rights
27 of other parties in interest to object to the Pre-Petition Obligations or to Comerica's security
28

1 interest in the Pre-Petition Collateral as provided below, the Debtor hereby irrevocably and
2 unconditionally releases and forever discharges Comerica, its attorneys, accountants, consultants,
3 agents, servants, members, officers, directors, shareholders, employees, predecessors, parents,
4 subsidiaries, affiliates, successors and assigns, and all persons acting by, through, under, or in
5 concert with any of them from any and all charges, complaints, claims, and liabilities of any kind,
6 including, without limitation, claims for the recovery of preferential transfers, fraudulent
7 conveyances, or other avoidance actions under federal or state law, including all attorneys' fees,
8 interest, expenses, and costs actually incurred or of any nature whatsoever, known or unknown,
9 suspected or unsuspected, which in any way arise from or relate to the Pre-Petition Loan
10 Documents or the Pre-Petition Obligations. The Debtor agrees that Comerica's claim as to Pre-
11 Petition Obligations is allowed, and the Debtor waives any right to seek reconsideration of its
12 allowance. The Debtor further waives any right to seek to surcharge Comerica's collateral under
13 Section 506(c) of the Bankruptcy Code or under any other legal or equitable basis.

14
15 4. General Release. To the extent that the releases contained in the foregoing
16 Section 3 are releases to which Section 1542 of the California Civil Code or similar provisions of
17 other applicable law apply, the Debtor waives any and all rights and benefits conferred upon it
18 thereby. Section 1542 provides as follows:

19
20 A general release does not extend to claims which the creditor does not know or
21 suspect to exist in his or her favor at the time of executing the release, which if
22 known by him or her must have materially affected his or her settlement with the
23 debtor.

24 This Section 4 shall not affect the rights of other parties in interest to object to the Pre-Petition
25 Obligations or to Comerica's security interest in the Pre-Petition Collateral in accordance with
26 Section 2.
27

1 5. Use of Cash Collateral. Subject to the terms and conditions of this
2 Stipulation, Comerica hereby consents to the Debtor's use of Comerica's cash collateral during the
3 Budget Period, and the Debtor is hereby authorized to use Comerica's cash collateral in
4 accordance with the following procedures:

5
6 a) Deposit of Cash Collateral. The Debtor agrees that it shall deposit
7 all cash collateral currently in its possession or hereafter received by it into a separate account
8 established solely for the purpose of receiving and holding such deposits (the "Cash Collateral
9 Account"). Comerica's cash collateral shall not be commingled with funds that are the proceeds of
10 the collateral encumbered by the Chassis Liens. Except as provided for herein, the Debtor agrees
11 that it will not use any cash collateral in which Comerica claims an interest without further consent
12 of Comerica or order of the Bankruptcy Court in accordance with Section 363 of the Bankruptcy
13 Code. The Debtor agrees that it shall not have access to and shall not be permitted to use funds
14 held in the Cash Collateral Account which have not been swept to the Operating Account (defined
15 below).

16
17 b) Operating Account. At the end of each business day, the lesser of (i)
18 all amounts held in the Cash Collateral Account and (ii) Availability (as defined herein) shall be
19 swept into the Debtor's operating account (the "Operating Account"). The Debtor may only use
20 cash collateral that is held in the Operating Account and such use must be in compliance with the
21 Approved Budget as defined below, and all other terms set forth herein.

22
23 c) Availability. For the purposes of this Stipulation, the term
24 "Availability" shall mean: (i) the Borrowing Base (as defined herein), minus (ii) the current
25 outstanding balance of Pre-Petition Revolving Loans.

