



ORDERED in the Southern District of Florida on January 31, 2008.

**John K. Olson, Judge
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

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In re:)	Chapter 11 Cases
)	Case No. 08-10928 - JKO
TOUSA, INC., <i>et al.</i> , ¹)	Jointly Administered
)	
Debtors.)	
)	

INTERIM ORDER (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING ON A SUPERPRIORITY AND PRIMING BASIS PURSUANT TO SECTIONS 363 AND 364 OF THE BANKRUPTCY CODE, (II) GRANTING PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS PURSUANT TO SECTION 364(C) AND (D) OF THE BANKRUPTCY CODE, (III) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (IV) PROVIDING ADEQUATE PROTECTION TO PREPETITION SECURED

¹ The Debtors in the cases are: TOUSA, Inc.; Engle Homes Commercial Construction, LLC; Engle Homes Delaware, Inc.; Engle Homes Residential Construction, L.L.C.; Engle Sierra Verde P4, LLC; Engle Sierra Verde P5, LLC; Engle/Gilligan LLC; Engle/James LLC; LB/TE #1, LLC; Lorton South Condominium, LLC; McKay Landing LLC; Newmark Homes Business Trust; Newmark Homes Purchasing, L.P.; Newmark Homes, L.L.C.; Newmark Homes, L.P.; Preferred Builders Realty, Inc.; Reflection Key, LLC; Silverlake Interests, L.L.C.; TOI, LLC; TOUSA Associates Services Company; TOUSA Delaware, Inc.; TOUSA Funding, LLC; TOUSA Homes Arizona, LLC; TOUSA Homes Colorado, LLC; TOUSA Homes Florida, L.P.; TOUSA Homes Investment #1, Inc.; TOUSA Homes Investment #2, Inc.; TOUSA Homes Investment #2, LLC; TOUSA Homes Mid-Atlantic Holding, LLC; TOUSA Homes Mid-Atlantic, LLC; TOUSA Homes Nevada, LLC; TOUSA Homes, Inc.; TOUSA Homes, L.P.; TOUSA Investment #2, Inc.; TOUSA Mid-Atlantic Investment, LLC; TOUSA Realty, Inc.; TOUSA, LLC; and TOUSA/West Holdings, Inc.

**LENDERS PURSUANT TO SECTIONS 361, 362, 363 AND 364 OF THE
BANKRUPTCY CODE AND (V) PRESCRIBING FORM AND MANNER OF
NOTICE AND SCHEDULING TIME FOR FINAL HEARING**

Upon the motion (the "*Motion*") dated January 29, 2008 of TOUSA, Inc. (the "*Administrative Borrower*" or "*TOUSA*") and its affiliated debtors, as debtors and debtors-in-possession (each individually a "*Debtor*" and, collectively, the "*Debtors*"), (a) for the entry of this Order and the Final Order (as hereinafter defined) authorizing the Debtors to (i) obtain postpetition financing pursuant to sections 363 and 364 of title 11 of the United States Code (the "*Bankruptcy Code*") by entering into a senior secured superpriority debtor-in-possession credit facility on a superpriority and priming basis (as the same may be amended, supplemented or otherwise modified from time to time, the "*Postpetition Credit Agreement*"),² substantially in the form annexed to the Motion as Exhibit A, among TOUSA, as Administrative Borrower and certain of the direct and indirect subsidiaries of TOUSA (including all of the Debtors), as borrowers (each, individually, a "*Borrower*" and, collectively including TOUSA, the "*Borrowers*"), the lenders and postpetition letters of credit issuers from time to time parties thereto (collectively, the "*Postpetition Lenders*"), Citicorp North America, Inc. ("*CNAI*") or one of its affiliates, as administrative agent (in such capacity, the "*Postpetition Administrative Agent*") and Citigroup Global Markets, Inc., ("*Global Markets*"), as sole lead arranger and book running manager (together with the Postpetition Administrative Agent, the "*Postpetition Agents*"); (ii) grant priming Liens and superpriority claims to and on behalf of and for the benefit of the Postpetition Agents and the Postpetition Lenders in all Collateral in accordance with the Collateral Documents and this Order and the Final Order to secure any and all of the

² Unless otherwise defined herein, all capitalized terms used herein have the meanings ascribed to such terms in the Postpetition Credit Agreement.

