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9 RCR Plumbing and Mechanical, Inc.

10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 RIVERSIDE DIVISION

13 In re
14 RCR PLUMBING AND MECHANICAL
15 INC., a California corporation,
16 Debtor-in-Possession.

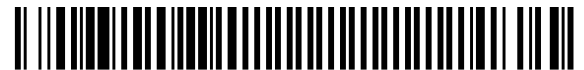
Case No. 6:11-bk-41853 WJ

Chapter 11

AMENDED STIPULATION FOR ORDER
AUTHORIZING DEBTOR'S FINAL USE
OF CASH COLLATERAL (OCTOBER 12,
2011 THROUGH AUGUST 31, 2012)

Date: February 7, 2012
Time: 1:00 p.m.
Ctrm.: Courtroom 302
United States Bankruptcy Court
3420 Twelfth Street
Riverside, CA 92501

22
23 RCR Plumbing and Mechanical, Inc. (the "Debtor"), the debtor and debtor-in-possession
24 in the above captioned case (the "Case"), PNC Bank, National Association ("Lender"), and the
25 Official Committee of Unsecured Creditors (the "Committee"), through their respective counsel
26 of record, hereby stipulate to the Debtor's final use of cash collateral in connection with the
27 Debtor's *Emergency Motion for Order (1) Authorizing Use of Cash Collateral and (2)*
28 *Compelling Turnover of Estate Funds* filed on October 12, 2011 [Docket No. 7] (the "Motion"),



1 on the terms and conditions set forth below, and subject to the entry of a Court order approving
2 this stipulation:

3 SECTION 1. Authorization and Conditions to Use of Cash Collateral.

4 1.1 Motion Granted. The Motion is granted on a final basis as set forth herein pursuant
5 to Rule 4001(b) of the Federal Rules of Bankruptcy Procedure.

6 1.2 Authorization to Use Cash Collateral. Pursuant to the terms and conditions of this
7 Stipulation and upon entry of an order approving this Stipulation (the "Final Order"), Debtor is
8 authorized to use cash collateral (the "Cash Collateral") on a final basis, as follows:

9 1.2.1 Expiration Date. Debtor is authorized to use Cash Collateral during the
10 period (the "Operative Period") terminating on the earlier of the following dates, (the "Expiration
11 Date"): (a) August 31, 2012; or (b) the Date of Default (as defined herein). The Operative Period
12 may be extended pursuant to consent by Lender in writing or as ordered by the Court.

13 1.2.2 Final Approval of Prior Cash Collateral Use. Debtor's prior interim use of
14 Cash Collateral during the period of time after the Petition Date¹ through February 7, 2012 (the
15 "Prior Interim Period"), in accordance with the Court-approved cash collateral budgets for the
16 Prior Interim Period [Docket Nos. 24, 69, 156, 178, 193, 212, and 228] and the Court's entered
17 orders governing the Prior Interim Period [Docket Nos. 27, 70, 157, 180, 194, 213, and 234] (and
18 a pending order lodged on January 31, 2012), is approved on a final basis.²

19 1.2.3 Budget. Debtor is authorized to use Cash Collateral solely to pay the
20 expenses for the period of February 7, 2012 through the Expiration Date set forth on the budget
21 attached hereto as Exhibit A (as amended as provided herein, the "Budget"), to the extent actually
22 incurred by Debtor for its business operations during the Case, and not to exceed the amounts set
23

24 ¹ Capitalized terms not expressly defined herein shall have the meanings ascribed to them in the Motion.

25 ² To the extent that any fees and expenses incurred by counsel for the Committee or counsel for Debtor during the
26 Prior Interim Period were not provided for in the budget(s) filed with the Court during the Prior Interim Period,
27 nothing in this Stipulation shall be construed to prejudice the respective right of the Committee, Debtor or such
28 counsel to assert a claim for or seek allowance and payment of such additional fees and expenses, if any. Debtor,
Lender, and Committee shall not object to any such claim on the grounds that the fees and expenses were not
provided for in the budget(s) filed with the Court during the Prior Interim Period. Debtor, Lender, and Committee
otherwise reserve all rights and this provision shall not be construed as consent by Lender for use of Cash Collateral
for such fees and expenses.

1 forth in the Budget by more than ten percent (10%) in the aggregate (the "Variance")³;
2 notwithstanding the foregoing, the Variance applicable for payment to trade creditor(s) supplying
3 goods or services to the Debtor after the Petition Date shall be fifteen percent (15%) in the
4 aggregate or greater with Lender's written consent, and any budget savings during any given
5 month may be applied to future months during the budgeted period. Debtor is further authorized
6 to use Cash Collateral to pay any expenses actually incurred by Debtor for its business operations
7 during the Prior Interim Period that become due and payable during the Operative Period,
8 provided and to the extent such expenses are consistent with the Court-approved cash collateral
9 budget for the Prior Interim Period [Docket Nos. 24, 69, 156, 178, 193, 212, and 228].⁴ The
10 Budget may be amended or extended only by written agreement of Debtor and Lender, or by
11 further order of the Court. Notwithstanding anything herein to the contrary, provided Debtor has
12 satisfied the Reserve Requirement (as defined below),⁵ Debtor shall be authorized to use Cash
13 Collateral to pay fees and costs of Professionals (as defined below) employed by the estate in
14 amounts in excess of those provided in the Budget subject to further Court order allowing and
15 authorizing payment of such fees and costs; provided, however, Lender reserves all rights to
16 object to the allowance and/or payment of such fees and costs.

