

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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<i>In re</i>	:	Chapter 11
	:	
NTK HOLDINGS, INC., <i>et al.</i> , ¹	:	Case No. 09 – 13611 (KJC)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**FINAL ORDER (i) AUTHORIZING USE OF CASH COLLATERAL,
(ii) GRANTING ADEQUATE PROTECTION, AND (iii) MODIFYING THE
AUTOMATIC STAY**

Upon the motion (the “Motion”) dated October 21, 2009, of NTK Holdings, Inc., and certain of its direct and indirect subsidiaries, each as a debtor and debtor in possession (collectively, the “Debtors” or “Debtors in Possession”) in the above-captioned chapter 11 cases (collectively, with any successor case, the “Cases”) pursuant to sections 105, 361, 362, 363 and 507 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (as amended, the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 4001-2 of the Local Bankruptcy Rules of the District of Delaware, seeking entry of a final order (this “Final Order”):

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: NTK Holdings, Inc. (4298); Nortek Holdings, Inc. (9907); Nortek, Inc. (4991); Aigis Mechtronics, Inc. (6764); Broan-Mexico Holdings, Inc. (1438); Broan-NuTone LLC (4397); Broan-NuTone Storage Solutions LP (4328); CES Group, Inc. (5781); CES International Ltd. (6119); Cleanpak International, Inc. (2925); Elan Home Systems, L.L.C. (7629); Gefen, Inc. (1217); Governair Corporation (1240); GTO, Inc. (6645); HC Installations, Inc. (0110); Huntair, Inc. (2838); International Electronics, LLC (4321); Linear LLC (9070); Linear H.K. LLC (9638); Lite Touch, Inc. (0152); Magenta Research Ltd. (5160); Mammoth-Webco, Inc. (3077); Niles Audio Corporation (2001); Nordyne Inc. (4381); NORDYNE International, Inc. (7842); Nortek International, Inc. (0717); NuTone LLC (9551); OmniMount Systems, Inc. (7936); Operator Specialty Company, Inc. (6248); Pacific Zephyr Range Hood, Inc. (8936); Panamax Inc. (0890); Rangaire GP, Inc. (4327); Rangaire LP, Inc. (9900); Secure Wireless, Inc. (2485); SpeakerCraft, Inc. (6374); Temtrol, Inc. (3996); Xantech Corporation (1552); and Zephyr Corporation (1650). The Debtors’ principal offices are located at 50 Kennedy Plaza, Suite 1900, Providence, Rhode Island 02903. The addresses for all of the Debtors are available at the website chapter11.epiqsystems.com/nortek.

- (i) authorizing the Debtors' use of "cash collateral" (as defined in section 363(a) of the Bankruptcy Code, "Cash Collateral") of the Prepetition Agent and Prepetition Lenders (each as defined herein);
- (ii) providing adequate protection to the Prepetition Agent and Prepetition Lenders and for any diminution in value of their respective interests in the Prepetition Collateral (as defined herein), including the Cash Collateral; and
- (iii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Final Order.

The Court having considered the Motion, the *Declaration of Richard L. Bready in Support of the Debtors' Chapter 11 Petitions and Request for First Day Relief*, sworn to on October 21, 2009, the exhibits attached thereto, at an interim hearing on October 23, 2009, and having entered an order granting the interim relief requested in the Motion (the "Interim Order") and scheduling a final hearing on the Motion, and the Court having conducted the final hearing on December 4, 2009 (the "Final Hearing"); and at that hearing having considered the evidence submitted or adduced and the arguments of counsel; and notice of the Final Hearing having been given in accordance with the Interim Order and Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and the Final Hearing having been held pursuant to Bankruptcy Rule 4001(b)(2) and concluded; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that the relief requested in the Motion is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and is essential for the continued operation of the

Debtors' businesses; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE FINAL HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Petition Date. On October 21, 2009 (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 District of Delaware (the "Court") commencing these Cases.

B. Debtors in Possession. The Debtors are continuing in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

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

D. Statutory Committee. As of the date hereof, the United States Trustee (the "U.S. Trustee") has not appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code (a "Statutory Committee").

E. Debtors' Stipulations. Without prejudice to the rights of parties in interest as set forth in Paragraph 17 herein, the Debtors and Debtors in Possession stipulate and agree that (collectively, Paragraphs E(i) through E(x) below are referred to herein as the "Debtors' Stipulations," which are not findings of the Court):

(i) *Prepetition Credit Agreement.* Pursuant to that certain Credit Agreement, dated as of May 20, 2008 (as amended, supplemented or otherwise modified, the “Prepetition Credit Agreement”) and, together with all other loan, intercreditor and security documents related to, referenced in or executed in connection with the Prepetition Credit Agreement (the “Prepetition Credit Documents”), among Nortek, Inc. (“Nortek”), as Specified U.S. Borrower, and other credit parties signatory thereto, Bank of America, N.A., as Administrative Agent, Collateral Agent, U.S. Swing Line Lender and U.S. L/C Issuer (the “Prepetition Administrative Agent”), Banc of America Securities LLC and Credit Suisse Securities (USA) LLC, as Joint Lead Arrangers, and, together with Goldman Sachs Credit Partners L.P., as Joint Bookrunners, Credit Suisse Securities (USA) LLC, Goldman Sachs Credit Partners L.P. and UBS Securities LLC, as Co-Syndication Agents, Wachovia Bank National Association and General Electric Capital Corporation, as Co-Documentation Agents, and the lenders that are parties thereto from time to time (collectively, together with the Prepetition Administrative Agent, the “Prepetition Secured Lenders”), the Prepetition Secured Lenders provided credit and letter of credit facilities to Nortek and certain of the Debtors (collectively, the “Borrowers”) and provided other financial accommodations to or for the benefit of the Debtors (collectively the “Prepetition Credit Facility”). The Prepetition Credit Documents shall govern the rights and obligations of the Prepetition Secured Lenders, subject to the provisions of this Final Order.

(ii) *Prepetition Credit Obligations.* The Prepetition Credit Facility provided the Debtors with up to \$330 million in aggregate maximum principal amount of revolving commitments, including swingline loan commitments and a sublimit for U.S. standby letters of credit of \$60 million. As of the Petition Date, the outstanding principal amount of all loans under the Prepetition Credit Agreement was not less than \$135 million, and \$20,345,668 face

amount of issued and outstanding letters of credit (collectively, together with any amounts paid, incurred or accrued prior to the Petition Date in accordance with the Prepetition Credit Documents, principal, accrued and unpaid interest, any fees, expenses, and disbursements (including, without limitation, attorneys' fees, related expenses and disbursements), reimbursement obligations, indemnification obligations and other charges of whatever nature, whether or not contingent, whenever arising, due or owing in respect thereof to the extent and as provided for in the Prepetition Credit Documents, including all "Obligations" as described in the Prepetition Credit Agreement, the "Prepetition Credit Obligations"). Subject to Paragraph 17, in light of the Prepetition Credit Obligations and the value of the Collateral (as defined herein) with respect thereto, the Prepetition Administrative Agent and Prepetition Secured Lenders are oversecured and are accordingly entitled to interest and fees with respect to the Prepetition Credit Obligations in accordance with the Prepetition Credit Documents. The Prepetition Credit Obligations are guaranteed by Nortek and the other Debtors under the U.S. Guaranty (as defined in the Prepetition Credit Agreement) and the obligors other than the Debtors under certain additional guaranty agreements.

