

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:		Chapter 11
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MF GLOBAL HOLDINGS, LTD., <u>et al.</u> ,	:		Case No. 11-15059 (MG)
	:		
	:		Jointly Administered
	:		
Debtors.	:		
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**FINAL ORDER UNDER 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e) AND 364  
AND BANKRUPTCY RULES 2002, 4001, 6003, 6004 AND 9014  
(I) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, AND  
(II) GRANTING ADEQUATE PROTECTION**

Upon the motion, dated October 31, 2011 (the "Motion")<sup>1</sup> of MF Global Holdings Ltd. ("Holdings") and MF Global Finance USA Inc. ("Finance USA" and together with Holdings, the "Debtors"), as adopted by Louis J. Freeh, as chapter 11 trustee of the Debtors (the "Trustee") for entry of an order (i) authorizing the Debtors' use of JPMorgan Chase Bank, N.A.'s ("JPMorgan") "cash collateral" (as defined in section 363(a) of the Bankruptcy Code, the "Cash Collateral"); and (ii) providing adequate protection to JPMorgan for any diminution in value of its interest in the Cash Collateral; all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and grant the requested relief in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors having provided notice of the Motion and Interim Hearing (as defined below) to: (a) the United States Trustee for the Southern District of New York (the

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Motion. The term "Debtors" shall not include any subsequently filed entity unless otherwise consented to by JPMorgan.

“UST”); (b) the United States Attorney for the Southern District of New York; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) counsel for the agents under the Debtors’ prepetition Liquidity Facility; (f) the indenture trustee for each of the Debtors’ outstanding bond issuances; and (g) the parties included on the Debtors’ list of fifty (50) largest unsecured creditors; and the Court having entered the *Amended Interim Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection to the Liquidity Facility Lenders, and (III) Scheduling a Final Hearing*, dated November 2, 2011 [Docket No. 26] (the “Interim Order”), and such Interim Order having been extended by Stipulated Orders dated November 10, 2011, November 17, 2011, November 30, 2011 and December 9, 2011 (collectively, the “Stipulations”) [Docket Nos. 65,118, 204 and 255, respectively] and the Court having held hearings on November 1, 2011 to consider entry of the Interim Order, and November 16, 2011, November 30, 2011 and December 9, 2011 to consider the Stipulations(the “Interim Hearings”), and on December 14, 2011 (the “Final Hearing” and together with the Interim Hearings, the “Hearings”) to consider entry of this final order (the “Final Order”); and upon the Abelow Declaration, the record of the Hearings, and all of the proceedings before the Court; the Court having found and determined that the requested relief is in the best interests of the Debtors, their estates, creditors, and all parties in interest, that the Debtors and the Trustee, as applicable, have provided due and proper notice of the Motion and the Hearings and no further notice is necessary; and whereby JPMorgan withdrew its objection to the Motion and consented to the use of Cash Collateral based upon the terms of this Final Order; and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:<sup>2</sup>

A. Petition Date: On October 31, 2011 (the "Petition Date"), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Court") thereby commencing these cases (the "Chapter 11 Cases").

B. Debtors in Possession: Until the appointment of the Trustee, the Debtors were managing and operating their business and properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

C. The Trustee: By order dated November 28, 2011, the Trustee was appointed the Chapter 11 Trustee of the Debtors.

D. Jurisdiction and Venue: This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

E. Party with Interest in Cash Collateral: JPMorgan asserts an interest in the Cash Collateral to the extent that funds on deposit with it as of the Petition Date in the account of Finance USA, in the amount of approximately \$25,329,480, are subject to rights of setoff under the Bankruptcy Code and other applicable law as a result of claims JPMorgan holds against Finance USA, including as a lender and agent under the Liquidity Facility (the "Setoff Claim"). JPMorgan also asserts potential setoff rights with respect to funds on deposit with it as of the Petition Date in accounts of Holdings totaling approximately \$1,665,021, which funds the

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<sup>2</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

Trustee does not seek to use absent further order of the Court and are not subject to the provisions of this Final Order, and as to which all parties' rights and interests are reserved.

F. Good Faith. The terms of the use of the Cash Collateral have been the subject of negotiations conducted in good faith and at arm's length among the Debtors, the Trustee, JPMorgan and the statutory creditors' committee (the "Committee"), and, pursuant to sections 105, 361, 363 and 364 of the Bankruptcy Code, JPMorgan is hereby found to be an entity that has acted in "good faith" in connection with the negotiation and entry of this Final Order, and is entitled to the protection provided under section 364(e) of the Bankruptcy Code.