17 1.2.4 Limitation on Authority. Notwithstanding any other term of this Order,
18 during the Operative Period and subject to further Court order, Debtor shall not and is not
19 authorized to use Cash Collateral relating to:

20 (a) Except as otherwise provided in this Stipulation or the Final
21 _____

22 ³ For avoidance of doubt, the Variance applies solely to "Operating Disbursements" as set forth in the Budget and not
23 to other matters, including but not limited to earnings, income or the Carve Out (defined below). Moreover, with
24 respect to the expenditures in the Budget under the expense line item "Job Materials," any payments or
25 disbursements made to vendors through the "joint-check process" shall not be considered in determining or
26 calculating the Variance from such expenditures or whether actual expenditures exceed such expenditures.

27 ⁴ To the extent that any fees and expenses incurred by counsel for Debtor or counsel for the Committee are not
28 provided for in the Budget, nothing in this stipulation shall be construed to prejudice the respective rights of Debtor,
the Committee, or such counsel to assert a claim for or seek allowance and payment of such fees and expenses.
Debtor, Lender, and Committee shall not object to any such claim on the grounds that the fees and expenses were not
provided for in the Budget. Debtor, Lender, and Committee otherwise reserve all rights and this provision shall not
be construed as consent by Lender for use of Cash Collateral for such fees and expenses.

⁵ The "Reserve Requirement" shall be satisfied when: (a) Debtor has fully funded the Maximum Reserve Amount
(as defined below); and (b) no portion of the Maximum Reserve Amount is subject to release pursuant to Section
2.4.2(e) of this Stipulation or otherwise to any party other than Lender.

1 Order, to pay any fee or cost incurred by any professional in connection with or relating to
2 the following (other than in connection with or relating to the Motion) (collectively, the
3 “Prohibited Matters”): (i) any challenge or dispute of any claim, obligation, lien or interest
4 asserted by or in favor of Lender, (ii) any claim or assertion against any Lender, (iii) any act
5 that would delay enforcement of any right or remedy by Lender other than to contest any
6 default(s) as provided in Section 5.2.1 below, or (iv) any act that could have the effect of
7 adversely modifying or compromising the rights and remedies of Lender or that could be
8 contrary to any term or condition set forth in or acknowledged by the Loan Documents or
9 this Order;⁶ provided, however, that upon Debtor’s satisfaction of the Reserve Requirement,
10 there shall be no prohibition on Debtor using Cash Collateral to pay fees and costs of
11 Professionals incurred in connection with Prohibited Matters subject to further Court order
12 allowing and authorizing payment of such fees and costs; provided, however, Lender
13 reserves all rights to object to the allowance and/or payment of such fees and costs; and

14 (b) to pay any obligation owed to any party (other than to Lender)
15 on account of or relating to services and/or product provided prior to the Petition Date,
16 including without limitation (i) obligations relating to the provision or sale of goods
17 provided to Debtor on consignment or bailment, or (ii) obligations on account of purchase
18 orders that were provided by Debtor prior to the Petition Date, unless otherwise agreed to by
19 Lender which consent shall not be unreasonably withheld. Notwithstanding the foregoing,
20 subject to providing Lender with written notice at least 24 hours in advance, which notice
21 may be provided by email to Lender’s counsel, J. Alexandra Rhim at Buchalter Nemer, A
22 P.C., suppliers with valid mechanic’s lien or payment bond claims may receive payment to
23 the extent necessary to avoid a breach of the applicable subcontract.

24 1.2.5 Procedure for Use of Cash Collateral. All Cash Collateral, now or hereafter

25 _____
26 ⁶ For avoidance of doubt, nothing herein shall prejudice the right of Debtor to use Cash Collateral to pay fees and
27 costs incurred for pursuing the Prohibited Matters after the Operative Period upon further Court order allowing and
28 authorizing payment of such fees and costs, even if such fees and costs were incurred during the Operative Period.
Such reservation of rights shall not be construed as consent by Lender for use of Cash Collateral for such fees and
expenses.

