



**SO ORDERED.**

**SIGNED this 09 day of February, 2009.**

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.  
PLEASE SEE DOCKET FOR ENTRY DATE.**

**John C. Cook  
UNITED STATES BANKRUPTCY JUDGE**

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

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	)	Bankr. Case Nos. 08-10249, et. al
IN RE:	)	
	)	Chapter 11
PROPEX INC., et al.,	)	
	)	Jointly Administered
	)	
Debtors.	)	
-----	X	

**FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POSTPETITION  
FINANCING PURSUANT TO 11 U.S.C. §§105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3),  
364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11  
U.S.C. §363, (II) GRANTING LIENS, SECURITY INTERESTS AND SUPERPRIORITY  
CLAIMS AND (III) GRANTING ADEQUATE PROTECTION TO PREPETITION  
SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364**

Upon the motion (the “**Motion**”) of Propex Inc. (the “**Borrower**”), and its affiliated debtors, each as debtor and debtor-in-possession (collectively, the “**Debtors**”), in the above-captioned cases (the “**Cases**”) seeking, pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C §§ 101, *et seq.* (the “**Bankruptcy Code**”) and Rules 2002, 4001 and 9014 of the Federal Rules of

Bankruptcy Procedure (the “**Bankruptcy Rules**”), this Court’s authorization by entry of this final order (this “**Final Order**”):

(a) for the Borrower to obtain postpetition financing in the aggregate amount of up to \$65 million of delayed draw term loans pursuant to a \$65 million Superpriority First Lien Debtor-in-Possession Term Loan Facility (the “**DIP Facility**,” documented substantially in the form filed with this Court on January 27, 2009 [Docket No. 861] with any changes as set forth on the record at the Interim Hearing (the “**DIP Credit Agreement**,” and together with any related documents or agreements, the “**DIP Documents**”)),<sup>1</sup> and for Propex Holdings Inc. and direct and indirect subsidiaries of the Borrower, as set forth in the DIP Documents (the “**Guarantors**”) to guaranty the Borrower’s obligations in connection with the DIP Facility up to the aggregate principal amount of \$65 million (the actual available principal amount at any time being subject to the conditions set forth in the DIP Documents) from Wayzata Investment Partners LLC, acting as the sole administrative agent (the “**DIP Agent**”), and Wayzata Opportunities Fund II L.P. and the other lenders thereto (collectively, the “**DIP Lenders**”):

(i) having priority, pursuant to section 364(c)(1) of the Bankruptcy Code, over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code (except from proceeds of causes of action arising under sections 502(d), 544, 545, 547, 548, 549, 550, 551, 553(b), 723(a) or 724(a) of the Bankruptcy Code (collectively, the “**Avoidance Actions**”));

(ii) being secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by perfected first priority security interests in and liens upon all unencumbered prepetition and postpetition property of the Debtors including, but not limited to, Cash Collateral (defined below), accounts receivable, other rights to payment whether arising before or after the Filing Date, property, plant, equipment, general intangibles, instruments, interests in leaseholds, real property, patents, copyrights, trademarks, trade names, other intellectual property and the proceeds of all the foregoing, but excluding the Avoidance Actions and any proceeds thereof;

(iii) being secured, pursuant to section 364(d)(1) of the Bankruptcy Code, by perfected first priority senior priming liens on all property of the Debtors (other than the Avoidance Actions and any proceeds thereof) that are senior to (x) existing liens that secure the obligations of any kind of the Debtors under that certain Credit Agreement (the “**Prepetition Credit Facility**”) dated as of January 31, 2006, as amended, among the Borrower, the lenders party thereto (the “**Prepetition Lenders**”) and BNP Paribas, as administrative agent (the “**Prepetition Agent**”) and the guarantees and other documents entered into by the Borrower and/or the other Debtors in connection therewith, as any of such documents may have been amended, modified, supplemented or refinanced, (collectively, the “**Prepetition Credit**

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to such terms in the DIP Documents.

**Documents**”), (y) any liens to which the liens granted under the Prepetition Credit Documents are senior and (z) any liens granted after the commencement of the Cases to provide adequate protection in respect of the Prepetition Credit Facility (collectively, the “**Primed Liens**”); and

(iv) being secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by perfected security interests in and liens upon prepetition and postpetition property of the Debtors that is subject to valid and perfected liens in existence at the time of the commencement of the Cases or to valid liens in existence at the time of such commencement as permitted by Section 546(b) of the Bankruptcy Code, junior to such liens (other than the Primed Liens).

(b) for the Debtors to use the Cash Collateral (as such term is defined in the Bankruptcy Code) pursuant to sections 361, 362 and 363 of the Bankruptcy Code, and all other “Collateral” (as defined in the Prepetition Credit Documents) in which the Prepetition Lenders have a lien or security interest (together with the Cash Collateral, the “**Prepetition Collateral**”) and provide adequate protection with respect to any diminution in the value of the Prepetition Lenders’ interests in the Prepetition Collateral resulting from the implementation of the DIP Facility and the priming of the Prepetition Agents’ liens on the Prepetition Collateral to secure the DIP Facility set forth herein, the use of the Cash Collateral and the use, sale or lease by the Debtors (or other decline in value) of the Prepetition Collateral and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code; and

(c) the granting of certain related relief.

This Court having held an interim hearing on the Motion on January 22, 2009 and continued on January 28, 2009 (the “**Interim Hearing**”) and a final hearing on the Motion on February 9, 2009 (the “**Final Hearing**”); having entered an order approving the DIP Facility and other relief requested in the Motion on an interim basis on January 29, 2009 [Docket No. 869] (the “**Interim Order**”); having considered all the pleadings filed with this Court; and having overruled all unresolved objections to the relief requested in the Motion; and upon the record made by the Debtors at the Interim Hearing and the Final Hearing, including the Motion and other filings and pleadings in the Cases, and after deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction.* This Court has core jurisdiction over the 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.