G. Necessity of Relief Requested. The Trustee alleges that the Debtors would not have sufficient available sources of working capital and financing to operate their business in the ordinary course or to maintain their property without the use of Cash Collateral. Without access to the Cash Collateral, the Trustee alleges that his ability to manage, administer and preserve the Debtors' estates would be immediately and irreparably harmed, thereby materially impairing their estates and creditors, and the possibility for a successful outcome in these Chapter 11 Cases. Based on the Trustee's allegations, the relief requested in the Motion is, therefore, necessary, essential, and appropriate for the management and preservation of the Debtors' estates. Entry of this Final Order is in the best interests of the Debtors, their estates, their creditors and other parties in interest.

H. Notice. The Debtors served notice of the Final Hearing to the parties set forth on the Affidavit of Service, dated November 3, 2011 [Docket No. 36]. Under the circumstances, such notice provided to such parties is good and sufficient under the circumstances to permit the relief set forth in this Final Order, and no other or further notice of the relief sought at the Final Hearing and the relief granted herein is necessary or shall be required.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED

THAT:

1. Motion Granted. The Motion is granted as herein provided, and the use of Cash Collateral is authorized, subject to the terms and conditions set forth in this Final Order.

2. Authorization to Use Cash Collateral. The Trustee is authorized to use Cash Collateral subject to the terms hereof up to an aggregate amount of \$21,329,480. This authorization is limited to using Cash Collateral to fund expenditures of the Debtors made in accordance with the Budget (as defined below) for the period(s) covered thereby.

Notwithstanding anything herein to the contrary, the Trustee shall not be authorized to use any Cash Collateral to fund (i) MF Global Inc., (ii) any foreign non-Debtor entity unless with the prior consent of JPMorgan, and (iii) any investigation of or any action or proceeding against JPMorgan or adverse to any lien, claim or interest, if any, it may hold or assert. Prior to using any Cash Collateral (including without limitation for purposes of the Carve-Out, as defined below), the Trustee shall use the Debtors' cash that is not Cash Collateral to the full extent thereof (and such cash shall be deemed used prior to the use of any Cash Collateral). All of the Debtors' cash that is not Cash Collateral and Cash Collateral shall be maintained in accounts with JPMorgan or in Finance USA's existing Cash Collateral account at Signature Bank; provided that unless JPMorgan consents otherwise in writing, the Trustee shall not hold more than \$2.5 million in Cash Collateral in Finance USA's Cash Collateral account at Signature Bank at any given point in time; and, provided further that cash in excess of the amount of the Setoff Claim then outstanding may also be maintained in a separate account at Signature Bank. The Trustee may make disbursements from the above accounts at JPMorgan and Signature Bank to

cover costs and expenses set forth in the Budget reasonably expected to become due and payable within the next three (3) business days.

3. Budget. The Trustee shall deliver to JPMorgan from time to time as set forth below a cash budget in a form acceptable to and approved by JPMorgan, which acceptance and approval shall not be unreasonably withheld (as amended or updated from time to time and approved by JPMorgan, the "Budget"). The Budget shall be limited to the cash payment (but not prepayment, except as otherwise agreed and identified in the Budget) of operating costs and expenses, fees owed to the United States Trustee, and reasonable restructuring expenses, including reasonable professional fees and expenses. All fundings for payments under the Budget, which shall include all expenses of non-debtor subsidiaries to the extent such subsidiaries are controlled by the Debtors, shall originate from the Debtors' accounts (other than expenses of non-debtor subsidiaries to the extent paid from restricted cash earmarked for such expenses). Expenses in the Budget shall include detail for restructuring expenses to be paid in any Budget period and all non-cash deferred expenses (other than restructuring expenses) not expected to be paid in the ordinary course. The Trustee also shall deliver to JPMorgan a weekly reconciliation of the Budget against actual results, in form reasonably satisfactory to JPMorgan, on Wednesday of each week covering the prior week period. The Budget shall cover a rolling 4 week period (or such other period as JPMorgan and the Trustee may agree from time to time). The initial Budget is attached hereto as Exhibit A. On Wednesday of each week, with the weekly reconciliation of the Budget referenced above, the Trustee shall include (a) a roll-forward of the Budget for an additional one-week period, which automatically shall be deemed approved by JPMorgan, unless JPMorgan objects in writing to the Trustee within six (6) days of receipt thereof, if such Budget (i) does not reflect a decrease in the Budget line item marked Cash

Available for Use of more than \$500,000 relative to the preceding week, and (ii) contains no new categories of expenses in excess of \$100,000 in the aggregate; and (b) detail for actual (to the extent such information is then available to the Trustee) or estimated accrued but unpaid restructuring expenses, including professional fees and expenses. In its reasonable discretion, in consultation with the Trustee, JPMorgan may require reasonable prospective changes to the Budget, including to the form of the Budget, the periods covered thereby and the timing of its delivery and approval; provided that any dispute over the reasonableness of such proposed changes shall be resolved by the Court. By the 15th day of each month, the Trustee shall file with the Court copies of each Budget approved by JPMorgan during the preceding month.