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1 d) The Borrowing Base. For purposes of this Stipulation, the term
2 "Borrowing Base" shall mean, without duplication, the sum of (except as defined in this
3 Stipulation, all capitalized terms set forth below shall have the meanings given to them in the Loan
4 Agreement):

5
6 1. Eighty percent (80.0%) of the net amount of Eligible
7 Accounts after deducting therefrom all payments, adjustments and credits applicable
8 thereto; plus

9
10 2. One hundred percent (100.0%) of the cost of all Base
11 Vehicles which are not Work in Process or Finished Goods after deducting therefrom all
12 adjustments for age or other factors affecting the value of such Inventory; plus

13
14 3. One hundred percent (100.0%) of the cost of all Base
15 Vehicles which are Work in Process (but are not Near Completion Work in Process as
16 defined in Section 1.70 of the Loan Agreement) consisting of up to a maximum of one
17 hundred (100) Base Vehicles, after deducting therefrom all adjustments for age or other
18 factors affecting the value of such Inventory; plus

19
20 4. One hundred fifteen percent (115.0%) of the cost of each
21 Base Vehicle consisting of a limousine or a hearse which is Near Completion Work in
22 Process, excluding the cost of any such conversion or modification, and after deducting
23 therefrom all adjustments for age or other factors affecting the value of such Inventory;
24 plus

25
26 5. The lesser of (i) one hundred twenty five percent (125.0%)
27 of the cost of each Base Vehicle consisting of Finished Goods that has been fully
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1 converted into a finished limousine or a finished hearse, excluding the cost of any such
2 conversion or modification, and after deducting therefrom all adjustments for age or other
3 factors affecting the value of such Inventory, or (ii) eighty percent (80.0%) of the average
4 sale price of such Inventory, based upon the audit of such Inventory sales for the prior six
5 (6) month period conducted pursuant to Section 6.7 of the Loan Agreement; plus

6
7 6. One hundred fifty five percent (155.0%) of the cost of each
8 Base Vehicle consisting of a recreational vehicle or a bus which is Ncar Completion Work
9 in Process, excluding the cost of any such conversion or modification, and after deducting
10 therefrom all adjustments for age or other factors affecting the value of such Inventory;
11 plus

12
13 7. The lesser of (i) one hundred sixty five percent (165.0%) of
14 the cost of each Base Vehicle consisting of Finished Goods that has been fully converted
15 into a finished recreational vehicle or a finished bus, excluding the cost of any such
16 conversion or modification, and after deducting therefrom all adjustments for age or other
17 factors affecting the value of such Inventory, or (ii) eighty percent (80.0%) of the average
18 sale price of such Inventory, based upon the audit of such Inventory sales for the prior six
19 (6) month period conducted pursuant to Section 6.7 of the Loan Agreement; plus

20
21 8. The lesser of (i) Borrowing Base Real Property Equity, or
22 (ii) Three and One Half Million Dollars (\$3,500,000.00); plus

23
24 9. The Overformula Amount.

25
26 10. Anything contained in the foregoing to the contrary
27 notwithstanding, Bank may adjust the Borrowing Base percentages and the definition of
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1 Eligible Accounts, Borrowing Base Real Property Equity, Base Vehicles, Work in Proccss
2 and finished conversion for eligible advances, in each case as provided for under Section
3 6.7 of the Loan Agreement.

4
5 11. As used herein, the term "Base Vehicle" shall mean any new
6 motor vehicle in its original state as manufactured, that has not been previously registered
7 or titled in any State, is located in the United States of America, is free of any liens other
8 than liens in favor of Bank, and Bank holds the original certificate of title for such vehicle,
9 and to the extent such vehicle is associated with a purchase order in which a customer has
10 made a deposit, the value of such deposit is deducted from the cost of such vehicle.

11
12 e) Approved Budget. The Debtor may utilize eash collateral only for
13 the purpose of paying the projected expenses of its post-petition operations, the costs of operating
14 its bankruptcy estate, the fees and expenses of the professionals employed by the Debtors and the
15 Official Committee of Unsecured Creditors, and the fees owing to the Office of the United States
16 Trustee and the Clerk of the Bankruptcy Court, all as set forth in its budget, a true and correct
17 copy of which is attached hereto as Exhibit "H" and its terms are incorporated herein in full by this
18 reference (the "Approved Budget"). The Approved Budget specifies, on a weekly basis, by
19 amount, type and kind, all expenses anticipated by the Debtor for the Budget Period. Upon
20 expiration of the Budget Period, the Debtor shall immediately cease its use of cash collateral held
21 in the Operating Account, unless the Budget Period is extended by further stipulation of Comerica
22 and the Debtor, or such continued use of cash collateral is authorized by the Court.