(iii) *Prepetition Indenture.* The 10% Senior Secured Notes due 2013 (the "10% Notes") were issued pursuant to that certain Indenture dated as of May 20, 2008 (as may have been amended, supplemented, restated or otherwise modified prior to the Petition Date, the "Prepetition Indenture", and, together with all other loan, intercreditor and security documents related to, referenced in or executed in connection with the Prepetition Indenture Agreements, the "Prepetition Indenture Documents", and, together with the Prepetition Credit Documents, the "Prepetition Documents"), among Nortek, as issuer, and the other credit parties signatory thereto, U.S. Bank National Association, as Trustee and Collateral Agent thereunder (the "Prepetition

Indenture Trustee"; and together with the Prepetition Administrative Agent, the "Prepetition Agents"), and the noteholders that are parties thereto from time to time (collectively, the "10% Noteholders"); and together with the Prepetition Secured Lenders, the "Prepetition Lenders").

(iv) *Prepetition Indenture Obligations.* As of October 21, 2009, the outstanding principal amount owing under the 10% Notes was \$750 million (together with any amounts paid, incurred or accrued prior to the Petition Date in accordance with the Prepetition Indenture Documents, principal, accrued and unpaid interest, any fees, expenses, and disbursements (including, without limitation, attorneys' fees, consultant fees, and related expenses and disbursements), indemnification obligations and other charges of whatever nature, whether or not contingent, whenever arising, due or owing in respect thereof, the "Prepetition Indenture Obligations", and together with the Prepetition Credit Obligations, the "Prepetition Obligations"). The Prepetition Indenture Obligations are guaranteed by each of the Debtors other than Nortek.

(v) *Prepetition Liens and Prepetition Collateral.* As more fully set forth in the Prepetition Documents, prior to the Petition Date, the Debtors granted security interests in and liens on, among other things, substantially all of the Debtors' existing and after acquired personal and real property, whether owned by, consigned to or leased from or to the Debtors, to the full extent of the Debtors' interest therein and regardless of where located, including the proceeds and products of, accessions to, substitutions and replacements for, and rents and profits of all such property and assets (collectively, the "Prepetition Collateral") to: (a)(i) with respect to the Revolving Facility First Lien Collateral (as defined in the Intercreditor Agreement (as defined herein)), the Prepetition Administrative Agent, for itself and the Prepetition Secured Lenders, and (ii) with respect to the Noteholder First Lien Collateral (as defined in the

Intercreditor Agreement), the Prepetition Indenture Trustee, for itself and the 10% Noteholders (in each case, the “Prepetition First Liens”); and (b)(i) with respect to the Revolving Facility First Lien Collateral, the Prepetition Indenture Trustee, for itself and the 10% Noteholders, and (ii) with respect to the Noteholder First Lien Collateral, the Prepetition Administrative Agent, for itself and the Prepetition Secured Lenders (in each case, the “Prepetition Second Liens”; and together with the Prepetition First Liens, the “Prepetition Liens”). In their capacity as holders of their respective Prepetition First Liens, the Prepetition Secured Lenders and the 10% Noteholders shall be referred to collectively as the “Prepetition Senior Lenders”. In their capacity as holders of their respective Prepetition Second Liens, the Prepetition Secured Lenders and the 10% Noteholders shall be referred to herein collectively as the “Prepetition Junior Lenders”. The Prepetition Second Liens on the Prepetition Collateral are subordinate to the Prepetition First Liens on the Prepetition Collateral in accordance with and subject to the Intercreditor Agreement.

(vi) *Intercreditor Agreement.* The Prepetition Administrative Agent, the Prepetition Indenture Trustee, Nortek and certain other credit parties signatory thereto entered into that certain Intercreditor Agreement dated as of May 20, 2008 (the “Intercreditor Agreement”)² to govern the respective rights, interests, obligations, priority, and the positions of the Prepetition Administrative Agent and the Prepetition Indenture Trustee with respect to the assets and properties of the Debtors and other obligors. Pursuant to the Intercreditor Agreement, among other things, (a) with respect to the Revolving Facility First Lien Collateral, the liens of the Prepetition Administrative Agent for the benefit of the Prepetition Secured Lenders are senior and prior in right to the liens of the Prepetition Indenture Trustee for the benefit of itself

² Each of the Debtors is a signatory to the Intercreditor Agreement.

and the 10% Noteholders, and (b) with respect to the Noteholder First Lien Collateral, the liens of the Prepetition Indenture Trustee for the benefit of itself and the 10% Noteholders are senior and prior in right to the liens of the Prepetition Administrative Agent, for the benefit of itself and the Prepetition Secured Lenders. By means of the terms and provisions of Section 2.06 of the Intercreditor Agreement, the Prepetition Junior Lenders have consented to the relief set forth herein.

(vii) *Validity and Perfection of Prepetition Liens and Prepetition Obligations.*

Subject to the provisions of Paragraph 17 of this Final Order, each of the Debtors acknowledges and agrees that: (a) as of the Petition Date, the Prepetition First Liens and the Prepetition Second Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected; (b) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors; (c) no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (whether equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (d) the Debtors and their estates have no claims, objections, challenges, causes of actions, and/or choses in action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code, against any of the Prepetition Agents, the Prepetition Lenders or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to their loans or other financial accommodations to the Debtors.

(viii) *Priority of Prepetition First Liens.* As of the Petition Date, the Prepetition First Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens otherwise permitted by the Prepetition Credit Documents and the Prepetition Indenture Documents, as the case may be (to the extent any such permitted liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition First Liens as of the Petition Date, collectively, the “Permitted Prior Liens”).³

(ix) *Priority of Prepetition Second Liens.* As of the Petition Date, the Prepetition Second Liens were senior in priority over any and all other liens on the Prepetition Collateral, other than the Prepetition First Liens and subject only to the Permitted Prior Liens.

(x) *Cash Collateral.* Each Debtor represents that all of the Debtors’ cash, including the cash in their deposit accounts, wherever located, whether as original Prepetition Collateral or proceeds of other Prepetition Collateral, constitutes the Cash Collateral of the Prepetition Administrative Agent and the Prepetition Secured Lenders, subject to the Intercreditor Agreement.

