



The relief described hereinbelow is SO ORDERED.

Signed July 08, 2011.

Ronald B. King
United States Chief Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

In re §
§
TAO-SAHI, LP, § **CASE NO. 11-52027 (rbk)**
§ **CHAPTER 11**
§
Debtor. §

**AGREED ORDER PURSUANT TO SECTIONS 105, 361, 362, 363 AND 507 OF THE
BANKRUPTCY CODE FOR AUTHORITY TO USE CASH COLLATERAL
IN THE ORDINARY COURSE, PROVIDE ADEQUATE PROTECTION,
AND FOR PRELIMINARY AND FINAL HEARINGS**

Upon the motion (the "Motion")¹ of TAO-SAHI, LP, as debtor and debtor in possession (the "Debtor") in the above-captioned case (the "Case"), pursuant to sections 105, 361, 362, 363 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), seeking an order, among other things, (i) authorizing the Debtor's use of "cash collateral," as such term is defined in section 363 of the Bankruptcy Code, in which S2

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the *Emergency Motion Pursuant To 11 U.S.C. § 363 For Authority To Use Cash Collateral In The Ordinary Course, Provide Adequate Protection, And For Preliminary And Final Hearings* (Docket No. 9).

Acquisition LLC ("S2 Acquisition") asserts a perfected security interest (the "Cash Collateral"); and (ii) granting adequate protection to S2 Acquisition with respect to any diminution of the value of S2 Acquisition's interest in its prepetition collateral resulting from the use of Cash Collateral, the use, sale or lease of the prepetition collateral (other than Cash Collateral) and the imposition of the automatic stay pursuant to Section 362(a) of the Bankruptcy Code to the extent necessary to provide adequate protection as set forth herein; and due and sufficient notice having been given of the Motion, the relief requested therein and the final hearing (the "Final Hearing") to consider entry of an order granting the relief requested on a final basis (the "Order"); and the Final Hearing having been held on June 27, 2011, with the appearances of all interested parties noted in the record of the Final Hearing; and upon consideration of all the pleadings filed with this Court; and upon the record made by the Debtor and other parties, if any, at the Final Hearing, and after due deliberation and consideration and good and sufficient cause appearing therefor.

IT IS FOUND AND DETERMINED, that:

A. The Court has jurisdiction over the Case, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. This is a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue before this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001 and 9014

B. The notice given by the Debtor of the Motion, the relief requested therein and the Final Hearing constitutes appropriate, due and sufficient notice thereof and complies with section 363 of the Bankruptcy Code, Rule 4001(b) of the Bankruptcy Rules and Local Rule 4001-2, and

no further or other notice of the relief sought at the Final Hearing and the relief granted in this Order is required.

C.² As of the Petition Date, S2 Acquisition asserts that the Debtor is liable to S2 Acquisition, without defense, counterclaim or offset, in the aggregate principal amount of approximately \$18,554,569.06 plus accrued and unpaid interest thereon and unpaid fees, expenses and other obligations due and payable in accordance with the terms of the Loan Agreement (as defined below) and the Loan Documents³ (collectively, the “Prepetition Secured Obligations”). The Prepetition Secured Obligations are evidenced by that certain loan agreement dated April 16, 2008, by and between Specialty Finance Group LLC (“SFG”), as lender and the Debtor, as borrower (the “Loan Agreement”). To secure repayment of the prepetition lender indebtedness, under the terms of the Loan Agreement, the documents executed by the Debtor granted to SFG a direct, valid and enforceable first lien (the “Prepetition Liens”) on and/or security title in and to the real property described in Exhibit A to the Loan Agreement (the “Land”) together with the buildings, and other facilities, amenities and improvements on the Land and to be erected or repaired pursuant to the Plans and all other fixtures and property described in the Deed of Trust, Security Agreement and Fixture Filing from the Debtors to SFG,

² Unless otherwise defined in this subparagraph, the capitalized terms shall have the meaning ascribed to them in the Loan Agreement.