23
24 f) Reporting Requirements. The Debtor agrees to provide Comerica
25 with the following certificates, schedules and reports, each in form and substance satisfactory to
26 Comerica within 2 business days following the end of the week shown in the Approved Budget,
27 written weekly reports for the prior week that include: (A) sources and uses of all cash; (B)

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1 projected cash budget (including all revenues and expenses); (C) actual expenses (including all
2 revenues and expenses); (D) weekly budget variance showing weekly and cumulative post-petition
3 actual and budgeted receipts and disbursements, and variances from Approved Budget for each
4 item, in form and content satisfactory to Comerica and containing such level of detail (which may
5 be more detailed than the Approved Budget) as Comerica may reasonably require, (E) weekly
6 collateral reports, including account receivable agings, as well as reports describing the aggregate
7 balance of the Debtor's inventory and equipment; (F) a Borrowing Base Certificate (as defined in
8 the Loan Agreement); (G) the cost and the MSRP pricing of each item of inventory listed on the
9 Borrowing Base Certificate (as defined in the Loan Agreement); (H) the average selling price for
10 the rolling 6-month period ended on the date of such report; (I) a production log and certification
11 as to percentage completion of each Base Vehicle; and (K) original titles for any new inventory
12 added to the Borrowing Base.

13
14 g) Compliance with Approved Budget. If during any weekly reporting
15 period, the Debtor's use of cash collateral from the Operating Account exceeds the Approved
16 Budget by more than 10% in the aggregate, by more than 15% in respect of any specific budget
17 item, or upon the occurrence of any Event of Default hereunder, Comerica shall not be obligated
18 to permit, and the Debtor shall not be entitled to the continued use of cash collateral, without
19 Comerica's prior written consent which may be withheld in Comerica's sole and absolute
20 discretion, or further order of the Court.

21
22 h) Continuing Right to Use Cash Collateral. The Debtor's right to
23 continue to use Comerica's cash collateral pursuant to the terms of this Stipulation shall be
24 contingent upon the Debtor's compliance with each and every provision of this Stipulation.

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1 6. Waiver of Defaults. Comerica may, in the exercise of its sole discretion,
2 temporarily waive defaults under Sections 5(d), (e) and (f) of this Stipulation without affecting
3 Comerica's rights hereunder.

4
5 7. Disposition of Sale Proceeds; Relief from Stay. Any order approving the
6 sale of assets of the Debtor in this case shall provide for the payment of the sale proceeds at
7 closing, as follows:

8
9 First, (A) to Comerica in the amount of the Pre-Petition Loans, Pre-Petition
10 Swap Obligations, Pre-Petition L/C Obligations (except to the extent such obligations have
11 previously been repaid or are assumed by the purchaser in a transaction acceptable to Comerica,
12 and (B) to any other senior lien holder (whose collateral is being sold pursuant to such sale) the
13 value of such senior lien holder's allowed secured claim (except to the extent such obligations are
14 assumed by the purchaser);

15
16 Second, to the Debtor \$500,000 (the "Estate Funds"), which Estate Funds
17 shall remain with the Debtor's estate to be used to fund the wind down of the Debtor's estate and
18 to distribute the remaining balance to claim holders in accordance with their priorities under the
19 Bankruptcy Code under what is expected to be a liquidating plan of reorganization, with Comerica
20 agreeing that the Estate Funds shall be free and clear of any of Comerica's liens;

21
22 Third, to the debtor-in-possession financing lender in an amount equal to
23 the outstanding amounts due under the applicable debtor-in-possession financing documents;

24
25 Fourth, to Comerica in the amount of the remaining Pre-Petition
26 Obligations; and

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1 Fifth, to the Debtor.

2

3 Furthermore, if no objection to the Pre-Petition Obligations or to Comerica's lien on and security
4 interest in the Pre-Petition Collateral is timely filed during the Challenge Period, Comerica agrees
5 that it shall not receive any portion of the Estate Funds on account of any unsecured deficiency
6 claim of Comerica or otherwise. If an objection to the Pre-Petition Obligations or to Comerica's
7 lien on and security interest in the Pre-Petition Collateral is timely filed during the Challenge
8 Period, Comerica shall have the right to assert an unsecured deficiency claim against the Debtor's
9 estate to share in the Estate Funds on a pro rata basis with other general unsecured creditors to the
10 extent any such unsecured deficiency claim in favor of Comerica is allowed by the Court.