1 in possession of Debtor shall be deposited by Debtor into the Reserve Account (as defined herein)
2 and the Debtor's bank accounts established at Wells Fargo Bank pursuant to the United States
3 Trustee Guidelines (collectively, the "CC Account"), and shall be subject to Secured Creditors'⁷
4 liens (to the same extent, validity, and priority as any duly perfected and unavoidable liens in the
5 Debtor's prepetition deposit accounts held by the respective Secured Creditors as of the Petition
6 Date) and the Postpetition Lien (as defined herein) as provided for in Section 2 of this Order.
7 Lender agrees to immediately remit to Debtor any payments it receives from Debtor's customers
8 or vendors on or after the Petition Date, which amounts the Debtor shall immediately deposit into
9 the CC Account. Debtor's authorization to use Cash Collateral in the CC Account, Reserve
10 Account and the PNC DIP Accounts is expressly limited by the terms of this Stipulation as may
11 be modified by written agreement between Lender and Debtor, or by further Court order.

12 **SECTION 2. Adequate Protection.**

13 **2.1 Postpetition Liens.**

14 **2.1.1 Postpetition Lien Granting.** Secured Creditors shall have and are each
15 hereby granted by Debtor, effective as of the Petition Date, a "replacement lien" pursuant to
16 sections 361 and 363(e) (a "Postpetition Lien") in all prepetition and postpetition assets whether
17 tangible or intangible, whether by contract or operation of law, and including all profits and
18 proceeds thereof (collectively, the "Collateral") (i) to the extent Debtor holds an interest in such
19 Collateral, and (ii) to the same extent, validity, and priority as any duly perfected and unavoidable
20 liens in such Collateral held by the respective Secured Creditors as of the Petition Date, and only
21 to the extent that any Cash Collateral of the respective Secured Creditors is actually used by the
22 Debtor and the Secured Creditors suffer a diminution in the value of their prepetition Collateral as
23 of the Petition Date. Notwithstanding anything herein to the contrary, the Postpetition Liens
24 granted herein shall not extend to claims or causes of action possessed by the Debtor's

25 _____
26 ⁷ The term "Secured Creditors" shall refer jointly to Lender and the Robert C. Richey Family Trust UAD 1/20/97 (the
27 "Richey Family Trust"), which asserts a lien on certain of Debtor's assets. By entering into this Stipulation, Lender
28 does not concede to the extent, validity or priority of the interests asserted by the Richey Family Trust. Similarly,
notwithstanding the Committee's execution of this Stipulation, the Committee reserves all rights to object to or
otherwise challenge the extent, validity, priority, enforceability, or amount of the liens, claims or interests asserted by
Lender and/or the Richey Family Trust.

1 bankruptcy estate under 11 U.S.C. §§ 544, 545, 547, 548, 549, 550, 551, 553(b), 723(b), or
2 724(a), or the proceeds therefrom.

3 2.1.2 Postpetition Lien Priority. With the exception of the limited lien(s) granted
4 by Debtor in certain unearned insurance premiums and related amounts pursuant to the entered
5 order granting the Debtor's motion for approval of premium financing on a final basis [Docket
6 No. 117] (the "Premium Finance Order"), the Postpetition Lien in favor of each of Secured
7 Creditors shall be senior in priority to any and all prepetition and postpetition claims, rights, liens
8 and interests, but subject only to any lien or security interest that is valid, perfected and senior to
9 the respective interests of the Secured Creditors effective as of the Petition Date and not
10 otherwise avoided and preserved under section 551 of the Bankruptcy Code. The respective
11 Postpetition Liens of the Secured Creditors relative to each other shall have the same priority as
12 the prepetition lien to which such Postpetition Lien relates.

13 2.1.3 Postpetition Lien Perfection. This Order constitutes sufficient and,
14 conclusive evidence of the granting, attachment, priority, perfection, and validity of the
15 Postpetition Lien, effective as of the date and time of entry of this Order, without any further act
16 required under federal, state, or local law requiring notice, filing, registration, recording,
17 possession or other act to validate or perfect a security interest or lien, including without
18 limitation deposit account control agreements, merchant payment agreements, merchant payment
19 direction letters, cash transport agreements, and such other agreements with any party possessing
20 or asserting an interest in the Collateral (a "Perfection Act"). Notwithstanding the foregoing, if
21 Lender, in its sole discretion, elects to effectuate a Perfection Act, Lender is authorized to
22 perform such act, and if requested by Lender, Debtor is authorized to perform such act to the
23 extent necessary or required, and in such event, the subject filing or recording office or agency is
24 authorized to accept, file, and/or record any document in regard to such act in accordance with
25 applicable law. No defect or failure in connection with an attempt to perform a Perfection Act
26 shall limit, waive, or alter the validity, enforceability, attachment, or perfection of the Postpetition
27 Lien by virtue of entry of this Order.

28 2.2 Letters of Credit Fees. Debtor shall timely pay from Cash Collateral all non-

1 default fees and charges related to any letter of credit issued by Lender and as provided for under
2 the loan documents in the approximate amount of \$49,000 per quarter as such amounts become
3 due and payable. Lender retains any right to seek reimbursement from Debtor for any draws on
4 letters of credit issued by Lender, and Debtor and the Committee retain any and all rights to
5 oppose the same.