Postpetition Obligations (as defined below), (iii) upon the satisfaction of certain conditions precedent to a Roll-up Event, repay the Prepetition First Priority Indebtedness (as hereinafter defined) as provided herein and in the Postpetition Credit Agreement, subject to the express reservation of rights (as set forth herein), (iv) subject to the terms and limitations herein, use Cash Collateral (as defined below) and (v) pending a final hearing on the Motion (the "*Final Hearing*"), obtain emergency postpetition loans under the Postpetition Credit Agreement to and including the date on which the Final Order is entered (the "*Interim Commitment*"), (b) requesting the provision of adequate protection to certain of the Debtors' prepetition secured lenders and (c) in accordance with Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*"), requesting that this Court schedule the Final Hearing and approve notice with respect thereto; and the Court having considered the Motion and the exhibits attached thereto, including, without limitation, the Postpetition Credit Agreement; and a hearing to consider approval of the Interim Commitment having been held and concluded on January 30, 2008 (the "*Interim Hearing*"); and upon all of the pleadings filed with the Court and all of the proceedings held before the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor,

THE COURT HEREBY FINDS:

A. On January 29, 2008 (the "*Petition Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Each Debtor is continuing in the management and possession of its business and properties as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. No request has been made for the appointment of a trustee or examiner and no statutory committee (a "*Committee*") has yet been appointed in the Debtors' chapter 11 cases (collectively, the "*Cases*").

C. Consideration of this Motion constitutes a "core proceeding" as defined in 28 U.S.C. §§ 157(b)(2)(A), (D), (G), (K), (M) and (O). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Subject to the time limitations and other provisions specified in paragraph 35 below, the Debtors acknowledge, admit and confirm the following as of the Petition Date:

i. Pursuant to that certain (i) Second Amended and Restated Revolving Credit Agreement dated as of July 31, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "*Prepetition First Priority Revolver*"), by and among TOUSA, the other borrowers and Borrowers named therein, CNAI, as administrative agent (in such capacity, the "*Prepetition First Priority Revolver Administrative Agent*") for the Prepetition First Priority Revolver Lenders (as defined below) and certain financial institutions and other entities as lenders and letters of credit issuers party thereto (collectively, the "*Prepetition First Priority Revolver Lenders*"), and together with all guarantees, subordination agreements, intercreditor agreements, blocked account or deposit control agreements, indentures, notes, mortgages, pledges, guarantees, instruments and any other agreements and documents delivered pursuant thereto or in connection therewith, including, without limitation, the Loan Documents as defined in the Prepetition First Priority Revolver (collectively, and as amended, restated, supplemented or otherwise modified from time to time, together with the Prepetition First Priority Revolver, the "*Prepetition First Priority Revolver Financing Documents*"); and (ii) First Lien Term Loan Credit Agreement dated as of July 31, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "*Prepetition First Priority Term Loan*" and

together with the Prepetition First Priority Revolver, the "*Prepetition First Priority Secured Facilities*"), by and among TOUSA, the other borrowers and Borrowers named therein, CNAI, as administrative agent (in such capacity, the "*Prepetition First Priority Term Loan Administrative Agent*" and together with the Prepetition First Priority Revolver Administrative Agent, the "*Prepetition First Priority Administrative Agents*") for the certain financial institutions and other entities as lenders party thereto (collectively, the "*Prepetition First Priority Term Loan Lenders*" and together with the Prepetition First Priority Revolver Lenders, the "*Prepetition First Priority Lenders*"), and together with all guarantees, subordination agreements, intercreditor agreements, blocked account or deposit control agreements, indentures, notes, mortgages, pledges, guarantees, instruments and any other agreements and documents delivered pursuant thereto or in connection therewith, including, without limitation, the Loan Documents as defined in the Prepetition First Priority Term Loan (collectively, and as amended, restated, supplemented or otherwise modified from time to time, the "*First Priority Term Loan Financing Documents*" and together with the Prepetition First Priority Revolver Financing Documents, the "*Prepetition First Priority Financing Documents*"); the Prepetition First Priority Agents and the Prepetition First Priority Lenders made certain senior loans, advances and other financial accommodations, and provided for the issuance of letters of credit, to the Debtors to fund, among other things, the operations of the Debtors.