³ The “Loan Documents” consist of the Note, Security Instrument, Guaranty, the Loan Agreement, an Assignment of Leases and Rents by Borrower to SFG, an Environmental Indemnification Agreement by Borrower and Guarantors to SFG, an Assignment of Project Documents by Borrower in favor of SFG, an Assignment and Subordination of Management Agreement by Borrower to SFG, an Assignment of Franchise Agreement from Franchisee to SFG, an Assignment of Lease from Borrower and Franchisee to SFG, and UCC Financing Statements by Borrower in favor of SFG, the and all other documents and instruments evidencing, securing or otherwise relating to the Loan. For purposes of this Order, the term “Loan Documents” shall not include that certain confirmation letter dated on or about April 16, 2008 providing for an interest rate hedge agreement (the “Confirmation Letter”) with Silverton Bank. The Debtor asserts that the FDIC acquired the Confirmation Letter from Silverton Bank and that the FDIC as receiver for Silverton Bank continues to invoice the Debtor pursuant to alleged rights arising from the Confirmation Letter. The Debtor believes that it has claims against the FDIC for amounts charged to and/or paid by the Debtor under the Confirmation Letter. Notwithstanding anything herein to the contrary, all parties, including the Debtor, S2 Acquisition and the FDIC, reserve and do not waive any rights or claims they may hold or may assert against the other with respect to the Confirmation Letter.

encumbering the Premises as security for the Note, as amended or modified from time to time, including an assignment in rents (the "Prepetition Collateral"). S2 asserts that the Loan Agreement was assigned to the Federal Deposit Insurance Corporation (acting in any capacity, the "FDIC") acting as a receiver for SFG by Assignment of Deed of Trust, Security Agreement and Fixture Filing and subsequently assigned by the FDIC to S2 Acquisition. S2 Acquisition asserts that it is the owner and holder of the Loan Documents. S2 Acquisition asserts that it holds a valid, properly perfected first priority security interest in and liens on the Prepetition Collateral.

D. S2 Acquisition and the Debtor have negotiated at arm's length and in good faith regarding the Debtor's use of the Prepetition Collateral and the Cash Collateral to fund its operations during the period covered by the Budget (as defined below). Entry of this Order is in the best interests of the Debtor and its estate. The terms of the Debtor's continued use of the Cash Collateral in accordance with this Order are fair and reasonable under the circumstances.

BASED UPON THE FOREGOING FINDINGS AND STIPULATIONS, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Motion Granted. For the reasons set forth on the record, the Motion is granted but only on the terms set forth herein. This Order shall be valid, binding on and enforceable against all parties in interest effective immediately upon entry.

2. Within ten (10) days upon the entry of this Order or as otherwise extended by agreement of the Debtor and S2 Acquisition, S2 Acquisition shall provide to Debtor's counsel all necessary assignment documentation supporting S2 Acquisition's status as the holder of the Loan Agreement, the Prepetition Liens, and the Prepetition Secured Obligations, and all documentation supporting interest (including rate information), fees and costs, and any notices

provided to the Debtor associated therewith under the Loan Documents (collectively, the “Supporting Documentation”).

3. Upon a good faith determination of the need to do so, in its sole discretion, within thirty (30) days of receipt by Debtor’s counsel of the documentation in paragraph 2, above, and absent written agreement otherwise with S2 Acquisition, the Debtor shall commence an adversary proceeding to contest any aspect of S2 Acquisitions’ asserted claims or liens.

4. Absent the commencement of an adversary proceeding in accordance with the preceding paragraph by the Debtor or absent a challenge by any Challenge Party⁴ as set forth in paragraph 18, the Debtor and each and every Challenge Party shall be deemed to have hereby acknowledged and agreed that as of the Petition Date: (a) the Debtor owed to S2 Acquisition, pursuant to the Loan Documents as of the Petition Date, the approximate amount of \$18,554,569.06 (exclusive of pre-petition and post-petition attorneys’ fees, costs, and expenses, late charges and other costs chargeable under the Loan Documents), consisting of: (i) unpaid principal, (ii) interest continuing to accrue on the foregoing obligations at the rate of interest provided under the Loan Agreement, as may be allowed by this Court pursuant to 11 U.S.C. § 506(b), and (iii) the expenses of S2 Acquisition, which are still accruing⁵; (b) S2 Acquisition’s security interests in and liens upon the Collateral are first-priority, valid, perfected, enforceable and non-avoidable; and (c) the pre-petition claims and Prepetition Liens of S2 Acquisition against the Debtor and the estate are allowable, not subject to subordination or recharacterization or challenge of any type by the Debtor, and are valid, enforceable and non-avoidable (in the amount set forth above), except as set forth herein. Absent the commencement of an adversary

⁴ “Challenge Party” shall mean any party in interest, including without limitation, any committee, any creditor, any chapter 11 trustee, or any examiner, but shall not include any subsequently appointed chapter 7 trustee.