6 2.3 Amended Budget. By no later than February 3, 2012, Debtor shall provide Lender
7 and Committee with an amended budget for the time period from June 1, 2012 through and
8 including August 31, 2012, which shall include the type and categories of information contained
9 in the Budget (the "Amended Budget"). Subject to Lender's consent to the Amended Budget, all
10 references to the Budget in this Stipulation and Final Order shall apply equally to the Amended
11 Budget and the Amended Budget may be filed with the Court and served on the Secured
12 Creditors' respective counsel and counsel for the Committee by no later than February 6, 2012.

13 2.4 Reserve Funds.

14 2.4.1 PNC DIP Accounts. Subject to further Court order and Section 2.4.2
15 below, Debtor is not authorized to use funds aggregating approximately \$683,400 (as of the
16 Petition Date) (the "Prior Reserve Amounts") contained in debtor-in-possession bank accounts at
17 PNC (as authorized by the interim order entered on October 14, 2011 [Docket No. 27]) (the "PNC
18 DIP Accounts"). The PNC DIP Accounts shall be blocked accounts subject to further Court order.
19 The PNC DIP Accounts and the funds contained therein shall also be subject to a reservation of
20 all of Lender's and Debtor's respective rights, interests, remedies, and benefits. Subject to Section
21 2.4.2 below, the establishment of the PNC DIP Accounts is without prejudice to any party's right
22 to seek turnover in the future of the proceeds in the PNC DIP Accounts, nor to any defense to
23 Lender's rights to the funds in the PNC DIP Accounts.

24 2.4.2 Adequate Protection Fund. During the Operative Period, commencing with
25 February 2012 and each month thereafter, Debtor shall transfer amounts (as calculated pursuant
26 to subparagraph (a) immediately below) (the "Reserve Amounts") to a segregated blocked bank
27 account established with Lender to be named the "RCR - PNC Collateral Account" (the "Reserve
28 Account") as set forth below and subject to the following terms and conditions:

1 (a) The Reserve Amounts transferred on a monthly basis during
2 the Operative Period, beginning with February 2012, shall equal the following amount as
3 determined on the last business day of each month: (a) Debtor's aggregate cash on hand (not
4 to include the Prior Reserve Amounts or Reserve Amounts in the Reserve Account) on the
5 last business day of the month; minus (b) the product of the amount of Debtor's aggregate
6 postpetition liabilities for such month multiplied by a factor of 1.20; provided, further, such
7 postpetition liabilities shall not include amounts delineated as "Billings in Excess of
8 Earnings" in Debtor's "Balance Sheet (Accrual Basis Only)" (filed as part of Debtor's
9 Monthly Operating Reports) for that particular month;

10 (b) For each month during the Operative Period, beginning with
11 February 2012, the Reserve Amounts, if any, will be transferred by the Debtor to the
12 Reserve Account for Lender's benefit by no later than the tenth (10th) calendar day with
13 respect to each preceding month;

14 (c) Notwithstanding anything to the contrary in this Stipulation,
15 by no later than February 10, 2012, Debtor shall transfer the Prior Reserve Amounts into the
16 Reserve Account and such funds shall be governed by the terms and conditions in this
17 Stipulation pertaining to the Reserve Account.

18 (d) The Reserve Account shall be funded up to the amount of the
19 outstanding irrevocable standby letters of credit (ref. nos. 18109801-00-000 and 18109802-
20 00-000) issued by Lender in favor of Ace American Insurance Co. and Arch Insurance Co.
21 (collectively, the "Insurance Companies"), respectively, which collectively total
22 approximately \$4,828,000 (collectively, the "Letters of Credit"); it is expected that the
23 Reserve Account will be funded in accordance with the projected amounts in the Budget
24 and that, by August 31, 2012, the Reserve Account will be funded in full up to \$4,828,000,
25 or, upon the entry of a final non-appealable Court order fixing the aggregate amount of the
26 Potential Claims (as defined below) or otherwise establishing that amounts less than
27 \$4,828,000 can be drawn against the Letters of Credit, then up to such lesser amount as
28 determined by such Court order (the "Maximum Reserve Amount").

1 (e) In the event Debtor has insufficient funds to pay the expenses
2 set forth in the Budget in the ordinary course, a portion of the Reserve Amounts (after
3 excluding the Prior Reserve Amounts) equal to such shortfall shall be released to Debtor
4 within two business days of a written request by Debtor⁸ (together with Debtor's calculation
5 of the amount of the Equity Cushion (as defined herein)); provided, however, in no event
6 shall any portion of the Reserve Amounts be released to Debtor to pay expenses as provided
7 herein if such release will cause the equity cushion in favor of Lender (the "Equity
8 Cushion") to be below 115%; the Equity Cushion shall be calculated by dividing (A) the
9 sum of (i) the amount of Debtor's cash on hand including the Prior Reserve Amounts and
10 the Reserve Amounts; (ii) accounts receivable; and (iii) inventory⁹; less (iv) any claims,
11 interests or liens against the foregoing assets that are senior in priority to Lender's liens and
12 security interests; by (B) the Maximum Reserve Amount;