ii. Pursuant to the Prepetition First Priority Secured Facilities and other Prepetition First Priority Financing Documents, the Debtors were, as of the Petition Date, indebted to the Prepetition First Priority Agents and the Prepetition First

Priority Lenders for the principal amount of the Prepetition First Priority Indebtedness (as defined below), exclusive of accrued but unpaid interest, costs, fees and expenses, of approximately \$407,412,116.00³, plus approximately \$108,013,113.00 in issued and outstanding letters of credit under the Prepetition First Priority Revolver. For purposes of this Order, the term "*Prepetition First Priority Indebtedness*" shall mean and include, without duplication, any and all amounts owing or outstanding under the Prepetition First Priority Secured Facilities (including, without limitation, all Obligations as defined in the Prepetition First Priority Secured Facilities) or any other Prepetition First Priority Financing Document, interest on, fees and other costs, expenses and charges owing in respect of, such amounts (including, without limitation, any reasonable attorneys', accountants', financial advisors' and other fees and expenses that are chargeable or reimbursable under Sections 2.11 and 10.3 of the Prepetition First Priority Revolver or Sections 2.11 and 10.3 of the Prepetition First Priority Term Loan or any other Prepetition First Priority Financing Document), and any and all obligations and liabilities, contingent or otherwise, owed in respect of the letters of credit or other Obligations outstanding thereunder.

iii. Pursuant to certain security agreements, pledge agreements, blocked account and deposit control agreements, mortgages, deeds of trust, assignments and other documents and agreements (as amended, restated, supplemented or otherwise

³ Prepetition First Priority Indebtedness includes \$199,000,000.00 owed under the Prepetition First Priority Term Loan and \$208,412,116 owed under the Prepetition First Priority Revolver (in addition to contingent obligations under outstanding letters of credit) as of the Petition Date.

modified from time to time, collectively, the "*Prepetition First Priority Security Documents*"), and the other Prepetition First Priority Financing Documents, the Debtors granted to and/or for the benefit of the Prepetition First Priority Agents and Prepetition First Priority Lenders first priority and continuing pledges, Liens and security interests (collectively, the "*Prepetition First Priority Liens*") to secure the Prepetition First Priority Indebtedness and any guarantees thereof, in and upon the Debtors' property and assets, whether real or personal, tangible or intangible and wherever located, including state and federal tax refunds or rebates, whether now or hereafter existing or acquired, including any federal and state tax refunds or rebates, and all of the proceeds, products, offspring, rents and profits thereof, all as described in the Prepetition First Priority Security Documents. All Collateral (solely for the purpose of this subparagraph, such term is used as defined in the Prepetition First Priority Secured Facilities) and any other collateral provided under any Prepetition First Priority Financing Document, including that described in this subparagraph, that existed as of the Petition Date and all prepetition and, subject to section 552 of the Bankruptcy Code, postpetition proceeds, products, offspring, rents and profits thereof shall hereafter be referred to as the "*Prepetition Collateral*."

iv. The Prepetition First Priority Financing Documents are valid and binding agreements and obligations of the Debtors, and the Prepetition First Priority Liens (i) constitute valid, binding, enforceable and perfected first priority security interests and liens and (ii) are not subject to avoidance, reduction, disallowance, impairment or subordination by the Debtors pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

v. (i) The Prepetition First Priority Indebtedness constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with its terms (ii) the Debtors have no objection, offset, defense or counterclaim of any kind or nature to the Prepetition First Priority Indebtedness and (iii) the Prepetition First Priority Indebtedness, and any amounts previously paid to any Prepetition First Priority Agent or Prepetition First Priority Lender on account thereof or with respect thereto, are not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

vi. The value of the Prepetition Collateral exceeds the amount of the Prepetition First Priority Indebtedness as of the Petition Date.

vii. The Prepetition First Priority Agents (on their behalf and on behalf of the Prepetition First Priority Lenders) perfected their security interests and Liens in and on the Prepetition Collateral.