4. Termination. The Trustee's authorization to use Cash Collateral shall automatically terminate on the earlier of the following (each a "Termination Event"): (x) the occurrence of an Event of Default (as defined below) or (y) September 30, 2012 (or such later date as the Trustee, the Committee and JPMorgan may agree).

5. Events of Default. The occurrence of each of the following shall constitute an "Event of Default" unless waived in writing by JPMorgan:

(a) the failure of the Debtors to (i) maintain an ending cash balance as of the end of a week equal to or greater than (x) the ending cash balance forecasted in the Budget for such end of week period minus (y) \$1 million; (ii) make any payment or reimbursement to JPMorgan as and when such payment or reimbursement becomes due; (iii) maintain the Cash Collateral in accounts with JPMorgan or Signature Bank in accordance with the terms of this Final Order; and (iv) comply with any other material provision of this Final Order; and such failure in each case described in (i) through (iv) inclusive shall continue unremedied for five (5)

business days following written notice (which may be given electronically) from JPMorgan to counsel for the Trustee, counsel for the Committee and the UST;

(b) an order shall be entered reversing, amending, supplementing, staying, vacating or otherwise modifying this Final Order without JPMorgan's written consent (which consent shall not be unreasonably withheld);

(c) the Debtors shall create, incur or suffer to exist any post-petition liens or security interests other than (i) those granted pursuant to this Final Order, (ii) consensual liens on non Cash Collateral that are "silent" and subordinated to the liens granted hereunder in favor of JPMorgan and (iii) non-consensual liens provided such liens shall have been vacated and discharged within twenty (20) days following written notice (which may be given electronically) from JPMorgan to counsel for the Trustee, counsel for the Committee and the UST; and

(d) any of the Chapter 11 Cases shall be dismissed or converted to a chapter 7 case, or a chapter 11 trustee (other than the Trustee) or an examiner with expanded powers pursuant to section 1106(b) shall be appointed in any of the Chapter 11 Cases.

6. Adequate Protection. As a condition for the use of any cash that is Cash Collateral, and as adequate protection to the extent of any net decrease in such cash, including as a consequence of the Debtors' and the Trustee's use thereof in accordance with this Final Order, JPMorgan shall receive:

(a) *Superpriority Claims*. Allowed senior administrative expense claims (the "Superpriority Claims") against the Debtors with priority over any and all administrative expenses, adequate protection claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, as provided under section 507(b) of the Bankruptcy Code, including, without limitation, all administrative expenses of the kind specified in sections



503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment; provided that the Superpriority Claims shall be subject to the Carve-Out.<sup>3</sup> The Superpriority Claims shall be payable from all property of the Debtors' estates, including (without limitation) from the proceeds of any avoidance actions.

(b) *Adequate Protection Liens*. Effective and perfected upon the date of this Final Order and without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by JPMorgan of any property, the following security interests and liens are hereby granted to JPMorgan, subject only to the Carve-Out (all property identified in clauses (a) and (b) below being collectively referred to as the "Adequate Protection Collateral"; and all such liens and security interests granted to JPMorgan pursuant to this Final Order, the "Adequate Protection Liens"):

(i) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority lien on, and security interest in, all tangible and intangible prepetition and postpetition property in which the Debtors have an interest, whether existing on or as of the Petition Date or thereafter acquired, that is not subject to valid, perfected, non-avoidable and enforceable liens in existence on or as of the Petition Date (collectively, the "Unencumbered Property"), including, without limitation, unencumbered cash, intercompany indebtedness owed by one or more non-debtor entities to

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<sup>3</sup> Notwithstanding the Motion, for the purposes of this Final Order, the "Carve-Out" means (i) any fees owed to the United States Trustee and (ii) any accrued but unpaid fees and expenses of the Trustee and estate professionals not to exceed \$5 million, inclusive of \$100,000 in the aggregate for any professional fees, costs and expenses incurred by any chapter 7 trustee.