⁵ The Debtor reserves the right to review and challenge postpetition interest, fees and costs accruing after entry of this Order.

proceeding in accordance with the preceding paragraph and/or absent a challenge by any Challenge Party as set forth in paragraph 18, the Debtor and any Challenge Party, shall be deemed to have acknowledged and agreed to the extent, validity, priority, perfection, and enforceability of S2 Acquisition's Prepetition Liens and the allowance, non-avoidability, non-subordination of, and inability to recharacterize the secured claims of S2 Acquisition against the Debtor as provided herein.

5. Authorization to Use Cash Collateral. S2 Acquisition has consented to the Debtor's use of its Cash Collateral through August 31, 2011 (subject to possible extension for each subsequent month if the Debtor and S2 Acquisition agree to such extension) pursuant to the Budget (defined below) and in accordance with the terms of this Order, conditioned upon its receipt of adequate protection as provided herein but not otherwise. The Debtor has consented to such adequate protection. Therefore, the Debtor is hereby authorized to use Cash Collateral, pursuant to the terms and conditions and subject to the limitations set forth herein. The Debtor may use Cash Collateral solely to pay the expense items set forth in the budget attached hereto as **Exhibit A** (as such budget may be modified from time to time as set forth in this Order, the "Budget") or as otherwise provided in this Order, provided, however, that: (a) no amounts may be expended for prepetition debt except to the extent provided in this Order or any other orders of the Bankruptcy Court; (b) any amendments to the Budget shall be subject to the prior written approval of S2 Acquisition; and (c) if the parties cannot resolve a discrepancy related to the Budget, the matter shall promptly be addressed to the Court.

6. Budget. During the period following entry of the Order, the aggregate actual cumulative disbursements by the Debtor, excluding any fees or expenses paid to the professionals of S2 Acquisition, must be no greater than 110% of the aggregate amount of

cumulative projected disbursements for such period as set forth in the then applicable Budget (the “Permitted Deviations”). S2 Acquisition may agree in writing with the Debtor to the use of its Cash Collateral (i) in a manner or amount which does not conform to the then applicable Budget (other than Permitted Deviations) (each such use of Cash Collateral, a “Permitted Non-Conforming Use”) or (ii) for any period following the period for the Budget (each such period, a “Subsequent Budget Period”) pursuant to one or more budgets (each such budget, a “Subsequent Budget”). If such consent is given, the Debtor shall be authorized pursuant to the Order to expend Cash Collateral for any such Permitted Non-Conforming Use or any such Subsequent Budget Period in accordance with a Subsequent Budget without further Court approval, and S2 Acquisition shall be entitled to all of the protections specified in the Order for any such use of Cash Collateral.

7. Adequate Protection. S2 Acquisition is entitled, pursuant to sections 361, 362 and 363(c)(2) of the Bankruptcy Code, to adequate protection of its interests in the Prepetition Collateral, including its Cash Collateral, in an amount equal to the aggregate diminution in value of the Prepetition Collateral, including without limitation, any such diminution resulting from the sale, lease or use by the Debtor (or other decline in value) of Cash Collateral and any other Prepetition Collateral and the imposition of the automatic stay under section 362 of the Bankruptcy Code is hereby lifted to the extent necessary to provide such adequate protection (such diminution in value, the “Adequate Protection Obligations”). As and for adequate protection, S2 Acquisition is hereby granted the following:

- a. Monthly Payments. On the first Business Day following July 15, 2011, the Debtor shall make a monthly payment to S2 Acquisition in cash in the amount of \$40,170.89 (“Monthly Payment”). During the pendency of the Case, each Monthly Payment shall be due on the 15th calendar day of each month, (or the next succeeding Business Day if the first calendar day of such month falls on a Saturday, Sunday or legal holiday).