E. Subject to the time limitations and other restrictions specified in paragraph 35 below, the Debtors acknowledge, admit and confirm the following as of the Petition Date:

i. Pursuant to that certain Second Lien Term Loan Credit Agreement, dated as of July 31, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "*Prepetition Second Priority Credit Agreement*", and together with all agreements, documents, notes, instruments and any other agreements delivered pursuant thereto or in connection therewith, the "*Prepetition Second Priority Financing Documents*"), among TOUSA and certain of the Borrowers, as borrowers or Borrowers and Wells Fargo Bank, N.A., as administrative agent (in such capacity, the "*Prepetition Second Priority Administrative Agent*," together with the Prepetition First Priority Agents, the "*Prepetition Agents*") and the lenders from time

to time party thereto (collectively, the "*Prepetition Second Priority Lenders*" and, together with the Prepetition First Priority Lenders, the "*Prepetition Secured Lenders*"), the Prepetition Second Priority Lenders made loans and extended other financial accommodations to or for the benefit of the Debtors.

ii. Pursuant to the Prepetition Second Priority Credit Agreement and other Prepetition Second Priority Financing Documents, the Debtors were, as of the Petition Date, indebted to the Prepetition Second Priority Agents and Prepetition Second Priority Lenders pursuant to the Prepetition Second Priority Credit Agreement in the aggregate principal amount of \$317,101,998, plus, as of the Petition Date, (i) accrued and unpaid interest thereon and (ii) fees, costs, expenses and other obligations accrued or owing with respect thereto (collectively, and including, without limitation, any reasonable attorneys', accountants', financial advisors' and other fees and expenses that are chargeable or reimbursable under Section 2.11 and 10.3 of the Prepetition Second Priority Credit Agreement or any other Prepetition Second Priority Financing Documents, the "*Prepetition Second Priority Indebtedness*" and, together with the Prepetition First Priority Indebtedness, the "*Prepetition Secured Obligations*").

iii. Pursuant to certain security agreements, pledge agreements, blocked account and deposit control agreements, mortgages, deeds of trust, assignments and other documents and agreements (as amended, restated, supplemented or otherwise modified from time to time, collectively, the "*Prepetition Second Priority Security Documents*"), and the other Prepetition Second Priority Financing Documents, the Debtors granted to the Prepetition Second Priority Agent, for its benefit and the benefit of the Prepetition Second Priority Lenders, a second priority Lien on

(collectively, the "*Prepetition Second Priority Liens*" and, together with the Prepetition First Priority Liens, the "*Prepetition Liens*") all of the Prepetition Collateral.

iv. The Prepetition Second Priority Financing Documents are valid and binding agreements and obligations of the Debtors and (i) the Prepetition Second Priority Liens constitute valid, binding, enforceable and perfected second priority security interests and liens, subject only to the Prepetition First Priority Liens and other Permitted Liens (as defined in the Prepetition Second Priority Credit Agreement), but only to the extent such other Permitted Liens are valid, enforceable, non-avoidable liens and security interests that are perfected prior to the Petition Date (or perfected after the Petition Date to the extent permitted by Section 546(b) of the Bankruptcy Code), which are not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law and which are senior in priority to the Prepetition Second Priority Liens under applicable law and after giving effect to any applicable subordination or intercreditor agreements and (ii) the Prepetition Second Priority Liens are not subject to avoidance, reduction, disallowance, impairment or subordination (other than subordination to the Prepetition First Priority Liens) pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

v. (i) The Prepetition Second Priority Indebtedness constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with its terms (ii) the Debtors have no objection, offset, defense or counterclaim of any kind or nature to the Prepetition Second Priority Indebtedness and (iii) the Prepetition Second Priority Indebtedness, and any amounts previously paid to or on behalf of any

Prepetition Second Priority Lender on account thereof or with respect thereto, are not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

F. The Prepetition First Priority Administrative Agents, on behalf of the Prepetition First Priority Revolver Lenders and the Prepetition First Priority Lenders (collectively, with the Prepetition First Priority Administrative Agents, the "*Prepetition First Priority Secured Parties*") and the Prepetition Second Priority Administrative Agent, on behalf of the Prepetition Second Priority Lenders (together, with the Prepetition Second Priority Administrative Agent, the "*Prepetition Second Priority Secured Parties*") entered into that certain Intercreditor Agreement, dated as of July 31, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "*Intercreditor Agreement*").