either or both Debtors (including, without limitation, any and all amounts owed by MF Global Inc. to each Debtor), accounts receivable, inventory, general intangibles, contracts, securities, chattel paper, owned real estate, real property leaseholds, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, tradenames, rights under license agreements and other intellectual property, capital stock of the subsidiaries of each Debtor and the proceeds of all of the foregoing; provided that, the Debtors shall not be required to pledge in excess of 65% of the capital stock of their direct foreign subsidiaries or any of the capital stock or interests of indirect foreign subsidiaries (if adverse tax consequences would result to the Debtors) or other assets that would be unlawful to pledge as determined by a final order of a court of competent jurisdiction; provided further that the term Unencumbered Property for the purpose of this clause (i) shall not include avoidance actions or the proceeds thereof.

(ii) Liens Junior to Existing Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, and subject to the Carve-Out, a valid, binding, continuing, enforceable, fully-perfected junior lien on, and security interest in all tangible and intangible prepetition and postpetition property in which the Debtors have an interest, whether now existing or hereafter acquired and all proceeds thereof, that is subject to valid, perfected and unavoidable liens (if any) in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(c) *Liens Senior to Other Liens*. The Adequate Protection Liens shall not be (i) subject or subordinate to any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) except for the

Carve-Out, subordinated to or made *pari passu* with any other lien or security interest under sections 363 or 364 of the Bankruptcy Code or otherwise.

(d) *Replenishment of Cash Collateral.* Except as set forth in subparagraph (g) below, on the last business day of each week, all cash of the Debtors (excluding cash deposited in any payroll accounts in accordance with terms hereof and also payments made pursuant to paragraph 6(e) or 6(f) of this Final Order) shall be applied to replenish any Cash Collateral used up to the then outstanding amount of the Setoff Claim, subject to the Debtors' right to reuse the Cash Collateral in accordance with the terms hereof.

(e) *Fees and Expenses.* JPMorgan shall receive from the Debtors reimbursement of all reasonable fees and expenses incurred or accrued, whether prior to or after the Petition Date, by JPMorgan relating to the use of Cash Collateral and the provisions hereof, including without limitation, the reasonable fees and disbursements of any financial advisors now or hereafter retained by or on behalf of JPMorgan and of the reasonable fees and expenses of Simpson Thacher & Bartlett LLP, as counsel to JPMorgan and, in each case, whether retained in JPMorgan's individual capacity or as Liquidity Facility Agent. None of the fees and expenses payable pursuant to this paragraph shall be subject to separate approval by this Court (but this Court shall resolve any dispute as to the reasonableness of any such fees and expenses), and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto. The Trustee shall pay the fees and expenses provided for in this paragraph (regardless of whether Cash Collateral shall have been repaid to JPMorgan) promptly (but no later than ten (10) days) after invoices for such fees and expenses shall have been submitted to counsel to the Trustee, counsel to the Committee, and the UST, provided that such fees in the aggregate shall be limited to \$500,000 and provided further that if prior to the expiration of such

ten (10) day period either the Trustee, the Committee or the UST shall have objected in writing to such fees and expenses then the Trustee shall pay only the undisputed portion (if any) of such fees and expenses and such objection shall be resolved by the Court upon notice and a hearing .

(f) *Additional Payments to JPMorgan.* JPMorgan also shall be entitled to the following cash payments in reduction of the principal amount of its asserted Setoff Claim from time to time: (a) \$4.0 million upon entry of this Final Order; (b) if on or after the Petition Date the Debtors' estates shall have received an aggregate of \$2.5 million in Cash Receipts, then an amount equal to 25% of Cash Receipts as and when thereafter received by the Debtors' estates; and (c) 100% of the proceeds of any postpetition financing extended to the Debtors' estates, up to the balance of the Setoff Claim. "Cash Receipts" means all cash and cash equivalents of the Debtors received by any of the Debtors' estates from time to time (before payment therefrom of any expenses of the Debtors' estates) other than shared services reimbursement payments made by the SIPC Trustee. The Debtors shall cause all cash of the Debtors' subsidiaries available to the Debtors for dividend or distribution from time to time to be so dividended or distributed as promptly as practicable, and "Cash Receipts" shall include such cash. JPMorgan will give counsel for the Trustee and counsel for the Committee five (5) business days prior written notice to the extent any payments are applied in reduction of the Setoff Claim other than in respect of the Liquidity Facility or that certain \$300 million revolving credit facility among MF Global Inc., as borrower, Holdings, Finance USA, JPM as administrative agent and the lenders from time to time thereunder, dated as of June 29, 2011 (as amended, modified or supplemented from time to time).