11

12 8. Replacement Lien and Adequate Protection. Comerica has approved the
13 Debtor's use of Comerica's cash collateral for expenses listed in the Approved Budget, and in
14 compliance with the Borrowing Base, for the Budget Period. Comerica shall have a replacement
15 post-petition lien and security interest upon all present and future personal property assets of the
16 Debtor (other than those assets specifically described below which shall not constitute Post-
17 Petition Collateral and subject to the Carve-Out described below), which assets include without
18 limitation, all of the Debtor's "Collateral" as defined in the Loan Agreement, which includes all
19 "Accounts", "Inventory", "General Intangibles", "investment property" and all other tangible and
20 intangible personal property of the Debtor, together with a lien on all causes of action to the same
21 extent, validity and priority as Comerica's pre-petition liens (collectively, the "Post-Petition
22 Collateral"). The Debtor acknowledges and shall not contest the validity, perfection and priority
23 of Comerica's liens upon and security interests in the Pre-Petition Collateral and the Post-Petition
24 Collateral. It is expressly understood and agreed between the Debtor and Comerica that
25 Comerica's consent to use of its cash collateral is expressly limited during the Budget Period and
26 that there is no other or further consent or commitment being given to use of Comerica's cash

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28

1 collateral. The Post-Petition Collateral shall not include any avoidance causes of action which
2 belong to the Debtor's estate.

3
4 9. Perfection of Post-Petition Liens. The liens and security interests granted
5 pursuant to this Stipulation are hereby deemed effective, valid, and perfected as of the date of the
6 entry of the order approving this Stipulation without the necessity of filing by any person of any
7 additional documents or other instruments or the taking of any additional action otherwise
8 required to be filed or taken under applicable nonbankruptcy law for the perfection of security
9 interests or mortgages. Such validity and perfection shall be binding upon any successor entity or
10 entities of the Debtor or subsequently appointed trustee in this Chapter 11 case or any Chapter 7
11 case into which this case may be converted, and upon any and all other creditors of the Debtor
12 who have extended or may hereafter extend credit to the Debtor, or assert a claim of any nature or
13 in any manner whatsoever in this bankruptcy case or any superseding bankruptcy case of the
14 Debtor, or any other person or entity, whether or not notice of filing of this bankruptcy case or any
15 order approving this Stipulation has been filed in any county or other political or administrative
16 subdivision in which assets of the Debtor are or may ever be located. Notwithstanding the
17 foregoing, and notwithstanding perfection pursuant to this section, the Debtor shall execute such
18 perfection documents and take such perfection actions as Comerica may reasonably request from
19 time to time.

20
21 10. Superpriority Claim. In addition to the liens described above, Comerica
22 shall also have the highest administrative priority under Section 507(b) of the Bankruptcy Code
23 above all administrative expenses incurred in this Chapter 11 case or subsequent Chapter 7 case,
24 including such administrative expenses of the kind specified in or authorized pursuant to Sections
25 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726 of the Bankruptcy Code, resulting from
26 any post-petition diminution in the value of Comerica's collateral.

1 11. No Challenges or Modification. The Debtor shall not in any manner
2 challenge or attempt to avoid or subordinate Comerica's claims against the Debtor under this
3 Stipulation or the Pre-Petition Loan Documents, nor attempt to avoid the validity, perfection or
4 priority of any security interests granted by the Debtor to Comerica pursuant to this Stipulation, all
5 of which are hereby confirmed. The Debtor shall not seek to modify the provisions of this
6 Stipulation under a Chapter 11 plan.

7
8 12. Conflicts. To the extent of any inconsistencies between the terms and
9 provisions of this Stipulation and the Pre-Petition Loan Documents, the terms of this Stipulation
10 shall govern. In all other respects, the Pre-Petition Loan Documents shall remain in full force and
11 effect and Comerica shall continue to have all of the interests, rights and remedies provided in the
12 Pre-Petition Loan Documents as modified hereby.

13
14 13. Application of Proceeds. All proceeds from Post-Petition Collateral shall
15 first be applied to reduce any Post-Petition Loss and then to reduce the Pre-Petition Obligations.