G. An immediate and critical need exists for the Debtors to obtain funds and use Cash Collateral (as defined below) in order to continue the operation of their businesses. The use of "cash collateral," as defined by section 363(a) of the Bankruptcy Code and including any and all prepetition and, subject to section 552 of the Bankruptcy Code, postpetition proceeds of the Prepetition Collateral ("*Cash Collateral*"), alone would be insufficient to meet the Debtors' immediate postpetition liquidity needs. The Debtors are unable to obtain the required funds (i) in the forms of (a) unsecured credit or debt allowable under section 503(b)(1) of the Bankruptcy Code, (b) only an administrative expense pursuant to section 364(a) or (b) of the Bankruptcy Code, (c) unsecured debt having the priority afforded by section 364(c)(1) of the Bankruptcy Code or (d) debt secured only as described in section 364(c)(2) or (3) of the Bankruptcy Code or (ii) on terms more favorable than those offered by the Postpetition Lenders under the Postpetition Credit Agreement, this Order, and all other agreements, documents, notes or instruments delivered pursuant hereto or thereto or in connection herewith or therewith and the fee letter

referred to in the Motion (collectively with the Postpetition Credit Agreement, this Order and the Final Order, the "*Postpetition Financing Documents*").

H. The Debtors have requested that, pursuant to the terms of the Postpetition Financing Documents, the Postpetition Lenders make loans and advances and provide other financial accommodations to the Debtors, and that the Prepetition First Priority Administrative Agents (on behalf of the Prepetition First Priority Secured Lenders) consent, or do not object, to (i) the financing contemplated under the Postpetition Financing Documents and (ii) the use of their Cash Collateral, to be used by the Debtors solely in accordance with the terms of the Postpetition Financing Documents. The ability of the Debtors to continue their businesses and reorganize under chapter 11 of the Bankruptcy Code depends upon the Debtors obtaining such financing and using such Cash Collateral. The Postpetition Lenders are willing to make such loans and advances and provide such other financial accommodations only on a superpriority and priming first priority secured basis, as more particularly described herein, pursuant to the terms and conditions of the Postpetition Financing Documents. Accordingly, the relief requested in the Motion is necessary, essential and appropriate for the continued operation of the Debtors' businesses, the management and preservation of their assets and properties, and is in the best interests of the Debtors, their estates and creditors.

I. The Debtors have represented that, in the absence of unforeseen circumstances, they will not seek authorization from this Court to borrow prior to entry of the Final Order the principal amount of more than \$134,574,000.00 under the Postpetition Financing Documents.

J. Based upon the record before the Court, (i) the terms of the use of the Prepetition Secured Priority Lenders' Cash Collateral as provided in this Order and (ii) the terms of the Postpetition Financing Documents, pursuant to which the Postpetition Financing will be

made or provided to the Debtors by the Postpetition Lenders, have been negotiated at arms' length and in "good faith," as that term is used in section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtors, their estates and creditors. The Postpetition Lenders are extending financing to the Debtors in good faith and the Prepetition Agents, Prepetition First Priority Lenders and Prepetition Second Priority Lenders are permitting the use of their Cash Collateral, in good faith, and the Postpetition Agents and Postpetition Lenders are entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code.

K. It is in the best interests of the Debtors' estates that they be allowed to finance their operations and use Cash Collateral under the terms and conditions set forth herein and in the Postpetition Financing Documents. The relief requested by the Motion is necessary to avoid immediate and irreparable harm to the Debtors' estates, and good, adequate and sufficient cause has been shown to justify the granting of the relief requested herein, and the immediate entry of this Order.

L. The Prepetition First Priority Agents and the First Priority Lenders have consented, or have not objected, and the Prepetition Second Priority Agent and Prepetition Second Priority Lenders have consented, or have not objected, to (i) the priming of the Prepetition Liens by the Postpetition Liens on the terms and conditions set forth in this Order and (ii) the Debtors' use of the Prepetition Secured Lenders' Cash Collateral. Nothing herein shall be construed as a consent by the Prepetition First Priority Agent, the Prepetition First Priority Lenders, the Prepetition Second Priority Agent or the Prepetition Second Priority Lenders to the entry and terms of the Final Order or the priming with respect to Advances proposed to be made under the Final Order. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary in order to obtain such consent or non-objection of such parties.