- b. Payment of Fees and Expenses. Beginning in July 2011 and each subsequent month thereafter through the effective date of a confirmed plan, the Debtor shall pay on a current basis, and up to \$10,000, the reasonable and customary fees and documented out-of-pocket expenses of S2 Acquisition including the reasonable and customary fees and documented expenses of legal counsel. The payment of the foregoing fees and expenses shall be made within seven (7) calendar days (the "Review Period") after the receipt by the Debtor, the United States Trustee and, if a Committee has been appointed, the Committee (the "Review Parties") of invoices therefor (subject in all respects to applicable privilege and work product doctrines) and without the necessity of filing formal fee applications; provided, however, that if any of the Review Parties disputes the reasonableness of any fees or expenses set forth on a particular invoice prior to the expiration of the Review Period therefor, then the Debtor shall timely pay in accordance with this Order all undisputed fees and expenses with respect to such invoice and shall pay any disputed fees and expenses promptly upon notification by the parties of the resolution of such dispute. Absent an objection made prior to the expiration of the Review Period, the Review Parties shall be deemed to have irrevocably waived their right to object to such fees and costs, and the Debtor is authorized and directed to pay such amounts. Notwithstanding anything to the contrary herein, S2 Acquisition shall be entitled to and nothing in this order shall preclude or prejudice S2 Acquisition's right to assess all reasonable and customary fees and documented out-of-pocket expenses of S2 Acquisition including the reasonable and customary fees and documented expenses of legal counsel, as more specifically set forth in the Loan Documents. S2 Acquisition reserves the right to seek the payment of any remaining reasonable and customary fees and documented out-of-pocket expenses of S2 Acquisition including without limitation the reasonable and customary fees and documented expenses of legal counsel, as more specifically set forth in the Loan Documents.
- c. Replacement Liens. S2 Acquisition is hereby granted, effective and perfected as of the Petition Date, a first priority replacement lien and additional lien on all assets and property of the Debtor of any kind or nature whatsoever, now owned or hereafter acquired by the Debtor, all proceeds, rents, products or profits thereof and all proceeds of such proceeds, rents, products and profits (all such assets and property, collectively, the "Collateral"), to secure the claims of S2 Acquisition and in the same priority as existed prepetition, subject and subordinate only to (x) the Carve-Out, and (y) existing liens and encumbrances that were senior to those of S2 Acquisition as of the Petition Date under applicable non-bankruptcy law, to the extent such liens and encumbrances are valid, binding, enforceable, perfected and non-avoidable liens existing in the Prepetition Collateral as of the Petition Date (the "Permitted Liens," which shall not, for the avoidance of doubt, include the Prepetition Lien), to secure any claim of S2 Acquisition for the diminution in the value of its

interests in the Prepetition Collateral (the "Adequate Protection Liens"). The Adequate Protection Liens, except as expressly set forth herein, shall not be subordinated or made *pari passu* with any other lien or security interest under sections 363 or 364 of the Bankruptcy Code or otherwise. The Collateral shall expressly not include, the proceeds of the Debtor's prepetition claims and prepetition causes of action arising under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code (collectively, the "Avoidance Actions"). Subject to the remaining provisions of this Order, until the earlier of payment in full of all of the Prepetition Secured Obligations and the effective date of a plan of reorganization, (a) the Adequate Protection Liens shall remain valid and enforceable with the same continuing priority as described in this Order, and (b) any guaranty executed in connection therewith shall remain valid and continue to be in full force and effect, and all parties reserve their rights to enforce or contest enforcement of the same.

- d. Perfection of Adequate Protection Liens. This Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the Adequate Protection Liens without the necessity of filing or recording by any party any financing statement, mortgage, notice or other instrument or document otherwise required to be executed or filed under applicable non-bankruptcy law (collectively, "Perfection Documents"). Notwithstanding the foregoing, S2 Acquisition is hereby authorized to file, as it deems necessary or advisable, such Perfection Documents to perfect in accordance with applicable non-bankruptcy law or otherwise to evidence the Adequate Protection Liens; provided, however that no such filing or recordation shall be necessary or required in order to create, evidence or perfect the Adequate Protection Liens. The Debtor is authorized and directed to execute and deliver promptly upon demand all such Perfection Documents as S2 Acquisition shall reasonably request.
- e. Superpriority Claims. S2 Acquisition is hereby granted an allowed superpriority administrative claim as provided for in section 507(b) of the Bankruptcy Code, with priority over all other administrative claims in the Case, including without limitation, claims specified or ordered under sections 326, 328, 330, 331, 503, 507(a), 552(b), 726, 1113 and 1114 of the Bankruptcy Code, which, subject to the Carve-Out, shall at all times be senior to the rights of the Debtor, and any successor trustee or any creditor, in the Case or any subsequent proceedings under the Bankruptcy Code (the "Superpriority Claims").
- f. Carve-Out. The Prepetition Collateral, the Collateral and the Superpriority Claims shall all be subject to a carve-out (the "Carve-Out") for: (a) all allowed fees and expenses of attorneys, investment bankers and financial advisors and other professionals retained by the Debtor (collectively, the "Estate Professionals") employed by the Debtor and, if applicable, any committee appointed in these cases pursuant to section 1102 of the