2. *Notice.* Notice of the Final Hearing was served by the Debtors on: (a) the list of parties provided in the Order Under 28 U.S.C. § 156(c) Authorizing and Approving the Retention of and Appointing Epiq Bankruptcy Solutions, LLC, as Claims, Noticing, and Balloting Agent and Establishing Notice and Administrative Procedures [Docket No. 57] (the “**Noticing Order**”); (b) counsel to the Prepetition Agent; (c) the United States Trustee for the Eastern District of Tennessee; (d) counsel for the statutory committee of unsecured creditors appointed in this Case (the “**Creditors’ Committee**”); (e) all parties who filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002, as directed by the Court and the Noticing Order; (f) counsel to any known secured parties of record; (g) counsel to the Existing Agent (as defined below); and (h) the taxing authorities to which the Debtors pay taxes (collectively, the “**Notice Parties**”). Under the circumstances, such notice constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c).

3. *Objections.* All objections to the entry of this Final Order, if any, are resolved hereby or, to the extent not resolved, are overruled.

4. *Existing Facility.* On February 13, 2008, this Court entered a final order [Docket No. 160] (the “**Prior DIP Order**”) authorizing the Debtors to obtain postpetition financing of up to \$60 million under the credit facility provided under that certain superpriority debtor-in-possession credit agreement dated as of January 23, 2008 among the Borrower, BNP

Paribas, as administrative agent thereunder (the “**Existing Agent**”), and the lenders and other parties party thereto (as amended or otherwise modified from time to time, the “**Existing Facility**”). As of January 23, 2009, the total amount outstanding under the Existing Facility was \$32,774,377.25, plus \$420,000 in cash used to cash collateralize letter(s) of credit issued by the Existing Agent following the Filing Date, and any reasonable professional fees of the Existing Agent for its counsel and financial advisors incurred prior to January 23, 2009 (the “**Existing Facility Obligations**”). In accordance with the Interim Order, on January 30, 2009, the Debtors paid the Existing Facility Obligations in full. The Debtors and their estates do not have any additional or remaining liabilities with respect to, or on account of, the Existing Facility. The Existing Facility is terminated and is of no further force or effect and any and all security interests, liens and other interests granted to the Existing Lenders under the Existing Facility and the Prior DIP Order have been released and terminated. As set forth in the DIP Documents, the effectiveness of the DIP Facility is conditioned upon repayment of the Existing Facility Obligations, termination of the Existing Facility, and the release and termination of any and all claims, security interests and liens thereunder.

5. *Debtor's Stipulations.* Without prejudice to the rights of the Creditors' Committee to continue to prosecute its claims against the Prepetition Agent in Adv. Proc. No. 08-01136 (Bankr. E.D. Tenn.) (the “**Adversary Proceeding**”) and the present appeal of the order confirming liens granted in the cases by the Bankruptcy Court [Docket No. 564] (the “**DIP Appeal**”) (but subject to the limitations thereon contained in paragraph 18 below), the Debtors reaffirm, admit, stipulate and agree to the following items (which items the Debtors also admitted, stipulated and agreed to in the Prior DIP Order):

(a) as of the Filing Date, (i) the Debtors were truly and justly indebted and liable to (i) the Prepetition Lenders, without defense, counterclaim or offset of any kind, in the outstanding aggregate principal amount of approximately \$230 million in respect of loans made by the Prepetition Lenders pursuant to, and in accordance with the terms of, the Prepetition Credit Documents, plus, accrued and unpaid interest thereon and fees, expenses and other obligations incurred in connection therewith as provided in the Prepetition Credit Documents (collectively, the “**Prepetition Secured Obligations**”);

(b) the Prepetition Secured Obligations constitute the legal, valid and binding obligations of the Debtors, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code);

(c) no portion of the Prepetition Secured Obligations are subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law; and

(d) the Debtors do not have, and hereby forever release, any claims, counterclaims, causes of action, defenses or setoff rights, whether arising under the Bankruptcy Code or otherwise, against the Prepetition Agent, the Prepetition Lenders and their affiliates, agents, officers, directors, employees, attorneys and advisors with respect to the Prepetition Secured Obligations; the Debtors agree that the liens and security interests granted to the Prepetition Agent and the Prepetition Lenders pursuant to and in connection with the Prepetition Credit Documents (including, without limitation, all security agreements, pledge agreements, mortgages, leasehold mortgages, deeds of trust and other security documents executed by any of the Debtors in favor of the Prepetition Lenders) are (i) valid, binding, perfected, enforceable first priority liens on and security interests in the Prepetition Collateral (the “**Prepetition Liens**”),

(ii) not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (iii) subject and subordinate only to (x) after giving effect to this Final Order, the DIP Liens (as defined below), and (y) valid, perfected and unavoidable liens permitted under the Prepetition Credit Documents to the extent such permitted liens are senior to or *pari passu* with the liens of the Prepetition Agent and the Prepetition Lenders on the Prepetition Collateral (the “**Permitted Prepetition Liens**”).

(e) The Prepetition Collateral constitutes substantially all of the Debtors’ assets.

6. *Findings Regarding the DIP Facility.*

(a) Good cause has been shown for the entry of this Final Order.