M. Notice of the relief sought by the Motion, and the hearing with respect thereto was delivered on January 29, 2008 via facsimile and/or overnight delivery to the following parties in interest: (i) the United States Trustee for the Southern District of Florida (the "*U.S. Trustee*"); (ii) those parties listed on the Consolidated List of Creditors Holding Largest Twenty Unsecured Claims Against the Debtors, as identified in the Debtors' chapter 11 petitions; (iii) counsel to the Postpetition Agents; (iv) counsel to the Prepetition First Priority Agents; (v) counsel to the Prepetition Second Priority Agent; (vi) counsel to the ad hoc Group of Prepetition Second Priority Lenders (the "*Second Priority Lenders Group*"); (vii) counsel to the indenture trustee for the Debtors' 8 1/4% senior notes; (viii) counsel to the indenture trustee for the Debtors' 9% senior notes; (ix) counsel to the indenture trustee for the Debtors' 10 3/8% senior subordinated notes; (x) counsel to the indenture trustee for the Debtors' 7 1/2% senior subordinated notes due 2011; (xi) counsel to the indenture trustee for the Debtors' 7 1/2% senior subordinated notes due 2015; (xii) the Internal Revenue Service; (xiii) any party that has filed a Lien against any of the Debtors' assets; and (xiv) all counterparties to nonresidential real property leases of the Debtors; (xv) counsel to the *ad hoc* group of the Debtors' senior bondholders; (xvi) counsel to the *ad hoc* group of the Debtors' subordinated bondholders (collectively, the "*Interim Notice Parties*"). Given the nature of the relief sought in the Motion, such notice constitutes sufficient and adequate notice of this Order pursuant to Bankruptcy Rules 2002, 4001(b), (c) and (d) and 9014 and section 102(1) of the Bankruptcy Code, as required by sections 363(b) and 364(d) of the Bankruptcy Code, and no further notice of the Motion or this Order is necessary or required.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Motion is granted in its entirety subject to the provisions hereof. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn

are hereby overruled on their merits. This Order shall become effective immediately upon its entry.

2. The Debtors are hereby (i) authorized to enter into the Postpetition Credit Agreement, substantially in the form filed with the Court, with such modifications as permitted by this Order, and the other Postpetition Financing Documents and (ii) authorized to borrow funds, obtain letters of credit, incur debt, reimbursement obligations and other obligations, grant Liens, make deposits, provide guaranties and indemnities and perform their obligations solely in accordance with the terms and conditions of the Postpetition Financing Documents. Upon written notice to Interim Notice Parties (as defined below), (provided that this notice requirement shall not affect the effectiveness of any amendment, modified or supplement) the Postpetition Financing Documents may be amended, modified, supplemented or the provisions thereof waived in accordance with their terms, without further order of this Court; *provided, however*, that notice of any (i) increase in the aggregate of the Postpetition Lenders' lending commitments, except as set forth with respect to the Roll-Up Commitment as defined in the Postpetition Credit Agreement, which will be subject to the Final Order, (ii) increase in the applicable interest rates, other than increases described in the Motion or in the Postpetition Filing Documents as filed with this Court, (iii) modification of the maturity of the obligations under the Postpetition Financing Documents, or (iv) modification of the Borrowing Base (other than the exercise of the Postpetition Administrative Agent's and Postpetition Lenders' rights set forth or permitted by the Postpetition Credit Agreement to increase or decrease advance rates and increase or decrease reserves), financial covenants or financial events of default that are on terms materially more onerous or burdensome to the Debtors, other than modifications described in the Motion or in the Postpetition Financing Documents as filed with this Court, shall be provided to the Interim Notice Parties, each of which shall have five (5) days from the date of such notice within which

to object in writing to such amendment, modification or supplement, and upon any such timely written objection, such amendment, modification or supplement shall only be permitted following entry of an order of this Court approving or authorizing such amendment, modification or supplement. All obligations owed to any of the Postpetition Agents and/or Postpetition Lenders (collectively, and solely in their respective capacities as Postpetition Agents and Postpetition Lenders and not in their capacity as lender under any other facility the "*Postpetition Secured Parties*"), under or in connection with the Postpetition Financing Documents, including, without limitation, all Obligations (as such term is defined in the Postpetition Financing Documents), loans, advances, letters of credit and other indebtedness, obligations and amounts (contingent or otherwise) owing from time to time under or in connection with the Postpetition Financing Documents, and any and all other obligations at any time incurred by any of the Debtors to any of the Postpetition Secured Parties, are defined and referred to herein as the "*Postpetition Obligations*."