F. *Adequate Protection.* The Prepetition Administrative Agent, for the benefit of itself and the Prepetition Secured Lenders, and the Prepetition Indenture Trustee, for the benefit of itself and the 10% Noteholders, are each entitled to receive adequate protection to the extent of any diminution in value of their respective interests in the Prepetition Collateral (including the Cash Collateral) resulting from the use of Cash Collateral, the use, sale, lease, consumption or disposition of Prepetition Collateral authorized herein or the physical deterioration or shrinkage of the Prepetition Collateral, the subordination of the Prepetition First Liens and the Prepetition

³ Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Prior Liens are valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtors, the Prepetition Agents, the Prepetition Lenders, and any Statutory Committee to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Permitted Prior Lien and/or security interest.

Second Liens to the Carve Out (as described herein), the imposition of the automatic stay or the physical deterioration, consumption, use, sale, lease, disposition, or shrinkage of the Prepetition Collateral (collectively the “Diminution in Value”) pursuant to sections 361, 362, and 363 of the Bankruptcy Code.

(i) Adequate Protection of Prepetition First Liens on Revolving Facility First Lien Collateral. Pursuant to sections 361, 363, and 507(b) of the Bankruptcy Code, as adequate protection, the Prepetition Administrative Agent, for the benefit of itself and the Prepetition Secured Lenders will receive with respect to their Prepetition First Liens on the Revolving Facility First Lien Collateral (a) the Senior Adequate Protection Liens; (b) the Senior Adequate Protection Superpriority Claim; (c) the Senior Adequate Protection Payments; (d) current payments of interest at the non-default rate set forth in the Prepetition Credit Documents, fees (including, without limitation, unused commitment fees) and other amounts due under the Prepetition Credit Documents; and (e) ongoing payment of the reasonable fees, costs and expenses, including, without limitation, reasonable legal and other professionals’ fees and expenses, of the Prepetition Administrative Agent and the Prepetition Secured Lenders under the Prepetition Credit Documents, as required therein and (except to the extent directed in writing by the Debtors to stop work on such documentation) including, without limitation, fees and expenses incurred by the Prepetition Administrative Agent or any Prepetition Secured Lender in connection with any proposed exit financing arrangements relating to the Cases (including, without limitation, reasonable legal and other professionals’ fees and expenses in connection therewith but not including fees to be earned by the lenders at closing). Notwithstanding the foregoing, if the Prepetition Credit Obligations are determined by this Court to be undersecured, interest payments and payment of fees permitted hereunder may be recharacterized and

recredited to the principal balance of such Prepetition Credit Obligations pursuant to further order entered by this Court.

(ii) Adequate Protection of Prepetition First Liens on Noteholder First Lien Collateral. Pursuant to sections 361, 363, and 507(b) of the Bankruptcy Code, as adequate protection, the Prepetition Indenture Trustee, for the benefit of itself and the 10% Noteholders will receive with respect to their Prepetition First Liens on the Noteholder First Lien Collateral (a) the Senior Adequate Protection Liens; (b) the Senior Adequate Protection Superpriority Claim; (c) the Senior Adequate Protection Payments; (d) current payments of interest at the non-default rate set forth in the Prepetition Indenture Documents, fees and other amounts due under the Prepetition Indenture Documents; and (e) ongoing payment of the reasonable fees, costs and expenses, including, without limitation, reasonable legal and other professionals' fees and expenses, of the Prepetition Indenture Trustee under the Prepetition Indenture Documents, as required therein. Notwithstanding the foregoing, if the Prepetition Indenture Obligations are determined by this Court to be undersecured, interest payments and payment of fees permitted hereunder may be recharacterized and recredited to the principal balance of such Prepetition Indenture Obligations pursuant to further order entered by this Court.

(iii) Adequate Protection of Prepetition Second Liens on Revolving Facility First Lien Collateral. Pursuant to sections 361, 363, and 507(b) of the Bankruptcy Code, as adequate protection, the Prepetition Indenture Trustee, for the benefit of itself and the 10% Noteholders will receive with respect to their Prepetition Second Liens on the Revolving Facility First Lien Collateral (a) the Junior Adequate Protection Liens and (b) the Junior Adequate Protection Superpriority Claim (each as defined herein).

(iv) Adequate Protection of Prepetition Second Liens on Noteholder First Lien

Collateral. Pursuant to sections 361, 363, and 507(b) of the Bankruptcy Code, as adequate protection the Prepetition Administrative Agent, for the benefit of itself and the Prepetition Secured Lenders will receive with respect to their Prepetition Second Liens on the Noteholder First Lien Collateral (a) the Junior Adequate Protection Liens and (b) the Junior Adequate Protection Superpriority Claim.

G. Necessity of Relief Requested. The ability of the Debtors to operate their businesses requires the use of Cash Collateral, absent which immediate and irreparable harm would result to the Debtors, their estates and creditors, and the possibility for a successful chapter 11 case. In the absence of the use of Cash Collateral, the continued operation of the Debtors' businesses would not be possible and serious and irreparable harm to the Debtors, their estates and their creditors would occur. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses in the ordinary course or to maintain their property without the use of Cash Collateral. The relief requested in the Motion is therefore necessary for the continued operation of the Debtors' businesses and the preservation of their property. The Prepetition Agents, the Prepetition Lenders and the Debtors have negotiated at arm's length and in good faith regarding the Debtors' use of Cash Collateral to fund the continued operation of the Debtors' businesses during the Specified Period (as defined herein). Entry of this Final Order is in the best interests of the Debtors and their estates.

H. Notice. Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including: (i) the U.S. Trustee; (ii) the parties included on the Debtors' consolidated list of the thirty (30) largest unsecured creditors; (iii) counsel to the Prepetition

Administrative Agent; (iv) counsel to the Prepetition Indenture Trustee; and (v) counsel to the Ad Hoc Committee (as defined in the Motion). The parties have made reasonable efforts to afford the best notice possible under the circumstances, and no other or further notice is or shall be required.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Motion Granted. The Motion is granted on a final basis as set forth herein, and the use of Cash Collateral is authorized and approved, subject to the terms of this Final Order.