16
17 14. Events of Default. Any one or more of the following events shall constitute
18 an "Event of Default" hereunder:

19
20 a) the Debtor fails or neglects to perform, keep or observe any of the
21 provisions of Sections 1, 3, 4, 5(a)-(d) and (f)-(g), 6, and 12 of this Stipulation;

22
23 b) the Debtor fails or neglects to perform, keep or observe any of the
24 provisions of Section 5(e) of this Stipulation, and the same shall remain unremedied for five (5)
25 business days or more;

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1 c) the Debtor breaches any of the other agreements, stipulations, or
2 covenants in this Stipulation (other than the provisions covered by any of the clauses in this
3 section) and the same shall remain unremedied for five (5) business days or more;

4
5 d) any representation or warranty herein or in any written statement,
6 report, financial statement or certificate made or delivered to Comerica by the Debtor is untrue or
7 incorrect in any material respect as of the date when made or deemed made;

8
9 e) the assets of the Debtor with a fair market value of \$10,000 or more
10 are attached, seized, levied upon or subjected to a writ or distress warrant, or come within the
11 possession of any receiver, trustee, custodian or assignee for the benefit of creditors of the Debtor
12 and such condition continues for five (5) business days or more;

13
14 f) a post-petition final judgment or judgments on account of a post-
15 petition claim for the payment of money in excess of \$25,000 in the aggregate at any time are
16 outstanding against the Debtor (which judgments are not covered by insurance policies as to
17 which liability has been accepted by the insurance carrier), and the same are not, within five (5)
18 business days after the entry thereof, discharged or execution thereof stayed or bonded pending
19 appeal, or such judgments are not discharged prior to the expiration of any such stay;

20
21 g) any material provision of any Pre-Petition Loan Document for any
22 reasons ceases to be valid, binding and enforceable in accordance with its terms;

23
24 h) the appointment of a trustee or an examiner with enlarged powers
25 (powers beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code) in this
26 case;

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1 i) the conversion of this case to a case under Chapter 7 of the
2 Bankruptcy Code;

3
4 j) the dismissal of this case without payment of all of the Pre-Petition
5 Obligations;

6
7 k) if there is any written pleading sustained by the Court pursuant to
8 which a party in interest invalidates, subordinates or avoids any material portion of Comerica's
9 lien on or security interest in the Pre-Petition Collateral or Post-Petition Collateral or any material
10 reduction or subordination of the Pre-Petition Obligations by reason of avoidance, invalidation,
11 offset or, except as a result of payments, otherwise;

12
13 l) except as permitted herein, the use of Comerica's cash collateral
14 under Section 363(c) of the Bankruptcy Code without Comerica's prior written consent or the
15 consent of the Court;

16
17 m) any party in interest obtaining relief from the automatic stay
18 applicable under Section 362 of the Bankruptcy Code in this case to exercise its rights as
19 lienholder or secured party against any portion of the Pre-Petition Collateral or Post-Petition
20 Collateral, unless otherwise consented to by Comerica, in writing;

21
22 n) an interim order approving this Stipulation ("Interim Order") is not
23 entered by the Bankruptcy Court within five (5) business days following the Petition Date, or a
24 final order acceptable to Comerica ("Final Order") is not entered by the Bankruptcy Court within
25 thirty (30) days following the Petition Date;

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1 o) an interim order approving the Debtor's debtor-in-possession
2 financing arrangement from National Energy Holdings Limited (the "DIP Financing") is not
3 entered by the Bankruptcy Court within five (5) business days following the Petition Date, a loan
4 in the amount of at least \$2,300,000 is not made to the Debtor under the DIP Financing within five
5 (5) business days following the Petition Date, or a final order approving the DIP Financing is not
6 entered by the Bankruptcy Court within thirty (30) days following the Petition Date;

7
8 p) a default occurs under Section 10 of the Post-Petition Loan and
9 Security Agreement between Debtor and National Energy Holdings Limited and the same is not
10 cured at least one business day before the expiration of any applicable cure period set forth
11 therein;

12
13 q) if the Debtor fails to pay to Comerica the amount of any draw
14 request made in respect of the L/C within seven (7) business days after a conforming draw request
15 is presented to Comerica;