13 (f) With respect to each Letter of Credit,¹⁰ Debtor shall in good
14 faith evaluate whether a meritorious motion could be filed (or proceeding be initiated) to fix
15 or estimate (and not for mere plan voting or other limited purpose) the maximum amount of
16 any draws under such Letter of Credit that could be sought (the "Potential Claims");
17 provided, however, Debtor may file such motion without the consent of Lender or the
18 Committee; provided, further, pending a further written agreement among Debtor and
19 Lender, or entry of a final non-appealable Court order fixing or estimating (and not for mere
20 plan voting or other limited purpose) the amount of the Potential Claims, the procedures in
21 this Stipulation shall continue to govern the Reserve Amounts and the Reserve Account;

22 _____
23 ⁸ In the event a dispute arises regarding the amount to be released, any disputed amounts shall be retained in the
24 Reserve Account and released subject to further agreement between Debtor and Lender or further Court order. Any
25 undisputed amounts can be released pursuant to Section 2.4.2(e). In the event a Court order is required, Debtor and
26 Lender agree that they shall be entitled to an expedited court hearing. The Committee reserves all rights in
27 connection with any such dispute.

28 ⁹ The sum of the value of the foregoing assets shall include amounts delineated as "Costs & Earnings in Excess of
Billings" as reported in Debtor's Monthly Operating Reports, and the value of the foregoing assets shall be
determined in accordance with Debtor's postpetition practices as reflected in its Monthly Operating Reports.

¹⁰ Upon receipt of any requests for draws on the Letters of Credit, Lender shall promptly notify the Debtor and
counsel for the Committee in writing (with email to be sufficient) with complete copies of all documents presented to
Lender in connection with such requests. Debtor and the Committee reserve the right to seek an order challenging
the rights of the Insurance Companies to make such draws on the Letters of Credit.

1 notwithstanding the foregoing, nothing contained herein shall prejudice the rights of the
2 Committee or other party in interest to file such a motion to the extent permitted under the
3 Bankruptcy Code or applicable law;

4 (g) Except for any sums released to the Debtor pursuant to
5 Section 2.4.2(e) or Section 2.4.2(h), the Prior Reserve Amounts and the Reserve Amounts
6 shall be held in the Reserve Account for Lender's benefit for purposes of adequate
7 protection pending further Court order;

8 (h) Debtor reserves all rights to confirm a chapter 11 plan that
9 supersedes the terms of this Stipulation. Debtor also maintains the right, upon order of the
10 Court, to replace the Letters of Credit with substitute letters of credit issued by another
11 financing source, in which event Lender will release the Prior Reserve Amounts and
12 Reserve Amounts to the Debtor free and clear of any liens, interests, claims, or
13 encumbrances of any kind or nature whatsoever, subject to Lender's receipt of releases from
14 Debtor and the estate, which releases shall be reasonably satisfactory to Lender and Debtor,
15 and satisfaction of its allowed secured claim pursuant to section 506(b) and otherwise under
16 the Bankruptcy Code; notwithstanding the foregoing, the Committee reserves all rights in
17 connection with this Section 2.4.2(h); and

18 (i) As further adequate protection, commencing no later than
19 May 31, 2012, and provided there has been a draw against either Letter of Credit and
20 provided that no timely Lender Claim Objection is pending, Debtor shall file a motion or
21 application seeking an order of the Court authorizing Lender to apply the Reserve Amounts
22 in the Reserve Account to satisfy obligations owed to Lender on account of such draw(s) in
23 accordance with the loan documents; notwithstanding the foregoing, the Committee
24 reserves all rights in connection with this Section 2.4.2(i).

25 2.5 Payment of Interest and Fees. Debtor shall be liable for all interest, reasonable
26 attorney fees and other costs of Lender, which shall continue to accrue under the loan documents,
27 if and to the extent Debtor is liable for such interest, attorney fees and other costs of Lender under
28 the Bankruptcy Code, including, without limitation, section 506(b), and any other applicable law.

1 SECTION 3. Representations; Covenants; and Waivers.

2 3.1 Reporting. Debtor shall timely provide Lender and counsel for the Committee,
3 subject to the provisions of the Confidentiality Agreement being entered into between the Debtor
4 and the Committee, with: (a) a detailed status report or verbal update from information readily
5 ascertainable without undue burden on Debtor or Debtor's employees regarding projects, and
6 regarding any progress billing, schedule regarding completion, tasks for completion, estimated
7 completion dates, payment projections, and budget (if one exists) with all such reports or verbal
8 updates provided each Wednesday for such preceding week; (b) a weekly report furnished each
9 Wednesday for such preceding week (i) comparing collections and expenditures to those set forth
10 in the Budget with such information; and (ii) listing all accounts receivable, cash (in detail by
11 account) and inventory and equipment; (c) by the 10th day of each month, the work in progress
12 and progress billing report in the form and substance consistent with Debtor's pre-petition
13 practice; (d) reporting in accordance with prepetition procedures as required under the loan
14 documents; and (e) furnish information and reasonable access to and copies of all settlement
15 agreements and other documents (as reasonably requested by Lender) evidencing any liability
16 under insurance policies that would give rise to a potential draw under any letter of credit issued
17 by Lender.