(b) The Debtors have an immediate need to obtain the DIP Facility and use the Prepetition Collateral, including the Cash Collateral, in order to, among other things, pay the Existing Facility Obligations, continue the orderly operation of their businesses, maintain business relationships with vendors, suppliers and customers, make payroll, make capital expenditures and satisfy other working capital and operational needs. The access of the Debtors to sufficient working capital and liquidity through the use of cash collateral, incurrence of new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

(c) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or unsecured credit with the enhanced priority afforded by section 364(c)(1) of the

Bankruptcy Code. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the DIP Lenders, subject to the Carve Out (as defined below) as provided for herein, the DIP Liens and the Superpriority Claims (as defined below) under the terms and conditions set forth in the Interim Order, the Final Order and in the DIP Documents.

(d) The terms of the DIP Documents and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The DIP Documents and the use of Cash Collateral have been negotiated in good faith between the Debtors, the DIP Agent, the DIP Lenders and the Prepetition Agent, and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the DIP Facility, including without limitation, all loans made to the Debtors pursuant to the DIP Facility and all fees and expenses incurred by the Debtors under the DIP Facility (together with any other obligation arising under the Interim Order, this Final Order or the DIP Documents, collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Lenders in good faith as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order, this Final Order or any provision of either such order is vacated, reversed or modified, on appeal or otherwise.

(f) The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent granting the relief sought by this Final Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the



DIP Facility and the use of Cash Collateral in accordance with this Final Order and the DIP Facility are therefore in the best interest of the Debtors' estates.

7. *Authorization of the DIP Documents.*

(a) The DIP Documents are hereby approved as set forth in this Final Order and the Debtors are hereby authorized to borrow money pursuant to the DIP Documents and this Final Order, up to an aggregate principal or face amount, inclusive of amounts authorized by the Interim Order, of \$65 million, which shall be used for all purposes permitted under the DIP Credit Agreement, the budget prepared in connection therewith (the "**DIP Budget**") and the other DIP Documents, including, without limitation, to provide working capital for the Debtors and to pay interest, fees and expenses in accordance with this Final Order and the DIP Documents.

(b) In furtherance of the foregoing and without further approval of this Court, the Debtors are authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees, that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Documents, including, without limitation:

(i) the execution, delivery and performance of the DIP Documents and any exhibits attached thereto, including, without limitation, the DIP Facility,

(ii) the execution, delivery and performance of one or more amendments to the DIP Documents, in each case in such form as the Debtors, the DIP Agent and the DIP Lenders may agree (it being understood that no further approval of this Court shall be required for amendments to the DIP Documents

that do not shorten the maturity of the extensions of credit thereunder or increase the commitments, the rate of interest or the letter of credit fees payable thereunder); *provided, however*, that Creditors' Committee shall be given five (5) business days written notice and shall not have raised an objection prior to any such amendment becoming effective,

(iii) the non-refundable payment to the DIP Agent or the DIP Lenders, as the case may be, of the fees referred to in the DIP Documents and reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained as provided for in the DIP Documents, and

(iv) the performance of all other acts required under or in connection with the DIP Documents.

(c) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute the valid and binding obligation of the Debtors, enforceable against the Debtors in accordance with the terms of the DIP Documents. No obligation, payment, transfer or grant of security under the DIP Documents, the Interim Order or this Final Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code, under section 548 of the Bankruptcy Code or under any applicable State Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

8. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed claims against the Debtors (except from proceeds of the Avoidance Actions) with priority over any and all administrative expenses, diminution claims (including all Adequate Protection Obligations (as defined below)) and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, 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 sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (the “**Superpriority Claims**”), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all pre and post-petition property of the Debtors and all proceeds thereof, subject only to the payment of the Carve Out (as defined below) to the extent specifically provided for herein.

(b) For purposes hereof, the “**Carve Out**” means (i) upon the occurrence of an Event of Default or the Termination Date (as defined in paragraph 21), (the “**Carve Out Event**”), an amount not exceeding \$4,200,000 in the aggregate, which amount may be used (subject to the terms of the Interim Order and this Final Order) solely to pay the allowed fees and expenses of the respective retained professionals of the Debtors and the Creditors’ Committee and the Debtors’ Chief Restructuring Officer, (ii) all quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) and (iii) any fees payable to the Clerk of the Bankruptcy Court for the Eastern District of Tennessee and any agent thereof, to the extent such fees and expenses are approved and allowed by this Court; *provided, however*, (x) that the dollar limitation in clause

8(b)(i) on fees and disbursements shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the occurrence of a Carve Out Event (and shall be payable to the extent ultimately allowed by this Court as if part of, but without reducing, the Carve Out) or by any fees, expenses, indemnities or other amounts paid to the DIP Agent, DIP Lenders, the Prepetition Agent, the Prepetition Lenders or their respective attorneys and agents under the DIP Documents, the Interim Order, this Final Order or otherwise and (y) that nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in this paragraph 8(b). For the avoidance of doubt, with respect to the fees described in clause (i) of this paragraph 8(b), the amount of the Carve Out shall not exceed \$4,200,000.

(c) In order to minimize administrative claims incurred but not yet paid upon a sale of all or substantially all of the assets, the Fee Procedures Order [Docket No. 145] ( unless otherwise defined in this Final Order, all capitalized terms used in this sub-paragraph 8(c) are as defined in the Fee Procedure Order) is amended as of the date of the Interim Order, such that all Professionals may submit at any time after the month in which such fees and expenses are incurred, such professional's Monthly Statement to the Debtors and serve a copy as provided in the Fee Procedures Order upon the Fee Parties. The Objection Deadline to any Monthly Statement shall be the fourth (4) day after receipt of the Monthly Statement and the Debtors shall pay within five (5) days of receipt eighty percent (80%) of the undisputed fees and ninety percent (90%) of the undisputed expenses.