16
17 r) the entry of an order by the Bankruptcy Court modifying the Final
18 Order, or priming Comerica's lien or security interest in either the Pre-Petition Collateral or the
19 Post-Petition Collateral under Section 364(d) of the Bankruptcy Code or otherwise;

20
21 s) the entry of an order by the Bankruptcy Court amending,
22 supplementing, staying, vacating, rescinding or otherwise modifying the Pre-Petition Loan
23 Documents or the Interim Order or the Final Order without Comerica's written consent;

24
25 t) the sale without Comerica's consent of all or substantially all of the
26 Debtor's assets either through a sale under Section 363 of the Bankruptcy Code, through a
27 confirmed Chapter 11 plan, or otherwise;

28

1 u) a motion to approve the bidding procedures for the sale of all or
2 substantially all of the Debtor's assets under Section 363 of the Bankruptcy Code, on terms
3 acceptable to Comerica, is not filed within five (5) business days following the Petition Date; or an
4 order approving the sale, on terms acceptable to Comerica, is not entered on or before January 10,
5 2011; or the sale has not consummated on or before January 25, 2010;

6
7 v) if there is any written objection sustained by the Court to the
8 Motion; or

9
10 w) the proposal of any Chapter 11 plan inconsistent with this
11 Stipulation.

12
13 15. Response to Events of Default. Upon the occurrence of an Event of Default
14 which is not cured by the Debtor within three business days following the Debtor's receipt of
15 written notice of default from Comerica, (a) Comerica may immediately cease transferring funds
16 from the Cash Collateral Account to the Operating Account, (b) the Debtor's right to continued
17 use of Cash Collateral shall immediately cease unless the Court orders otherwise, and (c)
18 Comerica shall have the right to seek relief from the automatic stay on an emergency basis,
19 without prejudice to the rights of the Debtor or any other party in interest to oppose any such relief
20 requested by Comerica. Subject to the availability of the Court, the Debtor and Comerica agree
21 that the hearing for the Court to consider any such relief from stay motion filed by Comerica shall
22 be held not later than three days following the date that Comerica has filed the relief from stay
23 motion with the Court.

24
25 16. Relief From the Automatic Stay. The automatic stay provisions of Section
26 362 of the Bankruptcy Code are vacated and modified, without the need for any further action of
27 Comerica or the Court, to the extent necessary to permit Comerica to give effect to any rights
28

1 granted in this Stipulation, including, without limitation, to the extent necessary to permit
2 Comerica to (a) pay all fees and expenses of Comerica, including, without limitation, all attorney's
3 fees (without the need to file a fee application or otherwise obtain the approval of this Court), (b)
4 apply sale proceeds to the Pre-Petition Obligations (excluding the Estate Funds), (c) apply the
5 amounts received in respect of the Debtor's reimbursement obligations under the L/C to the Pre-
6 Petition L/C Obligations, and (d) debit the Debtor's bank accounts at Comerica for Comerica's
7 customary cash management and servicing fees as they arise in the ordinary course of business.

8
9 **17. Right to Credit Bid.** Comerica shall have the right to credit bid up to
10 \$9,000,000 in any sale of the Pre-Petition Collateral or Post-Petition Collateral pursuant to Section
11 363 of the Bankruptcy Code, a plan of liquidation or reorganization under Section 1129 of the
12 Bankruptcy Code, or, in the event the case is converted into a Chapter 7 case, a sale or disposition
13 by a Chapter 7 trustee under Section 725 of the Bankruptcy Code. The Debtor agrees that any sale
14 of all or part of the Pre-Petition Collateral and Post-Petition Collateral that does not include an
15 unqualified right to credit bid up to \$9,000,000, as provided for in this section, will not result in
16 Comerica receiving the indubitable equivalent of its claims and interests.

17
18 **18. Modification of Stipulation.** Comerica may seek further protection of its
19 security interests if Comerica deems necessary in these or any superseding proceedings. Further,
20 Comerica may agree to modifications to this Stipulation, in its sole discretion.