18 3.2 Access to Premises. Upon the reasonable request of Lender, Debtor shall permit
19 Lender or its consultant reasonable access to any premises occupied by Debtor for the purpose of
20 enabling Lender to inspect and audit the Collateral and Debtor's books and records.

21 3.3 Insurance. Debtor shall maintain at all times casualty and loss insurance coverage
22 of the Collateral in compliance with the United States Trustee Guidelines and in an amount
23 reasonably acceptable to Lender to sufficiently cover Lender's interests in the Collateral. Such
24 insurance shall specifically include Lender as a loss payee and additional insured. Lender
25 consents to the use of Cash Collateral to make the payments required by the Premium Finance
26 Order.

27
28

1 3.4 No Offsets or Return to Vendor. Debtor shall not permit any offset or return of
2 any Collateral to any vendor, consignor or any other party outside the ordinary course of business
3 without the consent of Lender.

4 3.5 Further Assurances. Debtor is authorized and shall perform all acts and execute
5 and deliver to Lender all agreements, financing statements, instruments and documents as may be
6 reasonably requested by Lender to effectuate the terms of this Stipulation and Final Order or as
7 contemplated under this Stipulation and Final Order.

8 SECTION 4. Debtors Waivers, Consents and Releases.

9 4.1 Debtor's Waivers. Solely during the Operative Period, Debtor waives any rights
10 that it may have to (a) use Cash Collateral pursuant to section 363 of the Bankruptcy Code during
11 the Operative Period on terms other than those set forth in this Stipulation and Final Order, except
12 pursuant to further order of the Court; (b) with the exception of the Premium Finance Lien or
13 other premium financing to which Lender consents, incur financing or indebtedness during the
14 Operative Period from any party other than Lender that includes the granting by Debtor of liens,
15 claims or interests in favor of such other party that are senior or pari passu with the liens, claims
16 and interests in favor of Lender; or (c) object to, contest or seek to reduce any claim or lien in
17 favor of Lender.

18 4.2 Section 506(c) Waiver. Except as provided in Section 4.3 below, no costs or
19 expenses of administration incurred during only the Operative Period shall be charged against
20 Lender or the Collateral pursuant to sections 105, 506(c), 552(b) (with respect to the Court's
21 ability to order otherwise as provided in such section), or any similar principle of law, without the
22 prior written consent of Lender, and no such consent shall be implied from any other action,
23 inaction or acquiescence by Lender.

24 4.3 Carve Out for Professionals.

25 4.3.1. Upon the Expiration Date and resulting termination of Debtor's rights to
26 use Cash Collateral, any and all liens, interests, and claims in favor of Lender and any and all
27 assets that may be encumbered by or subject to such liens, interests, or claims, shall be subject to,
28 subordinate, and junior to the claims and rights of payment relating to fees and costs incurred by

1 Debtor's retained professionals including Weiland, Golden, Smiley, Wang Ekvall & Strok, LLP,
2 BSW & Associates, Sidley Austin, LLP, Oliva & Associates, ALC (excluding Kurtzman Carson
3 Consultants, LLC), and the Committee's retained professionals including Venable LLP and Bryan
4 Cave, LLP, and any other attorneys, accountants, investment bankers, consultants, brokers, and
5 any other professional, person, or entity retained by Debtor and/or the Committee, and whose
6 employment applications are approved by the Court under sections 327, 330 or 1103(a) (each, a
7 "Professional" and collectively, the "Professionals"),¹¹ (A) up to a cumulative aggregate sum of
8 \$275,000.00 for any unpaid and allowed fees and costs incurred by such Professionals during the
9 Prior Interim Period or the Operative Period through the Expiration Date, plus (B) the amount of
10 Cash Collateral budgeted but not paid for such Professionals, including accrued but unpaid fees
11 and expenses incurred during the Prior Interim Period and the Operative Period (exclusive of any
12 fees and expenses disallowed by the Court) with such budgeted amounts prorated for the
13 applicable period¹² through the Expiration Date (the "Carve Out").

14 4.3.2. The cash collateral budget to date, and the Budget and Amended Budget,
15 are premised upon the application by a Professional holding any retainer to first satisfy such
16 Professional's respective unpaid allowed fees and costs from such retainer. Also, to the extent a
17 Professional holds a retainer, such Professional holding a retainer must apply the remaining
18 balance of its respective retainer before participating in a distribution from the Carve Out. No
19 Professional holding a retainer shall apply such retainer towards unpaid fees and
20 expenses without further order of the Court allowing such fees and costs. The Carve Out shall
21 survive confirmation of a chapter 11 plan or conversion or dismissal of the bankruptcy case.