9. *DIP Liens.*

As security for the DIP Obligations, effective and perfected upon the date of the Interim Order and without the necessity of the execution and recordation of filings by the Debtors of

security agreements, control agreements, pledge agreements, financing statements or other similar documents, the following security interests and liens are hereby granted to the DIP Lenders (all property identified in clauses (a), (b) and (c) below being collectively referred to as the “**Collateral**”), subject, only in the event of the occurrence and during the continuance of an Event of Default or the Termination Date (as defined in paragraph 21), to the payment of the Carve Out (all such liens and security interests granted to the DIP Lenders, pursuant to the Interim Order, this Final Order and the DIP Facility, the “**DIP Liens**”):

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all pre- and postpetition property of the Debtors, whether existing on the Filing Date or thereafter acquired, that, on or as of the Filing Date is not subject to valid, perfected and non-avoidable liens (collectively, “**Unencumbered Property**”), including, without limitation, any unencumbered cash, inventory, accounts receivable, other rights to payment whether arising before or after the Filing Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, and the proceeds of all the foregoing. For the avoidance of doubt, Collateral shall (a) exclude the Avoidance Actions and any proceeds thereof and (b) include one-hundred (100%) percent of the capital stock of all of the Debtors’ subsidiaries, including one-hundred (100%) percent of the capital stock of all of the Debtors’ non-U.S. subsidiaries.

(b) Liens Priming Prepetition Secured Parties’ Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and post-petition property of the

Debtors (including, without limitation, cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Filing Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, one-hundred (100%) percent of the capital stock of all of the Debtors' subsidiaries (including one-hundred (100%) percent of the capital stock of all of the Debtors' non-U.S. subsidiaries), and the proceeds of all the foregoing, but excluding the Avoidance Actions and any proceeds thereof), whether now existing or hereafter acquired, that, in accordance with the Prepetition Credit Documents, is subject to the existing liens presently securing the Prepetition Secured Obligations. Such security interests and liens shall be senior in all respects to (i) the interests in such property of the Prepetition Agent and the Prepetition Lenders arising from current and future liens of the Prepetition Agents and the Prepetition Lenders (including, without limitation, the Adequate Protection Liens (defined below)) and (ii) the interests in such property held by any party whose interests are junior to the interests of the Prepetition Agent and Prepetition Lenders.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully-perfected security interests in and liens upon all pre- and post-petition property of the Debtors (other than the property described in clauses (a) or (b) of this paragraph 9, as to which the liens and security interests in favor of the DIP Lenders will be as described in such clauses), whether now existing or hereafter acquired, that is subject to (i) valid, perfected and unavoidable liens (other than the Primed Liens, which shall be governed by paragraph 9(b) above) in existence immediately prior to the Filing Date or (ii) to valid and unavoidable liens in existence immediately prior to the Filing Date that are perfected subsequent to the Filing Date as permitted by section 546(b) of the

Bankruptcy Code, in each case which existing liens are senior to the Prepetition Liens, which security interests and liens in favor of the DIP Lenders shall be junior to such valid, perfected and unavoidable liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens and the Adequate Protection Liens (defined below) shall not be (i) subject or subordinate to (A) 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 (B) any liens arising after the Filing Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors, or (ii) subordinated to or made *pari passu* with any other lien or security interest under sections 363 or 364 of the Bankruptcy Code or otherwise other than as set forth in the Interim Order or this Final Order. The DIP Liens shall not be subject to sections 510, 549 or 550 of the Bankruptcy Code.

10. *Protection of DIP Lenders' Rights.*

(a) So long as there are any borrowings or letters of credit or other amounts outstanding (other than contingent indemnity obligations as to which no claim has been asserted when all other amounts have been paid and no letters of credit are outstanding), or the DIP Lenders have any Commitment (as defined in the DIP Facility) under the DIP Documents, the Prepetition Agent and Prepetition Lenders shall (i) take no action to foreclose upon or recover in connection with the liens granted pursuant to Prepetition Credit Facilities, the Interim Order, this Final Order, or otherwise exercise remedies against any Collateral, except to the extent authorized by an order of this Court and the Prepetition Agent hereby reserves the right to seek such relief, (ii) be deemed to have consented to any release of Collateral authorized under the

DIP Documents; *provided* that the Prepetition Agent and any Prepetition Lender may appear and be heard as a party in interest in connection with any proceeding relating to the sale, transfer or other disposition of any Collateral and (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the Collateral unless, solely as to this clause (iii), the DIP Agent files financing statements or other documents to perfect the liens granted pursuant to the Interim Order, this Final Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Filing Date.

(b) The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise, (i) immediately upon the occurrence of an Event of Default, all rights and remedies under the DIP Documents other than those rights and remedies against the Collateral as provided in clause (ii) below and (ii) upon the occurrence and during the continuance of an Event of Default and the giving of ten (10) days prior written notice, all rights and remedies against the Collateral provided for in the DIP Documents (including, without limitation, the right to setoff monies of the Debtors in accounts maintained with the DIP Agent or any DIP Lender). In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and each of the Debtors hereby waives its right to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent and the DIP Lenders set forth in the Interim Order, this Final Order or the DIP Documents. In no event shall the DIP Agent or the DIP Lenders be subject to the equitable doctrine of “marshaling” or any similar doctrine with



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

(c) Entry of this Final Order shall be without prejudice to the right of the Prepetition Agent and the Prepetition Lenders to seek relief in the Cases and to appear and be heard on matters before the Court.

11. *Limitation on Charging Expenses Against Collateral.* No expenses of administration of any of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code except to the extent of the Carve Out, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent, the DIP Lenders, the Prepetition Agent or the Prepetition Lenders, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Prepetition Agent or the Prepetition Lenders.