2. Objections Overruled. All objections to the Motion to the extent not withdrawn or resolved are overruled.

3. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final Order (including for the purposes of clarity Paragraphs 13 and 14), the Debtors are authorized to use Cash Collateral for the period (the "Specified Period") from the Petition Date through the date that is the earliest to occur of (a) the expiration of the Remedies Notice Period (as defined herein), (b) the occurrence of the Event of Default set forth in Paragraph 13(e) below or (c) February 28, 2010. The Debtors may use the Cash Collateral during the Specified Period for operation of their businesses in the ordinary course of business; provided that the Debtors shall not be entitled to use Cash Collateral if, at the time of any such measurement, (i) Total Liquidity (as defined herein) is less than \$100 million or (ii) Total Liquidity is less than \$125 million and the Debtors' aggregate cash disbursements ("Total Cash Disbursements"), on a cumulative basis, exceed 120% of the aggregate projected amount of all Total Cash Disbursements (determined on a rolling four-week basis) as provided in the Debtors' thirteen-

week projections provided to the Prepetition Administrative Agent, as updated as required pursuant to Paragraph 10 hereof. "Total Liquidity" shall be defined for purposes of this Final Order as the sum of Canadian Available Cash (as defined in the Prepetition Credit Agreement) plus U.S. Available Cash (as defined in the Prepetition Credit Agreement) plus Excess Availability (as defined in the Prepetition Credit Agreement) less the amounts of Canadian Available Cash and U.S. Available Cash included in the calculation of Excess Availability. During the Remedies Notice Period, the Debtors may use Cash Collateral solely to meet payroll obligations in an amount not to exceed \$13,000,000 in the aggregate during such Remedies Notice Period and to pay other expenses critical to the preservation of the Debtors and their estates in an amount not to exceed \$15,000,000 in the aggregate during such Remedies Notice Period.

4. Adequate Protection Liens.

(a) *Senior Adequate Protection Liens.* As adequate protection of the interests of the Prepetition Agents and the Prepetition Senior Lenders against any Diminution in Value of such interest, pursuant to sections 361 and 363(e) of the Bankruptcy Code, the Debtors are authorized to grant, and upon entry of this Final Order shall be deemed to have granted, solely to the extent that there has been any Diminution in Value (i) with respect to the Revolving Facility First Lien Collateral, to the Prepetition Administrative Agent, for the benefit of itself and the Prepetition Secured Lenders and (ii) with respect to the Noteholder First Lien Collateral, to the Prepetition Indenture Trustee, for the benefit of itself and the 10% Noteholders, additional and replacement continuing valid, binding, enforceable, non-avoidable, and automatically perfected postpetition security interests in and liens (the "Senior Adequate Protection Liens") on any and all presently owned and hereafter acquired personal property, real property and all other assets of

the Debtors and their estates, together with any proceeds thereof, including, without limitation, as set forth in the Prepetition Credit Documents and the Prepetition Indenture Documents, as the case may be (collectively, the “Collateral”) having the priority set forth in Paragraph 4(c) below. The “Collateral” shall also include all causes of action arising under chapter 5 of the Bankruptcy Code and the proceeds thereof (“Avoidance Actions”). The Senior Adequate Protection Liens shall secure the payment of the Prepetition Credit Obligations and the Prepetition Indenture Obligations, as the case may be, in an amount equal to any Diminution in Value of the applicable Prepetition Agent’s interests in the Collateral from and after the Petition Date.

(b) *Junior Adequate Protection Liens.* As adequate protection of the interests of the Prepetition Agents and the Prepetition Junior Lenders against any Diminution in Value of such interest, pursuant to sections 361 and 363(e) of the Bankruptcy Code, the Debtors are authorized to grant, and upon entry of this Final Order shall be deemed to have granted solely to the extent that there has been any such Diminution in Value (i) with respect to the Revolving Facility First Lien Collateral, to the Prepetition Indenture Trustee, for the benefit of itself and the 10% Noteholders and (ii) with respect to the Noteholder First Lien Collateral, to the Prepetition Administrative Agent, for the benefit of itself and the Prepetition Secured Lenders, additional and replacement continuing valid, binding, enforceable, non-avoidable, and automatically perfected postpetition security interests in and liens on the Collateral (the “Junior Adequate Protection Liens”, and together with the Senior Adequate Protection Liens, the “Adequate Protection Liens”). The Junior Adequate Protection Liens shall secure the payment of the Prepetition Credit Obligations and the Prepetition Indenture Obligations, as the case may be, in an amount equal to any Diminution in Value of the applicable Prepetition Agent’s interests in the Collateral from and after the Petition Date.

(c) *Priority of Adequate Protection Liens.*

(i) The Senior Adequate Protection Liens of the Prepetition

Administrative Agent and the Prepetition Secured Lenders shall be junior only to:

(A) the Carve Out; (B) the Prepetition First Liens of the 10% Noteholders on the Noteholder First Lien Collateral; and (C) the Permitted Prior Liens. The Senior Adequate Protection Liens of the Prepetition Administrative Agent and the Prepetition Secured Lenders shall otherwise be senior to all other security interests in, liens on, or claims against any of the Collateral.

(ii) The Senior Adequate Protection Liens of the Prepetition Indenture

Trustee and the 10% Noteholders shall be junior only to: (A) the Carve Out; (B) the Prepetition First Liens of the Prepetition Secured Lenders on the Revolving Facility First Lien Collateral; and (C) the Permitted Prior Liens. The Senior Adequate Protection Liens of the 10% Noteholders shall otherwise be senior to all other security interests in, liens on, or claims against any of the Collateral.

(iii) The Junior Adequate Protection Liens of the Prepetition

Administrative Agent and the Prepetition Secured Lenders shall be junior only to: (A) the Carve Out; (B) the Prepetition First Liens of the 10% Noteholders on the Noteholder First Lien Collateral; (C) the Senior Adequate Protection Liens; (D) the Prepetition Second Liens; and (E) the Permitted Prior Liens. The Junior Adequate Protection Liens of the Prepetition Administrative Agent and the Prepetition Secured Lenders shall otherwise be senior to all other security interests in, liens on, or claims against any of the Collateral.

(iv) The Junior Adequate Protection Liens of the 10% Noteholders

shall be junior only to: (A) the Carve Out; (B) the Prepetition First Liens; (C) the Senior

Adequate Protection Liens; (D) the Prepetition Second Liens; and (E) the Permitted Prior Liens. The Junior Adequate Protection Liens of the 10% Noteholders shall otherwise be senior to all other security interests in, liens on, or claims against any of the Collateral.

(v) The Adequate Protection Liens shall be enforceable against the Debtors, their estates and any successors thereto, including without limitation, any trustee or other estate representative appointed in the Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, "Successor Cases"). Except as provided herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases, and the Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in any of the Cases or any Successor Cases, or upon the dismissal of any of the Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code. The Adequate Protection Liens shall not be subject to section 506(c) of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any estate pursuant to section 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the Prepetition Liens or the Adequate Protection Liens.

5. Adequate Protection Superpriority Claims.

(a) *Senior Adequate Protection Superpriority Claim.* As further adequate protection of the interests of the Prepetition Agents and Prepetition Senior Lenders in the Collateral against any Diminution in Value of such interests in the Prepetition Collateral, (i) with respect to the Revolving Facility First Lien Collateral, the Prepetition Administrative Agent and

the Prepetition Secured Lenders, and (ii) with respect to the Noteholder First Lien Collateral, the Prepetition Indenture Trustee and the 10% Noteholders, are each hereby granted to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (the “Senior Adequate Protection Superpriority Claim”).