Bankruptcy Code (a "Committee"), if any, pursuant to sections 327, 328, 1102 and 1103 of the Bankruptcy Code and any disbursements of any member of the Committee which are incurred or accrued prior to the Termination (as defined below) of the Debtor's use of Cash Collateral, (b) following the Termination (as defined below) of the Debtor's use of Cash Collateral, the payment of allowed fees and disbursements of Estate Professionals (i) incurred or accrued prior to such Termination whether or not then allowed and (ii) incurred or accrued after such Termination by the Estate Professionals and any disbursements of any member of the Committee in an aggregate amount not to exceed \$25,000 (in addition to fees and expenses previously incurred or accrued prior to termination of the Debtor's use of Cash Collateral but which are subsequently allowed), and (c) quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the Clerk of the Bankruptcy Court or to the Debtor's appointed claims agent; provided, however, no portion of the Carve-Out or any Cash Collateral shall be used for professional fees and disbursements incurred for the commencement and prosecution of any adversary proceeding or contested matter in which any person or entity asserts any claims or causes of action against S2 Acquisition and/or challenges or raises any defense to the Prepetition Liens of S2 Acquisition. Notwithstanding the above, up to \$25,000 of the Carve-Out and Cash Collateral may be applied by the Debtor's professionals and/or any Committee to the review of the claims and liens asserted by S2 Acquisition for amount, extent, and priority. No payment of any Carve-Out amount shall reduce any of the Prepetition Secured Obligations.

- g. Segregation of Funds. The Debtor is required, pursuant to 11 U.S.C. § 363(c)(2), to account for any of the Cash Collateral in its possession, custody or control which it has received or will receive while in these bankruptcy proceedings. The Debtor agrees to deposit immediately all Cash Collateral (inclusive of the Rents (as defined in the Loan Documents) collected from or attributable to the Collateral into the operating account of such Debtor maintained as a debtor in possession account in such Debtor's name, subject to the jurisdiction of this Court, with a depository institution approved by this Court (the "Operating Account"). In addition, the Debtor shall provide to S2 Acquisition an accounting of the Cash Collateral. The Debtor shall provide to S2 Acquisition within fifteen (15) calendar days of the submission of this Order to the Court, unless otherwise extended by written agreement of the parties, a detailed accounting of the sources and uses (inclusive of all payments made to present and former insiders and affiliates of any Debtor) of the Cash Collateral (inclusive of Rents relating to the Collateral), for the period one (1) year preceding the Petition Date.
- h. Nothing in this Order shall be deemed or construed to obligate S2 Acquisition (i) to pay compensation to or reimburse expenses of any Estate Professional or to guarantee that the Debtor will have sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve-Out; or

(iii) to consent or withhold any objection to the allowance of the fees and expenses of any Estate Professionals.

- i. The Debtor further acknowledges and agrees that as of the Petition Date all of the Collateral is presently insured, and within three (3) business days of the entry of this Order, the Debtor shall provide to S2 Acquisition's counsel evidence of such insurance.

8. Modification of the Automatic Stay. The automatic stay imposed under Bankruptcy Code Section 362(a) is modified as necessary to effectuate all of the terms and provisions of this Order, including, without limitation, to: (a) permit the Debtor to grant the Adequate Protection Liens and Superpriority Claims; (b) permit S2 Acquisition and the Debtor to perform such acts as S2 Acquisition may determine in its reasonable discretion to assure the perfection and priority of the Adequate Protection Liens granted herein; (c) permit the Debtor to incur all liabilities and obligations to S2 Acquisition under this Order; and (d) authorize the Debtor to pay, and S2 Acquisition to retain and apply, payments made in accordance with the terms of this Order; provided, however that any relief from stay with respect to the exercise of remedies upon any Event of Default shall be in accordance with Paragraph 11 below.