12. *Interest on DIP Obligations.* Interest on the DIP Obligations shall accrue at the rates and shall be paid at the times as provided in the DIP Documents.

13. *Use of Cash Collateral.* The Debtors' cash, including without limitation, all cash and other amounts on deposit or maintained in any account or accounts by the Debtors, and any amounts generated by the collection of accounts receivable, sale of inventory or other disposition of the Prepetition Collateral, constitute proceeds of the Prepetition Collateral and, therefore, are cash collateral of the Prepetition Lenders (the "**Cash Collateral**") within the meaning of section 363(a) of the Bankruptcy Code. The Debtors are hereby authorized to use the Cash

Collateral of the Prepetition Lenders pursuant to and limited by the provisions of the DIP Budget, *provided* that the Prepetition Lenders are granted adequate protection as hereinafter set forth. The Debtors' right to use Cash Collateral under the Interim Order and this Final Order shall automatically terminate on the date that is the earlier of (a) ten (10) days after an Event of Default under the DIP Facility or (b) the maturity of the DIP Facility.

14. *Adequate Protection.* The Prepetition Lenders are entitled, pursuant to sections 361, 363(c)(2), 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral, in an amount equal to the aggregate diminution in value of the Prepetition Lenders' respective Prepetition Collateral, including, without limitation, any such diminution resulting from the implementation of the DIP Facility and the priming of the Prepetition Agent's liens on the Prepetition Collateral, the sale, lease or use by the Debtors (or other decline in value) of the Prepetition Collateral (including Cash Collateral), and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Prepetition Agent and the Prepetition Lenders are hereby granted the following (collectively, the "**Adequate Protection Obligations**"):

(a) Adequate Protection Liens. To secure the Adequate Protection Obligations, the Prepetition Agent (for itself and for the benefit of the respective Prepetition Lenders) is hereby granted (effective and perfected upon the date of the Interim Order or this Final Order, as applicable, and without the necessity of the execution by the Debtors of security agreements, pledge agreements, financing statements or other agreements) a valid, perfected replacement security interest in and lien (the "**Adequate Protection Liens**") upon all the Collateral, subject and subordinate only to (i) the Permitted Prepetition Liens, (ii) the security interests and liens granted to the DIP Agent for the benefit of the DIP Lenders in the Interim

Order, this Final Order and pursuant to the DIP Documents and any liens on the Collateral to which such liens so granted to the DIP Agent are junior and (iii) the Carve Out.

(b) Section 507(b) Claim. The Adequate Protection Obligations shall constitute Superpriority Claims, subject and subordinate only to the payment of the Carve Out and the Superpriority Claims granted with respect to the DIP Obligations. Notwithstanding the foregoing, the Prepetition Agent and the Prepetition Lenders shall not receive or retain any payments, property or other amounts in respect of the Superpriority Claims under section 507(b) of the Bankruptcy Code granted under the Interim Order, this Final Order or the Prepetition Credit Documents unless and until the DIP Obligations have indefeasibly been paid in cash, in full.

(c) Interest. Consistent with the rights of holders of Prepetition Secured Obligations under section 506(b) of the Bankruptcy Code and in consideration of the entry of the Interim Order and this Final Order, the Debtors shall pay to the Prepetition Agent (on behalf of the Prepetition Lenders), monthly in arrears, an amount equal to postpetition interest on the Prepetition Secured Obligations at the respective non-default contractual rates set forth in the Prepetition Credit Documents (with the rights of all parties with respect to claims for any payment of additional default interest fully preserved); *provided* that the rights of all parties to contest whether the value of the Prepetition Collateral exceeds the Prepetition Secured Obligations (but not the interest rates), and to reallocate such payments to principal are hereby fully preserved.

(d) Fees and Expenses. Consistent with the rights of holders of Prepetition Secured Obligations under section 506(b) of the Bankruptcy Code and in consideration of the entry of the Interim Order and this Final Order, the Prepetition Agent shall receive from the

Debtors current cash payments of all fees and expenses payable to the Prepetition Agent under the Prepetition Credit Documents and to any Prepetition Lender entitled to be paid under the Prepetition Credit Documents. For purposes of the Interim Order and this Final Order, professional fee payments shall be made with respect to fees of one lead and one local counsel and one financial advisor for the Prepetition Agent;<sup>2</sup> *provided* that the rights of all parties to contest whether the value of the Prepetition Collateral exceeds the Prepetition Secured Obligations (but not the amounts), and to reallocate such payments to principal are hereby fully preserved.

(e) Reporting and Right to Access. The Debtors shall provide the Prepetition Agent, the Prepetition Lenders and the Creditors' Committee with copies of all written reports, information and other materials delivered to the DIP Agent and the DIP Lenders pursuant to the DIP Facility, and such other written reports, information and materials as reasonably requested by the Prepetition Agent or the Creditors' Committee. In addition, the Debtors shall cooperate with and permit representatives of the DIP Agent and the Prepetition Agent to have reasonable access to their premises and non-privileged records during normal business hours (without unreasonable interference with the proper operation of the Debtors' businesses).

(f) Survival of Adequate Protection Provided Pursuant to the Prior DIP Order. Nothing contained in the Interim Order or this Final Order shall in any way modify, change, amend or otherwise effect the adequate protection previously provided to the Prepetition Agent and/or the Prepetition Lenders under the Prior DIP Order and the provisions of the Prior DIP

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<sup>2</sup> The Debtors shall continue to pay invoices of such professionals, with any disputes regarding reasonableness of fees and expenses to be resolved by this Court.

Order providing such adequate protection shall specifically survive the entry of the Interim Order and this Final Order.