22 4.3.3. The subordination of Lender's liens and administrative expense priority to
23 the Carve Out shall not apply to any compensation and expense reimbursement incurred (1)
24 preventing, hindering or delaying Lender's enforcement or realization upon any of the collateral

25 _____
26 ¹¹ For avoidance of doubt, delineation of any particular Professional shall not be construed as consent by Lender for
the payment of such Professional's fees and costs from Cash Collateral or the Carve Out in connection with matters
prohibited by this Stipulation.

27 ¹² For calculation of the Carve Out, the budgeted amounts shall be those amounts budgeted (in the Budget or
28 Amended Budget) pursuant to Lender consent and are unpaid for the months up to the Expiration Date and shall be
further pro-rated for the month in which the Expiration Date occurs.

1 once an Event of Default (as defined below) has occurred, other than to contest any default(s) as
2 provided in Section 5.2.1., (2) using or seeking to use Cash Collateral or selling any other
3 collateral without Lender's consent, (3) incurring indebtedness without Lender's consent, or (4)
4 objecting to or contesting in any manner, or in raising any defenses to, the validity, extent,
5 amount, perfection, priority or enforceability of the loan documents, Lender's prepetition debt or
6 prepetition liens, or any other rights or interests of Lender or in asserting any avoidance actions or
7 related claims against Lender.¹³ Nothing herein shall affect the right of Lender to recover any
8 obligations resulting from the Carve Out pursuant to the loan documents from any third party or
9 additional obligor.

10 4.4 Objections to Existing Obligations. Notwithstanding anything to the contrary in
11 this Stipulation, any objection, contest or challenge to the extent, validity, amount or priority of
12 any claim asserted by Lender, obligations in favor of Lender, or lien or interest in favor of
13 Lender, encumbering assets of Debtor, as such claim, obligation, lien or interest existed as of the
14 Petition Date ("Lender Claim Objections"), shall be filed with the Court on or before May 15,
15 2012 (the "Lender Claim Objection Deadline"). If no Lender Claim Objection is timely filed or a
16 Lender Claim Objection is timely filed but denied, the claims of Lender existing as of the Petition
17 Date shall be deemed allowed in full, shall not be subject to any setoff, recoupment, counterclaim,
18 deduction or claim of any kind by Debtor or any other party, and shall not be subject to any
19 further objection or challenge by Debtor or any other party at any time, and the liens and interests
20 in favor of Lender encumbering assets of Debtor shall be deemed legal, valid, perfected,
21 enforceable and unavoidable for all purposes and of first and senior priority (unless otherwise
22 expressly consented to by Lender or otherwise ordered by the Court).

23 SECTION 5. Default; Rights and Remedies; Relief from Stay.

24 5.1 Event of Default. An "Event of Default" under this Stipulation shall occur upon
25 _____

26 ¹³ To the extent that any fees and expenses incurred by any Professional are not the type permitted to be paid from the
27 Carve Out available for such Professional, nothing in this Stipulation shall be construed to prejudice such
28 Professional's right to assert a claim for or seek allowance and payment of such fees and expenses. Debtor, Lender,
and the Committee shall not object to any such claim merely on the grounds that the fees and expenses are not the
type permitted to be paid from the Carve Out. Debtor, Lender, and Committee otherwise reserve all rights, and this
provision shall not be construed as consent by Lender for use of Cash Collateral for such fees and expenses.

1 any of the following events: (a) a breach or failure of Debtor to comply with any term, covenant,
2 representation, warranty or requirement of this Stipulation, Final Order or any other order of the
3 Court; (b) with the exception of the Premium Finance Lien or other premium financing to which
4 Lender consents, the granting by Debtor in favor of any party other than Lender of a security
5 interest in or lien upon any property of Debtor or Debtor's estate or a claim against Debtor having
6 priority senior or pari passu with the security interests, liens or claims in favor of Lender, except
7 to the extent that such party had a security interest in or lien upon property of Debtor on the
8 Petition Date which had priority senior or pari passu with the security interests, liens or claims of
9 Lender existing on the Petition Date; (c) entry of an order converting this Case to a case under
10 chapter 7 of the Bankruptcy Code; (d) entry of an order appointing a trustee in this Case; (e) entry
11 of an order granting relief in favor of any other party (including lessors and landlords) that
12 includes enabling such party to exercise state law or contractual rights and remedies with respect
13 to certain asset or assets of Debtor that could have a material adverse effect on Debtor, its
14 business and/or other assets; or (f) any stay, reversal, vacating or rescission of the terms of the
15 Final Order, or any modification of any terms of the Final Order that is not reasonably acceptable
16 to Lender.

17 5.2 Remedies on Occurrence of Event of Default.