(b) *Junior Adequate Protection Superpriority Claim.* As further adequate protection of the interests of the Prepetition Agents and Prepetition Junior Lenders in the Collateral against any Diminution in Value of such interests in the Prepetition Collateral, (i) with respect to the Revolving Facility First Lien Collateral, the Prepetition Indenture Trustee and the 10% Noteholders, and (ii) with respect to the Noteholder First Lien Collateral, the Prepetition Administrative Agent and the Prepetition Secured Lenders, are each hereby granted to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (the “Junior Adequate Protection Superpriority Claim”, and together with the Senior Adequate Protection Superpriority Claim, the “Adequate Protection Superpriority Claims”).

(c) *Priority of Adequate Protection Superpriority Claims.* The Senior Adequate Protection Superpriority Claim shall be junior only to the Carve Out. The Junior Adequate Protection Superpriority Claim shall be junior only to the Carve Out and the Senior Adequate Protection Superpriority Claim. Except for the Carve Out, the Adequate Protection Superpriority Claims shall have priority over all administrative expenses and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or

ordered pursuant to sections 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 1113 and 1114 of the Bankruptcy Code.

6. Senior Adequate Protection Payments. As further adequate protection, each Debtor is authorized and directed to provide adequate protection payments to the Prepetition Administrative Agent, for the benefit of itself and the Prepetition Secured Lenders and the Prepetition Indenture Trustee, for the benefit of the 10% Noteholders (in each case, the “Senior Adequate Protection Payments”), in the form of: (i) payments of interest on the applicable Prepetition Obligations at the non-default rate set forth in the applicable Prepetition Documents, any fees of the applicable Prepetition Agent and the applicable Prepetition Senior Lenders (including, solely with respect to the Prepetition Credit Documents, any letter of credit fees pursuant to the Prepetition Credit Agreement (including those described in Section 2.03(b)(vi) of the Prepetition Credit Agreement)), payable at the times specified in the applicable Prepetition Documents; and (ii) ongoing payment of the reasonable fees, costs and expenses of the Prepetition Agents and applicable Prepetition Secured Lenders, including, without limitation, the reasonable fees and expenses of legal and other professionals retained by the Prepetition Agents and applicable Prepetition Secured Lenders in accordance with the applicable Prepetition Documents, and (except to the extent directed in writing by the Debtors to stop work on such documentation) including, without limitation, fees and expenses incurred by the Prepetition Administrative Agent or any Prepetition Secured Lender in connection with any proposed exit financing arrangements relating to the Cases (including, without limitation, reasonable legal and other professionals’ fees and expenses in connection therewith but not including fees to be earned by the lenders at closing). In addition, the Debtors shall provide continued maintenance and insurance of the Collateral in the amounts and for the risks, and by the entities, required

under the Prepetition Credit Documents. Except as authorized by any cash collateral order entered by this Court, the Debtors shall not make any payments from the Revolving Facility First Lien Collateral to the Prepetition Indenture Trustee or 10% Noteholders on account of the Prepetition Indenture Obligations until Payment in Full⁴ of the Prepetition Secured Lenders.

7. Payment of Professionals to Prepetition Agents and Prepetition Secured Lenders.

Professionals for the Prepetition Agents and the Prepetition Secured Lenders shall not be required to comply with the U.S. Trustee fee guidelines for the payment of fees and expenses, but each professional shall provide fee and expense invoices to the Debtors, counsel to the U.S. Trustee and counsel to any Statutory Committee, and the Debtors are authorized and directed to pay after twenty (20) days of the submission thereof the fees and expenses with respect thereto; provided that to the extent that the U.S. Trustee or any Statutory Committee has an objection to the fees and expenses of any such professional, the U.S. Trustee shall so advise the professional within fifteen (15) days following delivery of the applicable invoice and the disputed portion of such invoice shall not be paid unless the objection is resolved (including by an order of the Court) and/or withdrawn within twenty (20) days following delivery of the applicable invoice to

⁴ The following shall constitute "Payment in Full" as used herein: (a)(i) With respect to the Prepetition Credit Obligations, (A) the Prepetition Credit Obligations shall have been irrevocably paid in full in cash (with all such payments and collateral proceeds received by the Prepetition Administrative Agent and Prepetition Secured Lenders, respectively, irrevocably vested in such parties) and (B) all letters of credit under the Prepetition Credit Facility shall have been cancelled or cash collateralized (which cash collateralization shall be at least in the amount of 105% of the outstanding letters of credit), or (ii) with respect to the Prepetition Indenture Obligations, the Prepetition Indenture Obligations shall have been irrevocably paid in full in cash (with all such payments and collateral proceeds received by the Prepetition Indenture Trustee and 10% Noteholders, respectively, irrevocably vested in such parties), (b) either (i) the expiration of all periods during which any Statutory Committee (or any other party in interest granted standing by the Court) may file or assert (or seek to file or assert) against any such Prepetition Agent or Prepetition Lender an adversary proceeding or other challenge (each, a "Challenge") in the nature of a setoff, counterclaim or defense to the applicable Prepetition Obligations or (ii) delivery by any Statutory Committee (or such other party in interest) to such Prepetition Agent of a no-action notice that the Statutory Committee (or such other party in interest) will not file or assert a Challenge against such Prepetition Agent and the applicable Prepetition Lenders and (c) the applicable Prepetition Agent shall have no further responsibilities with respect to the Carve Out.

the U.S. Trustee; provided further that if any such objection is raised and not resolved and/or withdrawn, the parties shall submit any dispute to this Court for adjudication.

8. Modification of Automatic Stay. The automatic stay imposed under Bankruptcy Code section 362(a) is modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the Prepetition Agents or Prepetition Lenders may request in their reasonable discretion to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the Prepetition Agents and Prepetition Lenders under this Final Order; and (d) authorize the Debtors to pay, and the Prepetition Administrative Agent, the Prepetition Indenture Trustee, and the Prepetition Secured Lenders, as applicable, to retain and apply, payments made in accordance with the terms of this Final Order; provided, however, that any stay of relief with respect to the exercise of remedies shall be in accordance with Paragraph 14 below or as otherwise ordered by this Court.

9. Perfection of Adequate Protection Liens. This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Adequate Protection Liens without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Adequate Protection Liens, or to entitle the Prepetition Agents and Prepetition Lenders to the priorities granted herein. Notwithstanding the foregoing, the Prepetition Agents are authorized to file, as each deems necessary or advisable, such financing

statements, mortgages, notices of liens and other instruments or documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the applicable Adequate Protection Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create, evidence or perfect the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the Prepetition Agents all such financing statements, mortgages, title insurance policies, notices, instruments and other documents as such Prepetition Agents or Prepetition Lenders may reasonably request. The Prepetition Agents, each in their sole discretion, may file a copy of this Final Order as a financing statement or notice with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, mortgages, notices of lien, instrument, or similar document.