15. *Reservation of Rights of Prepetition Lenders.* Under the circumstances and given that the above described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, this Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Lenders. However, the Prepetition Agent and the Prepetition Lenders may request further or different adequate protection or may object to any request by the Debtors or any other party in interest with respect to any financing other than the DIP Facility, and the Debtors or any other party may contest any such request or objection. The Debtors may object to any additional request for adequate protection. Except as expressly provided herein, nothing contained in the Interim Order or this Final Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to the Prepetition Agent, any Prepetition Lender, the DIP Agent or any DIP Lender including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion).

16. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) Subject to the provisions of paragraph 10(a) above, the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Lenders are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not

the DIP Agent on behalf of the DIP Lenders or Prepetition Agent on behalf of the Prepetition Lenders shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination, at the time and on the date of entry of this Final Order.

(b) A certified copy of this Final Order may, in the discretion of the DIP Agent or the Prepetition Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order for filing and recording.

(c) The Debtors shall execute and deliver to the DIP Agent and the Prepetition Agents all such agreements, financing statements, instruments and other documents as the DIP Agent and the Prepetition Agents may reasonably request to evidence, confirm, validate or perfect the DIP Liens and Adequate Protection Liens granted pursuant hereto.

(d) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other post-petition collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting post-petition liens, in such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Lenders or the

Prepetition Lenders in accordance with the terms of the DIP Documents, the Interim Order and this Final Order.

17. *Preservation of Rights.*

(a) Unless all DIP Obligations and Adequate Protection Obligations shall have been paid in full in cash, the Debtors shall not seek, and it shall constitute an Event of Default and a termination of the right to use Cash Collateral if any of the Debtors seek, or if there is entered, (i) any modifications or extensions of the Interim Order or this Final Order without the prior written consent of the DIP Agent and the Prepetition Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Agent or the Prepetition Agent, or (ii) an order dismissing any of the Cases. 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, priming liens, security interests and replacement security interests granted to the DIP Agent or the DIP Lenders, and, as applicable, the Prepetition Agent or the Prepetition Lenders pursuant to the Interim Order and this Final Order, shall continue in full force and effect and shall maintain their priorities as provided in the Interim Order and this Final Order until all DIP Obligations and Adequate Protection Obligations shall have been paid and satisfied in full (and that such superpriority claims, priming liens and replacement security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest) 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) of this paragraph.

(b) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the

validity of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent or the Prepetition Agent, as applicable, of the effective date of such reversal, modification, vacation or stay or (ii) the validity or enforceability of any security interest, lien or priority authorized or created hereby or pursuant to the DIP Documents with respect to any DIP Obligations incurred prior to such reversal, modification, vacation or stay, the Interim Order or this Final Order with respect to any Adequate Protection Obligations incurred prior to such reversal, modification, vacation or stay. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral, or DIP Obligations or Adequate Protection Obligations incurred by the Debtors to the DIP Agent, the DIP Lenders, the Prepetition Agent or the Prepetition Lenders prior to the actual receipt by the DIP Agent or the Prepetition Agent of written notice of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of the Interim Order or this Final Order, as applicable, and the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Lenders shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, the Interim Order, this Final Order and pursuant to the DIP Facility with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(c) Except as expressly provided in the Interim Order, this Final Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, the Adequate Protection Obligations and all other rights and remedies of the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Lenders granted by the provisions of the Interim Order, this Final Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any



of the Cases or by any other act or omission, or (ii) the entry of an order confirming a plan of reorganization in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of the Interim Order, this Final Order and the DIP Documents shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superceding chapter 7 cases under the Bankruptcy Code, and the DIP Obligations, the Adequate Protection Obligations and all other rights and remedies of the DIP Agent, the DIP Lenders, the Prepetition Agents and the Prepetition Lenders granted by the provisions of the Interim Order, this Final Order and the DIP Documents shall continue in full force and effect until the DIP Obligations and Adequate Protection Obligations are indefeasibly paid in full.

18. *Effect of Stipulations on Third Parties.* The stipulations and admissions contained in the Interim Order and this Final Order, including, without limitation, in paragraph 5 of this Final Order, shall be binding upon the Debtors in all circumstances. The stipulations and admissions contained in the Interim Order and this Final Order, including, without limitation, in paragraph 5 of this Final Order, shall be binding upon all other parties in interest, including, without limitation, the Creditors' Committee, except with respect to the Adversary Proceeding and the DIP Appeal. Except as otherwise set forth in the immediately following sentence, (a) the Prepetition Secured Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Cases and any subsequent chapter 7 case, (b) the Prepetition Liens on the Prepetition Collateral shall be deemed to be legal, valid, binding, perfected and of the priority described in paragraph 4(f), not subject to recharacterization, subordination, avoidance or reduction and (c) the Prepetition

Secured Obligations, the Prepetition Liens on the Prepetition Collateral and the Prepetition Agent and the Prepetition Lenders shall not be subject to any other or further challenge by any party in interest, and any such party in interest shall be enjoined from, seeking to exercise the rights of any of the Debtors' estates regarding any such challenge, including, without limitation, any successor thereto (including, without limitation, any estate representative or a chapter 7 or 11 trustee appointed or elected for any of the Debtors). The stipulations and admissions contained in the Interim Order and paragraph 5 of this Final Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on the Creditors' Committee and on any other person or entity, except to the extent that such findings and admissions were expressly challenged in the Adversary Proceeding or the DIP Appeal.

19. *Waiver of Claims and Causes of Action Against the DIP Lenders.* Without prejudice to the rights of any other party, including any Committee (but subject to the limitations thereon in paragraphs 18 and 20), the Debtors have waived any and all claims and causes of action against the DIP Agent, the DIP Lenders, the Prepetition Agent, the Prepetition Lenders, and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors, directly related to the DIP Facility, the Interim Order, this Final Order or the negotiation of the terms of any of the foregoing.