18 5.2.1 Notice of Default. Upon the occurrence of an Event of Default, Lender
19 shall give written notice of default (a "Notice of Default") via email, facsimile or overnight mail
20 to Debtor and its bankruptcy counsel (attn: Evan Smiley at Weiland, Golden, Smiley, Wang
21 Ekvall & Strok, LLP), and the Committee through its proposed counsel (attn: Keith Owens at
22 Venable, LLP), and Debtor will be provided seven (7) business days from receipt of the Notice of
23 Default (the "Cure Period") to cure the default(s) specified in the Notice of Default. The Debtor
24 and the Committee reserve the right to contest such default and to seek an order of the Court, if so
25 required.

26 5.2.2 Consequences Upon Notice of Default.

27 (a) No Further Use of Cash Collateral. Upon the expiration of the
28 Cure Period without cure (the "Date of Default"), Debtor shall be prohibited from any

1 further use of Cash Collateral without further written consent of Lender or order of the
2 Court.

3 (b) Relief from Automatic Stay. Upon the Date of Default,
4 Lender shall be entitled to seek an expedited hearing on a motion seeking relief from the
5 automatic stay to exercise any and all rights and remedies with respect to its Collateral.

6 5.2.3 Retention of Rights. Notwithstanding the occurrence of a Date of Default
7 or Expiration Date, the Debtor, the Secured Creditors, the Committee and other parties in interest
8 shall retain all rights, interests, liens, privileges, claims and protections pursuant to this Order.
9 Notwithstanding the occurrence of a Date of Default or Expiration Date, all of the rights,
10 remedies, benefits and protections in favor of the Debtor, the Secured Creditors, the Committee
11 and other parties in interest pursuant to this Order shall survive such date.

12 5.2.4 Limited Relief from Automatic Stay to Effectuate Order. The automatic
13 stay provisions of section 362 of the Bankruptcy Code and any other restriction or injunction
14 imposed by an order of the Court or by law are hereby modified and vacated without further
15 notice, application, motion, hearing, or order of the Court to the extent necessary to permit Lender
16 to perform any act authorized or permitted under this Order.

17 SECTION 6. Other Rights and Matters.

18 6.1 Power to Waive Rights; Duties to Third Parties. Lender shall be able to waive any
19 interest, claim, right, remedy or privilege in its favor (a "Lender Right") and shall have no
20 obligation or duty to any other party with respect to the exercise or enforcement, or failure to
21 exercise or enforce any Lender Right, as applicable. Any waiver by Lender of any Lender Right
22 shall not be or constitute a continuing waiver. A delay in or failure to exercise or enforce any
23 Lender Right shall neither constitute a waiver of such Lender Right, subject Lender to any
24 liability to any other party, nor cause or enable any other party to rely upon or in any way seek to
25 assert as a defense to any obligation owed by Debtor, any obligor or any other person or entity to
26 Lender. This Stipulation is without prejudice to the rights of Lender under the Bankruptcy Code
27 or other applicable law and applicable agreements to object to the allowance and/or payment of
28 compensation of professionals or entities seeking compensation from Debtor's bankruptcy estate,

1 or to seek further, different or additional adequate protection, to seek relief from the automatic
2 stay, or oppose use of Cash Collateral, and Debtor and the Committee retain any and all rights
3 with respect to the same.
4
5
6

7 Agreed:

8 WEILAND, GOLDEN,
9 SMILEY, WANG EKVALL & STROK, LLP

10 /s/ Evan D. Smiley
11 Evan Smiley
12 Counsel for Debtor-in-Possession

13 Agreed:

14 BUCHALTER NEMER, a Professional Corporation

15 /s/ J. Alexandra Rhim
16 J. Alexandra Rhim
17 Counsel for PNC Bank, a National Association

18 Agreed:

19 VENABLE, LLP

20 /s/ Keith C. Owens
21 Keith C. Owens
22 Counsel for the Official Committee
23 of Unsecured Creditors
24
25
26
27
28

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

650 Town Center Drive, Suite 950, Costa Mesa, California 92626

A true and correct copy of the foregoing document described as **AMENDED STIPULATION FOR ORDER AUTHORIZING DEBTOR'S FINAL USE OF CASH COLLATERAL (OCTOBER 12, 2011 THROUGH AUGUST 31, 2012)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On **January 31, 2012**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On **January 31, 2012**, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Nick Sanchez, Esq.
Theodora Oringher PC
535 Anton Boulevard, Ninth Floor
Costa Mesa, California 92626-7109
Attorneys for Robert Richey

Service information continued on attached page

II. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **January 31, 2012**, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

The Honorable Wayne Johnson, 3420 Twelfth Street, Room 125, Riverside, CA 92501

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

1/31/2012

Date

Margaret Sciesinski

Type Name

IsI Margaret Sciesinski

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING("NEF")

Kyra E Andrassy kandrassy@wglp.com
Sheryl Betance sbetance@kccllc.com
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Scott A Schiff sas@soukup-schiff.com
Sarah E Singer ssinger@lorberlaw.com
Evan D Smiley esmiley@wglp.com
United States Trustee (RS) ustpreion16.rs.ecf@usdoj.gov
Sharon Z Weiss sharon.weiss@hro.com, raul.morales@hro.com

SERVED BY EMAIL:

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