10. Additional Debtors Covenants. Until Payment in Full of the Prepetition Credit Obligations, the Debtors shall:

(a) Deposit all Cash Collateral (including pursuant to Section 2.03(f) of the Prepetition Credit Agreement), as and when received, in accordance with this Final Order and the Cash Management Order (as defined herein);

(b) Deliver to the Prepetition Agents and counsel to the Ad Hoc Committee on or before the close of business on Wednesday of every other week (beginning with the first Wednesday following entry of the Interim Order) (and if such day is not a business day, then the next succeeding business day) (i) a report of the Total Liquidity as through the end of the prior week and (ii) a report of the Total Disbursements on a cumulative basis from the Petition Date, in each case along with such supporting information as any Prepetition Agent may request;

(c) Deliver to the Prepetition Agents on or before the close of business on Wednesday of every other week (and if such day is not a business day, then the next succeeding business day) an update to the thirteen-week forecast previously delivered to the Prepetition Agents as through the close of business on the last Business Day of the immediately preceding calendar week, along with such supporting information as any Prepetition Agent may reasonably request. Copies of such updates and other supporting documents shall also be provided to counsel for the Ad Hoc Committee;

(d) Serve the Prepetition Agents and their respective counsel, and counsel to the Ad Hoc Committee, with a copy of each monthly report filed by the Debtors in these Cases as required by the Court, the U.S. Trustee or applicable law; and

(e) On Wednesday of every other week, beginning with the first full week following entry of the Interim Order, provide the Prepetition Administrative Agent with a weekly Borrowing Base Certificate, updated as of the close of business on the last Business Day of the immediately preceding calendar week (it being understood that inventory amounts shown in such Borrowing Base Certificate will be based on the inventory amount for the most recently ended month and that the amount of Eligible Receivables shown in such Borrowing Base Certificate will be based on the amount of gross receivables set forth in the most recent biweekly report, less the amount of ineligible receivables reported for the most recently ended month).

11. Cash Management System. Until Payment in Full of the Prepetition Credit Obligations, the Debtors shall maintain the cash management system, in effect as of the Petition Date, subject to any provision of any cash management order approved by the Prepetition Administrative Agent and entered by this Court (the "Cash Management Order").

12. Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Collateral with an aggregate fair market value equal to or more than \$5,000,000 during the pendency of the Cases without the prior written consent of the Prepetition Agents and compliance with applicable law; provided, however, that (a) with respect to Revolving Facility First Lien Collateral, if the Prepetition Administrative Agent consents to such sale, transfer, lease, or disposition of Collateral, until Payment In Full of all Prepetition Credit Obligations and any and all other requirements under the Intercreditor Agreement have otherwise been satisfied, then the Prepetition Indenture Trustee shall also be deemed to have consented and the liens of the Prepetition Indenture Trustee for the benefit of the 10% Noteholders on such Collateral shall be automatically released and terminated, with such liens attaching to the proceeds of such sale, transfer, lease or disposition with the same priorities as set forth in this Final Order and subject to the Intercreditor Agreement, without any action by or notice to the Prepetition Indenture Trustee; and (b) with respect to Noteholder First Lien Collateral, if the Prepetition Indenture Trustee consents to such sale, transfer, lease, or disposition of Collateral, until Payment In Full of all Prepetition Indenture Obligations and any and all other requirements under the Intercreditor Agreement have otherwise been satisfied, then the Prepetition Administrative Agent shall also be deemed to have consented and the liens of the Prepetition Administrative Agent for the benefit of the Prepetition Secured Lenders on such Collateral shall be automatically released and terminated, with such liens attaching to the proceeds of such sale, transfer, lease or disposition with the same priorities as set forth in this Final Order and subject to the Intercreditor Agreement, without any action by or notice to the Prepetition Administrative Agent; provided further, however, that the Debtors are permitted to sell, transfer, convey, assign or otherwise dispose of any Collateral (a) in the ordinary course of

business or (b) to other Debtors in both instances ((a) and (b)) solely in accordance with applicable law. The Debtors are prohibited from returning goods constituting Collateral pursuant to section 546(h) of the Bankruptcy Code absent consent of the Prepetition Agents.

13. Events of Default. The occurrence of any of the following events, unless waived in writing by each Prepetition Agent (subject to and consistent with the Intercreditor Agreement), shall constitute an event of default (collectively, the “Events of Default”):

(a) the obtaining after the Petition Date of credit or the incurring of indebtedness that is (i) secured by a security interest, mortgage or other lien on all or any portion of the Collateral which is equal or senior to any security interest, mortgage or other lien of the Prepetition Administrative Agent and the Prepetition Secured Lenders, or (ii) entitled to priority administrative status which is equal or senior to that granted to the Prepetition Administrative Agent and Prepetition Secured Lenders herein;

(b) any Debtor seeking or the obtaining of authority for any Debtor to use cash collateral as defined in section 363 of the Bankruptcy Code, except as authorized by this Final Order or as otherwise agreed in writing by the Prepetition Secured Lenders;

(c) the entry of an order by the Court, other than this Final Order, granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a lien on or security interest in any Collateral with a value in excess of \$25,000,000 in the aggregate during the pendency of the Cases, or (ii) with respect to any lien of or the granting of any lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a material adverse effect on the business, operations, property, assets, or condition, financial or otherwise, of the Debtors;

(d) reversal, vacatur, or modification (without the express prior written consent of the Prepetition Administrative Agent, in its sole discretion) of this Final Order;

(e) dismissal of the Cases or conversion of the Cases to cases under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner with enlarged powers or other responsible person;

(f) upon written notice from the Prepetition Administrative Agent, any material misrepresentation of a material fact made after the Petition Date by any of the Debtors or their agents to the Prepetition Administrative Agent or Prepetition Secured Lenders, or to agents for the Prepetition Administrative Agent or Prepetition Secured Lenders, about the financial condition of the Debtors, or any of them, the nature, extent, location or quality of any Collateral, or the disposition or use of any Collateral, including Cash Collateral (it being understood that prospective or forward-looking guidance or projections shall not constitute material misrepresentations of material facts);

(g) the sale after the Petition Date of any portion of any of the Debtors' assets that constitute Collateral with a value in excess of \$5,000,000 in the aggregate during the pendency of the Cases outside the ordinary course of business without an order of the Court;

(h) upon written notice from either of the Prepetition Agents, the material failure to make Adequate Protection Payments or other payments to the Prepetition Administrative Agent and Prepetition Secured Lenders when due;

(i) the Debtors' failure to perform, after notice from either of the Prepetition Agents, in any respect, any of the material terms, provisions, conditions, covenants, or obligations under this Final Order; provided, however, that failure to perform under Paragraph 3 of this Final Order shall constitute an Event of Default for which no notice is necessary; and

(j) the failure to (i) maintain the Collateral and (ii) to insure the Collateral in the amounts and for the risks, and by the entities, required under the Prepetition Credit Documents.

14. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, the Prepetition Administrative Agent may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral (any such declaration, a "Termination Declaration"). The Termination Declaration shall be given by facsimile or other electronic means to counsel to the Debtors, counsel to the Prepetition Administrative Agent, counsel to the Prepetition Indenture Trustee, counsel to any Statutory Committee, counsel to the Ad Hoc Committee, and the U.S. Trustee (the earliest date any such Termination Declaration is made shall be referred to herein as the "Termination Declaration Date"). Except with respect to Paragraph 13(e) above, during the period that ends five (5) business days after the Termination Declaration Date (the "Remedies Notice Period"), the Debtors may request that this Court order the continued use of the Cash Collateral pursuant to this Final Order. Immediately upon the expiration of the Specified Period, (a) unless the Court orders otherwise, the Debtors shall no longer have the right to use or seek to use Cash Collateral, (b) any stay under sections 362 or 105 of the Bankruptcy Code shall automatically be terminated, and (c) the Prepetition Agents, the Prepetition Secured Lenders and the 10% Noteholders shall be permitted to exercise all remedies set forth in this Final Order, in the Prepetition Credit Documents or the Prepetition Indenture Documents, as applicable, and as otherwise available at law against the Collateral, without further order of or application or motion to this Court, and without restriction or restraint by any stay under sections 362 or 105 of the Bankruptcy Code, or

otherwise, unless otherwise ordered by this Court. For the avoidance of doubt, nothing contained in this Paragraph 14 shall reduce the Carve Out.

15. Carve Out.

(a) *Carve Out.* As used in this Final Order, the “Carve Out” means the following expenses: (i) statutory fees payable to this Court or to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6); (ii) the accrued and unpaid professional fees and disbursements incurred for any professionals of any Statutory Committee or the Debtors retained by final order of this Court (which order has not been reversed, vacated, or stayed, unless such stay has been vacated) under sections 327, 328, 363 or 1102 of the Bankruptcy Code (the “Case Professionals”) incurred prior to the Termination Declaration Date, to the extent allowed or later allowed by order of this Court (which order has not been reversed, vacated, or stayed, unless such stay has been vacated) under sections 328, 330 and/or 331 of the Bankruptcy Code and any interim compensation procedures order (the “Allowed Professional Fees”); and (iii) after the Termination Declaration Date, the fees and expenses of Case Professionals in an amount not to exceed \$3 million (plus the amounts specified in (i) and (ii) hereof, the “Case Professionals Carve Out”). Notwithstanding anything to the contrary herein, the Carve Out shall be senior in priority to the Prepetition First Liens, the Prepetition Second Liens, the Senior Adequate Protection Liens, the Junior Adequate Protection Liens, the Senior Adequate Protection Superpriority Claim and the Junior Adequate Protection Superpriority Claim. No payment of any Carve Out amount shall reduce any Prepetition Obligations.

(b) *No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees.* The Prepetition Agents and Prepetition Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Case Professionals

incurred in connection with the Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed (i) to obligate the Prepetition Agents or Prepetition Lenders in any way to pay compensation to or to reimburse expenses of any Case Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement, (ii) obligate the Prepetition Agents or Prepetition Lenders to increase the Carve Out, (iii) as consent by the Prepetition Agents or Prepetition Lenders to the allowance of any professional fees or expenses of any Case Professionals, or (iv) to affect the right of the Prepetition Agents or Prepetition Lenders to object to the allowance and payment of such fees and expenses. The Prepetition Agents' and Prepetition Senior Lenders' liens and claims shall be subject to the Carve Out to the extent set forth in this Final Order.

16. Limitations on the Cash Collateral and the Case Professionals Carve Out. The Cash Collateral and the Case Professionals Carve Out may not be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) adverse to the interests of the Prepetition Agents, the Prepetition Lenders, or their rights and remedies under the Prepetition Documents or this Final Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Statutory Committee (if any) in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration or similar relief adverse to the interests of the Prepetition Agents, the Prepetition Lenders, or their rights and remedies under the Prepetition Documents or this Final Order, (ii) invalidating, setting aside, recharacterizing, avoiding or subordinating, in whole or in part, the Prepetition Obligations, (iii) for monetary,

injunctive or other affirmative relief against any Prepetition Agent or Prepetition Lender, or their respective collateral that would impair the ability of the Prepetition Agents or Prepetition Lenders to recover on the Prepetition Obligations or seeking affirmative relief against them, or (iv) preventing, hindering or otherwise delaying the exercise by the Prepetition Agents or Prepetition Lenders of any rights and/or remedies under this Final Order, the Prepetition Documents, or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Court or otherwise) by the Prepetition Agents or Prepetition Lenders upon any of the Collateral; (b) to make any payment in excess of \$1,000,000 in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior written consent of the Prepetition Administrative Agent, unless otherwise ordered by the Court; (c) subject to the limited use of Cash Collateral set forth in Paragraphs 3 and 14 above, objecting to, contesting, or interfering with in any way the enforcement or realization upon any of the Collateral once an Event of Default has occurred by the applicable Prepetition Agent or, subject to the Prepetition Documents, the applicable Prepetition Senior Lenders (and, subject to and consistent with the Intercreditor Agreement, the other Prepetition Agent or the applicable Prepetition Junior Lenders); (d) using or seeking to use Cash Collateral or selling or otherwise disposing of Collateral outside the ordinary course of business and not in accordance with Paragraph 12 without the consent of the Prepetition Administrative Agent and the Prepetition Secured Lenders (and, subject to and consistent with the terms of the Intercreditor Agreement, the Prepetition Indenture Trustee and the 10% Noteholders); (e) using or seeking to use any insurance proceeds constituting Collateral without the consent of the Prepetition Agents and the Prepetition Lenders, in each case subject to the terms of Section 2.09 of the Intercreditor Agreement; (f) incurring Indebtedness (as defined in the Prepetition Credit Agreement and the

Prepetition Indenture) outside the ordinary course of business, without the prior consent of the applicable Prepetition Agent and the applicable Prepetition Senior Lenders; (g) objecting to or challenging in any way the claims, liens, or interests (including interests in the Collateral) held by or for the benefit of any Prepetition Agent or Prepetition Lender; (h) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against any Prepetition Agent or Prepetition Lender; (i) prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, characterization or enforceability of any of the Prepetition Obligations or Prepetition Liens or any other rights or interests of any Prepetition Agent or Prepetition Lender; or (j) preventing, hindering or otherwise delaying the exercise by any Prepetition Agent or Prepetition Lender of any rights and remedies granted under this Final Order. Notwithstanding the foregoing provisions of this paragraph, the Cash Collateral and the Case Professionals Carve Out may be used in an amount not to exceed \$50,000 in the aggregate for Allowed Professional Fees incurred by the Statutory Committee to investigate the validity, enforceability, perfection, priority or extent of the Prepetition Obligations, the Prepetition Liens and/or a potential Challenge (as that term is defined herein).