20. *Limitation on Use of DIP Facility Proceeds and Collateral.* The Debtors shall use the proceeds of the DIP Facility and the Cash Collateral solely as provided in the Interim Order, this Final Order, the DIP Budget and in the other DIP Documents in the ordinary course of business and pursuant to orders of the Bankruptcy Court. Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings, letters of credit, Cash Collateral, Prepetition Collateral, Collateral or the Carve Out may be used to (a) object, contest or raise any

defense to, the validity, perfection, priority, extent or enforceability of any amount due under the Interim Order, this Final Order the DIP Documents or the Prepetition Credit Documents, or the liens or claims granted under the Interim Order, this Final Order, the DIP Documents or the Prepetition Credit Documents, (b) assert any Claims and Defenses or causes of action against the DIP Agent, the DIP Lenders, the Prepetition Agent, the Prepetition Lenders or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Agent's or the Prepetition Agent's assertion, enforcement or realization on the Cash Collateral or the Collateral in accordance with the DIP Facility, the Prepetition Credit Documents, the Interim Order or this Final Order, (d) seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, the Prepetition Agent or the Prepetition Lenders hereunder, under the DIP Facility or the Prepetition Credit Documents, in each foregoing case without such party's prior written consent, or (e) pay any amount on account of any claims arising prior to the Filing Date unless such payments are (i) approved by an Order of this Court and (ii) in accordance with the terms of the DIP Documents.

21. *Termination Date.* Pursuant to the DIP Documents, the DIP Facility shall mature and the DIP Obligations shall be due and payable in immediately available funds, without notice or demand, on the earlier of (a) April 23, 2009, (b) the effective date of the Plan (as defined below), (c) upon any sale of substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code, and (d) at the sole discretion of the DIP Lenders, upon the occurrence and continuation of an Event of Default under the DIP Documents.

22. *No Obligation to Extend Credit.* The DIP Agent and the DIP Lenders shall not have any obligation to make any loan or advance under the DIP Documents unless all of the conditions precedent to the making of such extension of credit under the DIP Documents, the

Interim Order and this Final Order have been satisfied in full or waived by the DIP Lenders in accordance with the DIP Documents.

23. *Insurance Policies.* As of the date of entry of the Interim Order, the DIP Agent (for the benefit of the DIP Lenders) have been, and have been deemed to be, without any further action or notice, named as an additional insured and loss payee on each insurance policy maintained by the Debtors which in any way relates to the Collateral. The Debtors are authorized and directed to take any action necessary to have the DIP Agent added as an additional insured and loss payee on each insurance policy.

24. *Indemnification.* The Debtors are obligated to indemnify and hold harmless the DIP Agent and the DIP Lenders and their respective directors, officers, agents, subsidiaries, affiliates, successors, assigns and professionals in their respective capacities as such, from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of action and reasonable costs and expenses incurred, suffered, sustained or required to be paid by an indemnified party of every nature and character arising out of or related to the DIP Documents or the DIP Facility, the Interim Order and this Final Order, except to the extent resulting from such indemnified party's gross negligence or willful misconduct as determined by a final non-appealable order of a court of competent jurisdiction.

25. *Nullifying Prepetition Restrictions on Postpetition Lien Grants.* Notwithstanding anything to the contrary contained in any prepetition agreement, contract, lease, document, note or instrument to which any Debtor is a party or under which any Debtor is obligated, any provision that restricts, limits or impairs in any way any Debtor's ability or right to grant liens or security interests upon any of the Collateral (including, among other things, any anti-lien granting or anti-assignment clauses in any leases or other contractual arrangements to which any

Debtor is a party) under the DIP Documents, the Interim Order or this Final Order or otherwise enter into and comply with all of the terms, conditions and provisions thereof (all such provisions being collectively referred to as the “**Restrictive Clauses**”) shall not be effective and shall be unenforceable against any such Debtor, the DIP Agent and the DIP Lenders to the maximum extent permitted under the Bankruptcy Code and other applicable law, but only with respect to the entry of the Interim Order and this Final Order granting such postpetition financing, and, therefore, shall not adversely affect the validity, priority or enforceability of the liens, security interests, claims, rights, priorities and/or protections granted to the DIP Agent or the DIP Lenders pursuant to the Interim Order, this Final Order and/or the DIP Documents or any of the rights of the DIP Agent or the DIP Lenders hereunder or thereunder to the maximum extent permitted under the Bankruptcy Code and other applicable law. Such Restrictive Clauses shall not, to the maximum extent permitted under the Bankruptcy Code and applicable law, render any contract or lease unable to be assumed and/or assigned by any Debtor (or by the DIP Agent or the DIP Lenders pursuant to the provisions contained in the Interim Order and this Final Order), or in any way impair or limit the ability or right of any Debtor (or by the DIP Agent or the DIP Lenders, on behalf of any Debtor, pursuant to the provisions contained in the Interim Order and this Final Order) to assume and/or assign any contract or lease under sections 365 or 1123 of the Bankruptcy Code.

26. *Chapter 11 Process.* The Debtors shall take, or cause to be taken, the following actions within the time periods set forth in this paragraph 26:

(a) not later than February 10, 2009, the Debtors shall file: (i) a motion for an order approving bid procedures, which bid procedures have been mutually agreed between the Debtors and the Requisite Lenders; provided that the Requisite Lenders shall not unreasonably

withhold their agreement, (the “**Bid Procedures**”) with respect to the proposed sale of substantially all of the Debtors’ assets under section 363 of the Bankruptcy Code to a potential stalking horse bidder or other successful bidder and scheduling an auction for such sale; and (ii) a motion for an order authorizing and approving the proposed sale of substantially all of the Debtors’ assets under section 363 of the Bankruptcy Code to the stalking horse bidder or other successful bidder;

(b) not later than March 4, 2009, the Debtors shall obtain Court approval of the Bid Procedures;

(c) not later than March 23, 2009, the Debtors shall conduct an auction in accordance with the Bid Procedures to determine the winning bidder; and

(d) not later than March 24, 2009, the Debtors shall obtain Court approval of the sale of substantially all of their assets.