21
22 **19. Reservation of Rights.** Nothing herein constitutes consent by Comerica to
23 these proceedings or to the continuation thereof or to the use of cash collateral except as provided
24 herein, or constitutes a waiver by Comerica of any right it may have, including, without limitation,
25 to object to the reasonableness of any fees or costs of professionals described herein, to oppose or
26 object to any plan of reorganization, to challenge any impairment of its claim, its security interests,
27 the Pre-Petition Collateral or Post-Petition Collateral, and incident thereto to introduce such
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1 evidence of its claim, its security interest and the value of the Pre-Petition Collateral or Post-
2 Petition Collateral as may be appropriate in the circumstances.

3
4 20. Further Assurances. The Debtor shall execute and deliver to Comerica any
5 and all further agreements, instruments and documents which may be reasonably necessary to
6 effectuate the purposes of this Stipulation, including, without limitation, any UCC-1 Financing
7 Statements. Comerica is entitled to reimbursement of all costs of Comerica's searches, title
8 policies or endorsements, recording expenses or other related Comerica expenses.

9
10 21. Binding Stipulation. The parties agree that this Stipulation shall be
11 submitted to the above-named Bankruptcy Court for its approval. Upon such approval, this
12 Stipulation shall be binding upon and shall inure to the benefit of the parties and their respective
13 successors or assigns, including, without limitation, any Chapter 11 or Chapter 7 trustee in these
14 or any superseding bankruptcy proceedings. All of Comerica's rights and remedies hereunder are
15 not exclusive and are in addition to all rights and remedies provided by law, or by any other
16 agreement between the Debtor and Comerica, or otherwise. If any or all of the provisions of this
17 Stipulation are hereafter modified, vacated or stayed by order of this or any other court, such stay,
18 modification or vacation shall not affect the validity of any debt to Comerica incurred pursuant to
19 this Stipulation and which is incurred prior to the effective date of such stay, modification or
20 vacation, or the validity and enforceability of any lien or priority authorized hereby, and
21 notwithstanding such stay, modification or vacation, any use of funds occurring pursuant to this
22 Stipulation prior to the effective date of such modification, stay or vacation, to or for the benefit of
23 the Debtor, shall be governed in all respects by the original provisions of this Stipulation, and
24 Comerica shall be entitled to all the rights, privileges and benefits, including the liens and security
25 interests and priorities granted herein, with respect to all such advances.

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1 22. Carve Out for Professionals. Comerica consents, notwithstanding its lien,
2 security interest and administrative expense priority, to the payments by the Debtor of professional
3 fees and expenses in the amounts set forth in the Approved Budget, which amounts shall be
4 capped at \$200,000 to the Debtor's bankruptcy counsel, \$100,000 to the Debtor's financial
5 advisor, \$20,000 to the Debtor's litigation counsel, and \$100,000 to professionals employed by an
6 Official Committee of Unsecured Creditors, recognizing that such capped amounts are in addition
7 to, and not inclusive of, any pre-bankruptcy retainers paid to any such professionals. Comerica
8 consents to the payments to such professionals in accordance with the timing set forth in the
9 Amended Budget, recognizing that all such professionals will be required to maintain such sums
10 in segregated trust accounts pending Court approval of fees and expenses, at which time
11 professionals shall have the authority to transfer such sums from the professionals' respective trust
12 accounts to their respective general accounts. Professionals employed by an Official Committee
13 of Unsecured Creditors shall have the authority to use the sums paid to them from the Approved
14 Budget to investigate and analyze the Pre-Petition Loan Documents and Comerica's Pre-Petition
15 Collateral, but such professionals may not use or be paid from any such sums to commence any
16 action or other proceeding for the purpose of, or which may result in, challenging the amount,
17 allowability, avoidability, enforceability, validity, perfection or priority of the Pre-Petition
18 Obligations or the Pre-Petition Collateral. The ultimate allowance of any professional fees and
19 expenses shall be subject to application, notice and allowance by the Bankruptcy Court. Comerica
20 shall have the right to object to the allowance by the Court of any such professional fees and
21 expenses, but Comerica may not object to the payment of any such professional fees and expenses
22 which are allowed by the Court, subject to the amounts contained in the Approved Budget.
23 Notwithstanding all of the foregoing, if this Stipulation is terminated by Comerica as a result of
24 the occurrence of an Event of Default which is not timely cured by the Debtor, the total amount of
25 money available to be funded to all professionals employed by the Debtor's estate after the date of
26 receipt of notice of the Event of Default from Comerica shall be \$200,000, which sum shall be in

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1 addition to all amounts funded by the Debtor prior to the date of receipt of notice of the Event of
2 Default from Comerica.