9. Limitation on Authorization. Nothing in this Order shall authorize the Debtor to use Cash Collateral received after the Petition Date from the sale or disposition of assets, or other receipt of Cash Collateral, outside the ordinary course of business of the Debtor except as explicitly set forth in the Budget. No portion of the Prepetition Collateral (including any Cash Collateral generated by the Debtor after the Petition Date) shall be distributed by the Debtor in the form of an upstream dividend, intercompany loan, or any contribution or distribution except as expressly provided in the then applicable Budget. Notwithstanding anything to the contrary set forth in this Order, the Cash Collateral may not be used: (a) to finance the commencement or prosecution of any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) against S2 Acquisition or seeking relief that would impair the rights and remedies of

S2 Acquisition under the Loan Documents or this Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtor or, if applicable, any Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration or similar relief that would impair the ability of S2 Acquisition to recover on the Prepetition Secured Obligations or seeking affirmative relief against S2 Acquisition related to the Prepetition Secured Obligations; (ii) invalidating, setting aside, avoiding or subordinating, in whole or in part, of the Prepetition Liens or the Prepetition Secured Obligations; or (iii) for monetary, injunctive or other affirmative relief against S2 Acquisition or its respective Prepetition Collateral that would impair the ability of S2 Acquisition to recover on the Prepetition Secured Obligations; (b) for objecting to or challenging in any way the claims, liens, or interests (including the Prepetition Liens and the Adequate Protection Liens) held by or on behalf of S2 Acquisition related to the Prepetition Secured Obligations; (c) for asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against S2 Acquisition related to the Prepetition Secured Obligations or the Prepetition Liens; or (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of the Prepetition Liens or any other rights or interests of S2 Acquisition related to the Prepetition Secured Obligations or the Prepetition Liens; provided, however, that no more than \$5,000 of the proceeds of the Prepetition Collateral may be used by any Committee, if appointed, solely to investigate the foregoing matters.

10. Credit Bid. S2 Acquisition shall have the absolute right to credit bid for any asset or assets of the Debtor offered at a sale, lease or other disposition of any Collateral inside or outside the ordinary course of business (including any auction or other similar sales), whether pursuant to a plan of reorganization or liquidation, or a motion pursuant to § 363 of the Bankruptcy Code, or otherwise.

11. Reporting Requirements. The Debtor shall deliver to counsel for S2 Acquisition on or before the close of business on Thursday of every other week (beginning on July 4, 2011) a report (or reports) setting forth:

- a. (i) The amount of the Debtor's aggregate unrestricted cash balances as of the last business day of the immediately preceding calendar week (a "Reporting Date") and (ii) the aggregate amount of cumulative disbursements made by the Debtor from the Petition Date through the Reporting Date;
- b. A Budget reconciliation setting forth for each line item in the Budget through the Reporting Date, the budgeted amounts, actual receipts and disbursements for each week through the Reporting Date and variances, in each case and on a weekly basis and a cumulative basis from the Petition Date through the Reporting Date;
- c. Any supporting information for the foregoing reports reasonably requested by the S2 Acquisition; and
- d. nothing herein shall limit the right of S2 Acquisition to request any and all additional document(s) and reports as required under the Loan Agreement.

12. Further Assurances. To the extent any other party is in possession or control of the Cash Collateral, such party is only authorized to use such Cash Collateral subject to the terms of this Order and the Budget annexed hereto (subject to Permitted Deviations, modifications and Permitted Non-Conforming Uses). The provisions of this Order shall be binding upon the Debtor and its successors and assigns (including any examiner, chapter 7 trustee or chapter 11 trustee hereinafter appointed or elected for the estate of the Debtor) and inure to the benefit of S2 Acquisition and the Debtor and its respective successors and assigns.

13. Section 506(c) and 552(b) Waivers. The Debtor, on its own behalf and on behalf of the bankruptcy estate, reserves any and all rights to assert any surcharge claim, under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by S2 Acquisition upon, the Prepetition Collateral. S2 Acquisition shall not be subject to the equitable doctrine of marshaling or any similar doctrine with respect to the Prepetition Collateral. S2 Acquisitions reserves all rights to object to any such claim. S2 Acquisition shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception in section 552(b) of the Bankruptcy Code shall not apply to S2 Acquisition with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral unless ordered otherwise by this Court.