All time periods set forth in this paragraph 26 shall not be extended absent the agreement of the Debtors and the Requisite Lenders. Failure by the Debtors for any reason to perform or take any of the actions described in this paragraph 26 within the time periods set forth in this paragraph 26 (or as otherwise mutually agreed to by the Debtors and the Requisite Lenders as provided above) shall constitute an Event of Default under the DIP Facility.

27. *Collateral Rights.* Until all of the DIP Obligations shall have been indefeasibly paid and satisfied in full in immediately available funds and without further order of the Court: in the event that any party who holds a lien or security interest in any of the Collateral that is junior and/or subordinate to the liens and claims of the DIP Agent and the DIP Lenders in such Collateral receives or is paid proceeds of the Collateral prior to the indefeasible payment and satisfaction in full of all Obligations, such junior or subordinate lienholder shall be deemed to

have received, and shall hold, such Collateral proceeds in trust for the DIP Agent and the DIP Lenders and shall immediately turnover to the DIP Agent such proceeds for application to the DIP Obligations in accordance with the DIP Documents, the Interim Order and/or this Final Order.

28. *Proofs of Claim.* The DIP Agent and the DIP Lenders shall not be required to file proofs of claim in any of the Cases for any claim allowed herein.

29. *No Direct Obligation to Pay Professional Fee and Disbursements.* Neither the DIP Agent nor any DIP Lender shall be responsible for the payment or reimbursement of any fees or disbursements of any professional retained by the Debtors or the Creditors' Committee in the Cases pursuant to sections 327, 328 or 1103(a) of the Bankruptcy Code.

30. *DIP and Other Expenses.* The Debtors are authorized to pay without the need of any further approval by this Court all reasonable out-of-pocket expenses of the DIP Agent and the DIP Lenders in connection with the DIP Facility, including, without limitation, legal, accounting, collateral examination, monitoring and appraisal fees, financial advisory fees, fees and expenses of any other consultants and indemnification and reimbursement of fees and expenses.

31. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of the Interim Order and this Final Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Agent, the DIP Lenders, the Prepetition Agent, the Prepetition Lenders, any Committee, and any of the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary hereafter appointed as a legal

representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, DIP Lenders, the Prepetition Agent, the Prepetition Lenders and the Debtors and each of their respective successors and assigns; *provided, however*, that the DIP Lenders shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estate of any of the Debtors.

32. *Limitation of Liability.* In determining to make any loan under the DIP Documents or in exercising any rights or remedies as and when permitted pursuant to the Interim Order, this Final Order or the DIP Documents, the DIP Agent and the DIP Lenders shall not be deemed to be in control of the operations of any of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of any of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.* as amended, or any similar federal or state statute); *provided, however*, that the foregoing shall not apply to any claim asserted under I.R.C. §3505 and/or I.R.C. §6673. Furthermore, nothing in the Interim Order, this Final Order or in the DIP Documents related to this transaction shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent or the DIP Lenders any liability for any claims arising from the pre-petition or post-petition activities by any of the Debtors and their affiliates (as defined in section 101(2) of the Bankruptcy Code) in the operation of their businesses, or in connection with their restructuring efforts.

33. *Right of Access and Information.*

(a) The Debtors shall permit representatives, agents and/or employees of the DIP Agent to have reasonable access to their premises and their records during normal business hours (without unreasonable interference with the proper operation of the Debtors’ businesses)



and shall cooperate, consult with, and provide to such persons all such non-privileged information as they may reasonably request.

(b) Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Agent or the DIP Lenders contained in the Interim Order, this Final Order or the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Documents, upon written notice to the landlord of any leased premises that a default has occurred and is continuing under the DIP Documents, the DIP Agent may, subject to any separate agreement by and between such landlord and the DIP Lenders, enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to Collateral located thereon and shall be entitled to all of the applicable Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder, provided that the DIP Agent (on behalf of the DIP Lenders) shall only pay rent and additional rent obligations of the Debtors that first arise after the DIP Agent's written notice referenced above and that are payable during the period of such occupancy by the DIP Agent, calculated on a *per diem* basis. Other than the payment obligation contained in this paragraph, neither the DIP Agent nor the DIP Lenders shall be required to perform any of the Debtors' obligations under any lease as a condition to the rights afforded to the DIP Agent or the DIP Lenders in this paragraph. Furthermore, any title, landlord's lien, right of distraint or levy, security interest or other interest that any landlord or mortgagee may have in any Collateral of the Debtors located on such leased premises, to the extent the same is not void under section 545 of the Bankruptcy Code, is hereby expressly subordinated to the liens of the DIP Lenders in such Collateral.

34. *Conflicting Provisions.* Unless otherwise provided in this Final Order, to the extent the terms and conditions of the DIP Documents or the Interim Order are in conflict with

the terms and conditions of this Final Order, the terms and conditions of this Final Order shall control.

35. *Effectiveness.* This Final Order shall constitute findings of fact and conclusions of law and, notwithstanding the possible application of Bankruptcy Rule 6004(h), shall take effect immediately upon execution hereof and not be stayed absent the grant of such stay under Bankruptcy Rule 8005 after a hearing upon notice to the Debtors and the DIP Lenders.

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