3
4 23. Integration. The Pre-Petition Loan Documents and this Stipulation
5 constitute the complete agreement of the parties with respect to the subject matter thereof and may
6 not be modified, altered or amended except by an agreement in writing executed by the Debtor
7 and Comerica. No amendment or waiver shall be effective unless the same shall be in writing.

8
9 24. Miscellaneous. This Stipulation may be executed in any number of
10 counterparts and by different parties on separate counterparts, each of which, when executed and
11 delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute
12 but one and the same agreement. The Debtor and Comerica anticipate executing this Stipulation
13 in counterparts in separate locations, delivering a copy of the executed counterpart signature pages
14 hereof to each other by facsimile, and subsequently delivering to each other originals of the
15 executed signature pages. The Debtor and Comerica hereby agree that this Stipulation shall be
16 deemed effective upon Comerica's receipt by facsimile of a copy of the signature page hereof
17 executed by the Debtor, and no subsequent delay or failure by either party hereto to deliver to the
18 other party hereto such party's original signature page shall diminish the effectiveness of this
19 Stipulation.

20
21 Dated: November 19, 2010

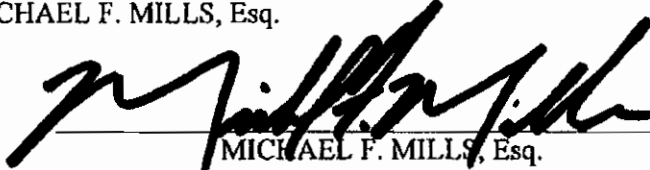
22 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

23
24 By /s/ Ron Bender

RON BENDER, Esq.

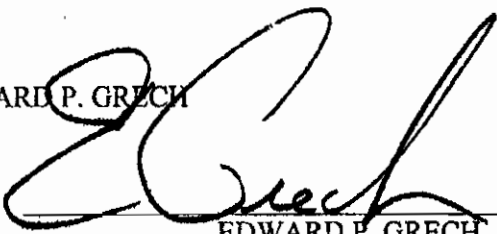
25 Attorneys for Debtor and Debtor-in-Possession,
26 KRYSTAL KOACH, INC.

1 Dated: November 19, 2010


2 MICHAEL F. MILLS, Esq.
3
4 By 
MICHAEL F. MILLS, Esq.

5 General Counsel,
6 KRYSTAL ENTERPRISES

7 Dated: November 19, 2010

8 EDWARD P. GRECH
9
10 By 
EDWARD P. GRECH

13
14 Dated: November 17, 2010

15 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
16
17 By 
KYLE MATHEWS

18 Attorneys for Secured Creditor,
19 COMERICA BANK

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Schedule 1(c)

7. Pursuant to an Intercreditor Agreement (Chassis Financing) dated as of January 12, 2004 ("Ford Intercreditor Agreement") between Comerica and Ford Motor Credit Company ("Ford"): (a) Comerica agreed, on the terms set forth therein, to subordinate its security interest in any "Chassis" (as defined in the Ford Intercreditor Agreement) financed by Ford and "Proceeds" (as defined in the Ford Intercreditor Agreement) thereof until such "Chassis" are paid for by the Debtor; and (b) Ford agreed to terminate its security interest in such "Chassis" upon payment thereof and acknowledged Comerica's senior security interest in the same.

8. Pursuant to an Intercreditor Agreement (Chassis Financing) dated as of May 26, 2010 ("Westrux Intercreditor Agreement") between Comerica and Westrux International Inc. ("Westrux"): (a) Comerica agreed, on the terms set forth therein, to subordinate its security interest in any "Chassis" (as defined in the Westrux Intercreditor Agreement) financed by Westrux until such "Chassis" are paid for by the Debtor; and (b) Westrux agreed to terminate its security interest in such "Chassis" upon payment thereof and acknowledged Comerica's senior security interest in the same.