(g) *Payments Indefeasible.* All payments to JPMorgan pursuant to paragraphs 6(e) and 6(f) above shall be indefeasible and not subject to reuse under paragraph 6(d) above or

subject to recapture, recovery or avoidance; provided however that if and to the extent (and only if and to the extent) a final, non-appealable order shall be entered finding that JPMorgan shall have had no valid and unavoidable right of setoff against the Cash Collateral identified in paragraph E as of the Petition Date and thus no interest in Cash Collateral entitled to adequate protection, then JPMorgan (i) shall have no further right to any of the payments set forth herein (or any adequate protection rights or benefits under this Final Order) and (ii) shall promptly return all payments pursuant to paragraphs 6(e), 6(f) and 10(c) of this Final Order, and any amounts setoff pursuant to paragraph 11 below, to the Debtors' estates.

(h) *Information Rights.* The Trustee shall permit representatives, agents and/or employees of JPMorgan to have reasonable access to the Debtors' and the Trustee's personnel and provide to such persons all such non-privileged information as they may reasonably request from time to time, including (without limitation) with respect to the Debtors' intercompany accounts. In addition, the Trustee shall provide JPMorgan, in its individual capacity and in its capacity as Liquidity Facility Agent (for the benefit of the Liquidity Facility Lenders), and JPMorgan's advisors, the same access to information and the same reporting that is provided to, or required to be provided to, the Committee or its advisors, subject to the confidentiality restrictions set forth in the Liquidity Facility Agreement. JPMorgan, as Liquidity Facility Agent, may in its discretion share information it may receive hereunder with "private side" lenders under the Liquidity Facility Agreement, subject to such restrictions (it being understood that JPMorgan shall not be liable for any breach by a lender of such restrictions). The Trustee acknowledges that its agreement to provide information to JPMorgan as set forth herein is a material inducement for JPMorgan to consent to the use of Cash Collateral hereunder.

(i) *Limitation on Liens and Claims.* The Adequate Protection Liens, superpriority claims and Cash Receipts rights granted hereunder to JPMorgan are solely with respect to property of the Debtors' estates, as determined pursuant to section 541 of the Bankruptcy Code, and not with respect to any property interest which does not constitute property of the Debtors' estates. Without limiting the foregoing, nothing herein shall constitute a determination of the extent to which, if at all, any "customer property" as defined in sections 741(4) and 761(10) of the Bankruptcy Code and/or 17 CFR § 190, or any property that may be subject to a constructive trust or may be subject to an equitable lien in favor of any former customer of MF Global, Inc. (or of MF Global, Inc. on account of the interests of such former customer), held by the Debtors' estates, if any (collectively, "Customer Property"), may or may not constitute property of the Debtors' estates, and the rights of all parties with respect thereto are fully preserved.

Additionally, if a final, non-appealable order shall be entered finding that any portion of the Cash Collateral referenced in paragraph E of this Final Order was as of the Petition Date Customer Property or for any reason not property of the Debtors' estates and that JPMorgan did not hold valid and unavoidable setoff rights with respect to such funds as of the Petition Date, as to which all parties' rights are fully reserved, then nothing in this Final Order shall preclude the Court from granting appropriate liens, claims or other relief in connection therewith.

7. Confirmation and Priority of Adequate Protection Liens. Except as otherwise provided herein, the Adequate Protection Liens shall be senior to all other security interests in, liens on, and claims against any of the Adequate Protection Collateral. The Adequate Protection Liens shall be enforceable against the Trustee, the Debtors, their estates and any successors thereto, including without limitation, any trustee or other estate representative appointed in these Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of

either of these Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing. The Adequate Protection Liens shall be (i) in continuation of and in addition to all liens and security interests now existing in favor of the Liquidity Facility Lenders and not in substitution therefor; (ii) effective as of the Petition Date; and (iii) deemed duly perfected without the necessity of filing in any county or state recorder's office or elsewhere, any additional documents or notices to perfect such postpetition liens and security interests.

8. Preservation of Rights. Notwithstanding anything herein to the contrary, but subject to paragraphs 6(e), (f) and (g) above, any and all rights of the Trustee, the Committee or any party in interest to contest the extent, validity, priority or perfection of any and all liens (other than Adequate Protection Liens), or any right of setoff, asserted by any party in these Cases are preserved (provided that nothing herein shall be deemed to grant standing to the Committee or any party in interest or to prejudice any request by the Committee or any party in interest for standing), and nothing herein shall prejudice any party asserting any such liens or rights to setoff or the validity, priority or perfection thereof.