14. Events of Default. The occurrence of any of the following events (each an “Event of Default”), unless waived in writing by S2 Acquisition shall constitute an event of default under this Order:

- a. the dismissal of any of the Case or the conversion of any of the Case to a case under chapter 7 of the Bankruptcy Code;
- b. the appointment of a trustee or examiner with expanded powers in the Case;
- c. the Debtor’s breach or failure to comply with any material term, covenant, representation, warranty or requirement of this Order (including, without limitation, the use of any Prepetition Collateral or Cash Collateral in a manner inconsistent with the then applicable Budget (subject to Permitted Deviations and Permitted Non-Conforming Uses);
- d. except as set forth in the Budget, the sale of any portion of any Debtor’s assets outside the ordinary course of business without the prior consent of the Court;
- e. the failure by the Debtor to maintain the Collateral or to insure the Collateral;
- f. the failure by the Debtor to timely make all adequate protection payments provided herein;

- g. the filing of a motion by the Debtor seeking to (x) incur additional indebtedness or liabilities with a priority senior to or *pari passu* with S2 Acquisition, or (y) grant or permit to exist liens with a priority senior to or *pari passu* with the Prepetition Liens or the Adequate Protection Liens;
- h. the granting or approval in favor of any other party other than S2 Acquisition or the holder of a Permitted Lien of a security interest in or lien upon any property of the Debtor's estate without Court authority;
- i. the entry of an order by the Court, other than this Order, granting relief from or modifying the automatic stay with respect to the enforcement of any existing lien, or the granting of an additional lien, on the Collateral; or
- j. any stay, reversal, vacation or rescission of the terms of this Order, or any modification of any terms of this Order that is not acceptable to S2 Acquisition.

The Debtor's authorization to use Cash Collateral shall terminate (any of the following occurrences being referred to herein as a "Termination"): (A) immediately, without the need for any action by S2 Acquisition upon the occurrence of an Event of Default under clause (a) or (b) above; and (B) with respect to all other Events of Default, after the delivery by S2 Acquisition of written notice of an Event of Default (a "Default Notice"), the Debtor shall have failed to cure such default by the close of business on the date that is five (5) business days after delivery to Debtor's counsel of the Default Notice (the "Cure Period"). For the avoidance of doubt, if the Debtor timely cures the Event of Default (other than an Event of Default caused by failure to comply with the Budget) prior to the end of the Cure Period, no Termination shall occur, and the Debtor shall be permitted to continue to use Cash Collateral thereafter, subject to the terms and conditions set forth herein, in accordance with the Budget (subject to Permitted Deviations and Permitted Non-Conforming Uses).

15. Remedies on Occurrence of Event of Default. To the extent that an Event of Default occurs as a result of Debtor's failure to comply with the then applicable Budget, and such Event of Default is not timely cured, the Debtor's use of Cash Collateral shall terminate, and S2 Acquisition shall have the right to file a motion with the Court to lift the automatic stay.

Notwithstanding the occurrence of an Event of Default or whether a Default Notice is provided or not, S2 Acquisition shall retain all rights, interests, liens, privileges, claims and protections pursuant to this Order and the Loan Documents, and the Debtor and S2 Acquisition shall be bound by all restrictions, prohibitions and other terms as provided in this Order.

16. Modification, Vacation or Stay. If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity of any Adequate Protection Obligations or Adequate Protection Liens incurred prior to the actual receipt by S2 Acquisition of written notice of the effective date of such reversal, modification, vacation or stay, (ii) the validity or enforceability of any claim, lien, security interest or priority authorized or created hereby with respect to any Adequate Protection Liens, or (iii) that the Prepetition Secured Obligations are secured by Prepetition Liens on all Prepetition Collateral. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral or the incurrence of Adequate Protection Liens by the Debtor prior to the actual receipt by S2 Acquisition of written notice of the effective date of such reversal, modification, vacation or stay, shall be governed in all respects by the provisions of this Order, and S2 Acquisition shall be entitled to all of the benefits and protections granted pursuant to this Order with respect to its Prepetition Secured Obligations, all Adequate Protection Obligations, Adequate Protection Liens and Superpriority Claims and all uses of Cash Collateral.

17. No Waiver by Failure to Seek Relief. The failure of S2 Acquisition to seek relief or otherwise exercise its rights and remedies under this Order, the Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder or otherwise of S2 Acquisition.