17. Reservation of Certain Statutory Committee and Third Party Rights. Nothing in this Final Order shall prejudice the rights of a Statutory Committee, a successor chapter 7 or chapter 11 trustee or any other party in interest granted standing by the Court (other than the Debtors) to seek to avoid, object to or otherwise challenge the findings or Debtors' Stipulations regarding (a) the validity, extent, priority, or perfection of the mortgages, security interests, and liens of any Prepetition Agent or Prepetition Lender; or (b) the validity, allowability, priority, fully secured status or amount of the Prepetition Obligations. For the avoidance of doubt, any

Prepetition Secured Lender receiving or accepting repayment of any portion of the Prepetition Credit Obligations on or after the Petition Date will be deemed subject to the jurisdiction of this Court in the event that disgorgement is required in accordance with this Paragraph 17, but no Prepetition Agent shall have any liability in its capacity as Prepetition Agent for any amounts paid to a Prepetition Lender in accordance with this Final Order.

18. 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.

19. Section 506(c) Claims. (i) No costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the Prepetition Agents, the Prepetition Secured Lenders or the 10% Noteholders or any of their respective claims or the Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior express written consent of the applicable Prepetition Agent, and (ii) no such consent shall be implied, directly or indirectly, from any other action, inaction or acquiescence by any such agents or lenders.

20. No Marshaling. The Prepetition Agents, the Prepetition Secured Lenders and the 10% Noteholders shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral, as the case may be.

21. Section 552(b). (i) The Prepetition Agents, the Prepetition Secured Lenders and the 10% Noteholders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and (ii) the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to any Prepetition Agent or Prepetition Lender with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

22. Rights Preserved. Notwithstanding anything herein to the contrary, and subject to the Intercreditor Agreement, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the Prepetition Agents' or any Prepetition Lender's right to seek any other or supplemental relief in respect of any Debtor, including the right to seek additional adequate protection (without prejudice to any other person's right to object to or otherwise oppose such additional adequate protection); or (b) any of the rights of any Prepetition Agent or Prepetition Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases or Successor Cases, conversion of any of the Cases to cases under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans. Other than as expressly set forth in this Final Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the Prepetition Agents and Prepetition Lenders are preserved.

23. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to any of the Prepetition Agents and/or Prepetition Lenders hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Cases or any Successor Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by the Prepetition Agents or Prepetition Lenders that the adequate protection granted herein does in fact adequately protect the Prepetition Agents and Prepetition Lenders against any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral), subject to the Intercreditor Agreement.

24. No Waiver by Failure to Seek Relief. The failure of any Prepetition Agent or Prepetition Lender to seek relief or otherwise exercise its rights and remedies under this Final Order, the Prepetition Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the applicable Prepetition Agent or Prepetition Lender.

25. Proofs of Claim. The Prepetition Agents and Prepetition Lenders will not be required to file proofs of claim in any of the Cases or Successor Cases for any claim allowed herein, and the Debtors' Stipulations in Paragraph E herein shall be deemed to constitute a timely filed proof of claim for the Prepetition Agents and Prepetition Lenders. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or Successor Cases to the contrary, each of (a) the Prepetition Administrative Agent for the benefit of itself and the Prepetition Secured Lenders and (b) the Prepetition Indenture Trustee for the benefit of itself and the 10% Noteholders is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in each of the Cases or Successor Cases for any claim allowed herein.

26. Good Faith. The Prepetition Agents and Prepetition Lenders each have acted in good faith in connection with this Final Order and their reliance on this Final Order is in good faith.

27. Continuing Effect of Intercreditor Agreement. The Prepetition Agents and Prepetition Lenders each shall be bound by and be subject to all the terms, provisions and restrictions of the Intercreditor Agreement. Nothing in this Final Order is meant to or shall be deemed to alter or otherwise modify the rights, including consent rights, contained in the

Intercreditor Agreement as between and among the Prepetition Agents and Prepetition Lenders and Debtors.

28. Binding Effect of Final Order. Immediately upon entry by this 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 Prepetition Agents, the Prepetition Lenders, all other creditors of any of the Debtors, any Statutory Committee or any other Court appointed committee appointed in any of the Cases, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Cases, any Successor Cases, or upon dismissal of any Case or Successor Case. In the event of any inconsistency between the provisions of this Final Order and the Prepetition Documents or 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.

29. No Modification of Final Order. Subject to Paragraph 14, the Debtors irrevocably waive any right to seek any amendment, modification or extension of this Final Order without the prior written consent of each Prepetition Agent, and no such consent shall be implied by any other action, inaction or acquiescence of any Prepetition Agent. In the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, such modification, amendment or vacatur shall not affect the validity, perfection, priority, allowability, enforceability or non-avoidability of any advances previously made or made hereunder, or lien, claim or priority authorized or created hereby. Any liens or claims granted to the Prepetition Agents and Prepetition Lenders hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Final Order shall be

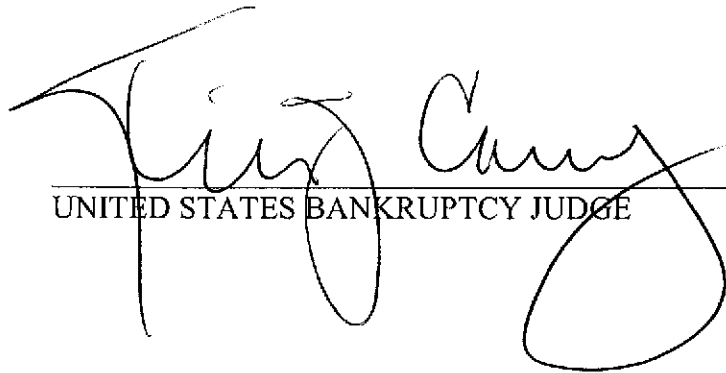
governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

30. Survival. The liens and security interests granted pursuant to this Final Order shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Cases provided that such liens and security interests have not been released; (b) converting any of the Cases to cases under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor Cases; (d) discharging any Debtor; or (e) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Final Order, including the claims, liens, security interests and other protections granted to the Prepetition Agents and Prepetition Lenders pursuant to this Final Order shall continue in the Cases, or in any Successor Cases, and shall maintain their priority as provided by this Final Order until the indefeasible Payment in Full of all Prepetition Obligations, notwithstanding the expiration of the Specified Period or any earlier termination of the Debtors' authorization to use Cash Collateral.

31. Effect of this Final Order. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon execution hereof.

32. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

Dated: December 4, 2009
Wilmington, Delaware


UNITED STATES BANKRUPTCY JUDGE