9. Waivers. Except to the extent of the Carve-Out, no expenses of administration of the cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Cash Collateral or the Adequate Protection Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law or equity, without the prior written consent of JPMorgan and no such consent shall be implied from any other action, inaction, or acquiescence by JPMorgan.

10. Continuing Effect of Order. (a) If an order dismissing any of the cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall

provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that: (x) the Superpriority Claims and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all adequate protection obligations shall have been paid and satisfied in full (and that such Superpriority Claims and the Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all persons); and (y) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

(b) Subject to 6(g) and 6(i) above, if any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect: (i) the validity, priority or enforceability of any adequate protection obligations incurred prior to the actual receipt of written notice by JPMorgan of the effective date of such reversal, stay, modification or vacatur; or (ii) the validity, priority or enforceability of the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of Cash Collateral or any adequate protection obligations incurred or Adequate Protection Liens granted by the Debtors hereunder, as the case may be, prior to the actual receipt of written notice by JPMorgan of the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Final Order, and JPMorgan shall be entitled to all of the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code with respect to all uses of Cash Collateral and all adequate protection obligations and Adequate Protection Liens.

(c) Nothing herein shall prohibit the Trustee from seeking postpetition financing; provided that if and to the extent the Setoff Claim remains outstanding (i) the proceeds of such postpetition financing shall be used to repay, on a dollar for dollar basis, the amount of the Setoff



Claim then outstanding, (ii) the Debtors shall not, and shall not be authorized to, utilize the Cash Collateral on and after the closing of such postpetition financing facility without the prior consent of JPMorgan, and (iii) the Debtors shall not grant a priming, pari passu or junior lien on any of the Cash Collateral. Without limiting the foregoing, JPMorgan's rights to object to any proposed debtor-in-possession financing are fully preserved.

11. Modification of Automatic Stay. The automatic stay under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to: (a) permit the Trustee to grant the Adequate Protection Liens and incur the Superpriority Claims; (b) permit the Trustee to perform such acts as JPMorgan may request in its sole discretion to assure the perfection and priority of the liens granted herein; (c) permit the Trustee to incur all liabilities and obligations to JPMorgan under the terms of this Final Order; and (d) authorize the Trustee to pay, and JPMorgan to retain and apply, any payments made in accordance with the terms of this Final Order. Further, the automatic stay shall be deemed vacated and modified to the extent necessary to permit JPMorgan to immediately setoff against the full amount of the Cash Collateral (including against all amounts replenished pursuant to paragraph 6(d) above) net of the Carve-Out, upon the occurrence of an Event of Default and JPMorgan's delivery of five (5) business days prior written notice to counsel to the Trustee, counsel to the Committee and the UST, to the extent of the unpaid balance of the Setoff Claim, to indefeasibly reduce such Setoff Claim on a dollar-for-dollar basis, and JPMorgan's right to setoff in accordance with the terms hereof shall be deemed valid, enforceable and unavoidable, subject, however, to the provisions of paragraph 6(g) and 6(i) above.

12. No Waivers. JPMorgan's delay or failure to exercise rights and remedies hereunder shall not constitute a waiver of JPMorgan's rights hereunder or otherwise, and no such waiver shall be deemed to have occurred unless such waiver is made pursuant to a written instrument executed by the Trustee and JPMorgan.

13. No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

14. Binding Effect of Final Order. Immediately upon entry by the Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtors, the Trustee, JPMorgan, the Liquidity Facility Lenders, all other creditors of any of the Debtors, the Committee, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in either of these Chapter 11 Cases, or upon dismissal of either of these Chapter 11 Cases. In the event of any inconsistency between the provisions of this Final Order and any other order (including any "First Day" order), the provisions of this Final Order shall govern and control. Any payments to be made under any order (including any "First Day" order) shall be made in accordance with this Final Order. The rights and benefits in favor of JPMorgan hereunder shall survive the termination of the Debtors' rights to use Cash Collateral in accordance with the terms hereof.

15. Effect of this Final Order. This Final Order shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution thereof and shall supersede the Interim Order.

16. Retention of Jurisdiction. This Court hereby retains jurisdiction to hear and

determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Final Order.

Dated: New York, New York  
December 14, 2011

/s/Martin Glenn  
MARTIN GLENN  
United States Bankruptcy Judge