18. The Challenge Period. The admissions, stipulations and agreements of the Debtor contained in this Order shall be binding on all persons and entities, including, without limitation, any and each Challenge Party, unless, and solely to the extent that, (a) such Challenge Party has timely and properly commenced an adversary proceeding or contested matter to invalidate, set aside, avoid recharacterize or subordinate the Prepetition Secured Obligations, or to challenge the amount, validity, or enforceability of any portion of the Prepetition Secured Obligations, or the perfection or priority of the Prepetition Liens in any of the Prepetition Collateral, or to pursue any pre-petition claims against S2 Acquisition on or before ninety (90) days after the petition date (the "Challenge Period"), and (b) the Court rules in favor of the plaintiff in any such timely filed adversary proceeding or contested matter and has entered an Order that is not subject to appeal (a "Successful Challenge"). If no such adversary proceeding or contested matter is timely commenced during the Challenge Period, and except with respect to any stipulations and admissions in this Order that are subject to the relief granted pursuant to a Successful Challenge, without further order of the Court, the following shall be binding on any Challenge Party: (i) the claims, liens and security interests of S2 Acquisition shall be deemed to be finally allowed for all purposes in this Case and, except as otherwise provided herein, shall not be subject to challenge by any party in interest or other person as to validity, priority or otherwise, (ii) the Prepetition Secured Obligations shall be deemed to constitute allowed secured claims against the Debtor without the need for any further order of this Court, and (iii) the Debtor and its estate shall be deemed to have released any and all claims and/or causes of action against S2 Acquisition with respect to the Prepetition Secured Obligations, the Prepetition Liens, the Loan Documents, and any related transactions. For the avoidance of doubt, this paragraph 18 shall not be binding on any subsequently appointed chapter 7 trustee.

19. Sale or Plan of Reorganization Efforts. The Debtor shall submit to S2 Acquisition, on or before August 15, 2011, a detailed summary of its proposal to market and sell the Collateral or a detailed term sheet of its proposal for a plan of reorganization. Either proposal or term sheet shall be in form and substance acceptable to S2 Acquisition. The Debtor and shall report each week to S2 Acquisition the progress being made in connection with set forth in either its sale proposal or plan term sheet.

20. Insurance Refunds and Deposits. To the extent any the Debtor has made or makes any payments from and after the Petition Date of insurance premiums from the operating account with respect to the Collateral, or makes utility deposits, such Debtor acknowledges that such payments would be made with Cash Collateral subject to S2 Acquisition's liens, and the Debtor assigns to S2 Acquisition as additional security all of such amounts to S2 Acquisition effective as of the Petition Date.

21. Reservation of rights. Nothing in this Order or the transactions contemplated hereby shall prejudice or preclude S2 Acquisition from making appropriate application or requesting additional adequate protection of its interests, including, without limitation the right to (a) seek at any time to terminate the Debtor's authority to use Cash Collateral, (b) to file a motion to dismiss this Case, or to (c) seek any other relief, whether at law or in equity. The provisions of this Order and any actions taken pursuant hereto (a) shall survive the entry of any order: (i) confirming any plan of reorganization or liquidation in the Debtor's Case; (ii) converting any such Case to a case under chapter 7 of the Bankruptcy Code; (iii) dismissing the Case; or (iv) discharging the Debtor; and (b) shall continue in full force and effect notwithstanding the entry of any such order, and the claims, liens, and security interests granted

pursuant to this Order shall maintain their priority as provided by this Order until all Adequate Protection Obligations, Superpriority Claims and Adequate Protection Liens are paid in full.

22. Effective Upon Entry. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, this Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Order as provided in such rules.

23. Findings of Fact and Conclusions of Law. This Order constitutes findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon the entry thereof.

24. Notice. The Debtor shall promptly serve or cause to be served a copy of this Order to the appropriate parties entitled to such notice, and to any other party that has filed a request for notices with this Court.

25. Texas Comptroller. Notwithstanding anything herein to the contrary, the relief granted herein is without prejudice to the rights of the Texas Comptroller of Public Accounts (the "Comptroller") to funds which do not constitute property of the estate, but which may qualify as tax trust funds. The Comptroller is not precluded from pursuing such funds, if any, by this Order, nor is any part in interest precluded from contesting any action of the Comptroller to recover alleged trust funds.

26. Retention of Jurisdiction. This Court shall maintain jurisdiction to hear and determine all matters arising from or relating to the interpretation or implementation of this Order.

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APPROVED:

JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(512) 236-2000
(512) 236-2002 – Fax

By: /s/Marvin E. Sprouse III
Marvin E. Sprouse III
State Bar No. 24008067
Email: msprouse@jw.com

PROPOSED ATTORNEYS FOR DEBTOR

GREENBERG TRAUIG, LLP
1000 Louisiana, Suite 1700
Houston, Texas 77002
Telephone: 713-374-3500
Facsimile: 713-374-3505

By: /s/ Shari L. Heyen
Shari L. Heyen
Texas State Bar No. 09564750
Federal Bar No. 13664
HeyenS@gtlaw.com

COUNSEL FOR S2 ACQUISITION LLC