3. Subject to the terms and conditions set forth in this Order, the Debtors are authorized, pursuant to section 363(c)(2) of the Bankruptcy Code, to use the Prepetition Secured Lenders' Cash Collateral for the period of time from the execution and effectiveness of the Postpetition Credit Agreement until the earliest to occur of (i) the termination or acceleration of the Postpetition Obligations as set forth in the Postpetition Credit Agreement or (ii) this Order or the Final Order ceases to be in full force and effect (each a "*Cash Collateral Termination Event*"). The Debtors' authority to use the Prepetition Secured Lenders' Cash Collateral shall automatically terminate on a Cash Collateral Termination Event without further order or relief from the Court. The Debtors reserve all rights to seek authorization to use the Prepetition Secured Lenders' Cash Collateral after a Cash Collateral Termination Event and the Prepetition First Priority Agents reserve all rights to object to such authorization.

4. Upon execution and delivery of the Postpetition Financing Documents, the Postpetition Financing Documents shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with their terms; *provided, however*, that notwithstanding any other provision of this Order or of the other Postpetition Financing Documents, the Debtors shall not, prior to entry of a final order approving the Postpetition Financing Documents (the "*Final Order*") or such other further orders as this Court may enter, incur Postpetition Obligations in the aggregate principal amount of more than \$134,574,000.00. No portion of the Postpetition Obligations incurred by the Debtors during the interim period pursuant to this Order shall be used to repay any portion of the Prepetition Secured Obligations except as specifically authorized under the Order. With respect to the Postpetition Obligations, no obligation, payment, transfer or grant of security under this Order or the other Postpetition Financing Documents shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or any applicable nonbankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

5. Except for the Carve-Out (and subject in all respects to the provisions set forth in paragraph 15 herein or in the Postpetition Credit Agreement), the Debtors are authorized to use Cash Collateral and the loans or advances made under or in connection with the Postpetition Financing Documents (including any letters of credit) solely as provided in this Order and in the other Postpetition Financing Documents. Except for under the Carve-Out, from and after the Petition Date, amounts loaned and advanced under or in connection with the Postpetition Financing Documents (including the issuance of the letters of credit) and all proceeds of Collateral, including, without limitation, all of the Debtors' existing or future cash and Cash Collateral (collectively, "*Lender Funds*"), shall not, directly or indirectly, be used to pay expenses of the Debtors or otherwise disbursed except for those expenses and/or disbursements

that are not expressly prohibited under the Postpetition Financing Documents. Except for the Carve-Out, no administrative claims, including fees and expenses of professionals, shall be assessed against or attributed to any of the Postpetition Secured Parties, Prepetition Agents or Prepetition Secured Lenders with respect to their interests in the Collateral and/or Prepetition Collateral, as applicable, pursuant to the provisions of section 506(c) of the Bankruptcy Code or otherwise by, through or on behalf of the Debtors, without the prior written consent of the Postpetition Secured Parties, Prepetition Agents and/or Prepetition Secured Lenders, as applicable, and no such consent shall be implied from any action, inaction or acquiescence by, either with or without notice to, the Postpetition Secured Parties, Prepetition Agents or Prepetition Secured Lenders, or otherwise. Except as set forth in the second sentence of this paragraph, the Postpetition Secured Parties have not consented or agreed to the use of Lender Funds.

6. Notwithstanding anything herein to the contrary, no Lender Funds may be used directly or indirectly by any of the Debtors, any Committee or any other person or entity to (i) object to or contest in any manner the Postpetition Obligations, or to assert or prosecute any actions, claims or causes of action against any of the Postpetition Secured Parties or (ii) seek authorization for any party to use any of the Cash Collateral of the Postpetition Secured Parties without the consent of the Postpetition Agents and the Postpetition Lenders or to obtain Liens that are senior to, or on a parity with, the Liens of the Postpetition Agents, the Postpetition Lenders and the other Postpetition Secured Parties in the Collateral or any portion thereof.

7. Notwithstanding anything herein to the contrary, for so long as the Debtors are authorized to use the Prepetition Secured Lenders' Cash Collateral with the consent of the Prepetition Secured Lenders and the Prepetition Agents, no Cash Collateral of the Prepetition Secured Lenders may be used directly or indirectly by any of the Debtors, any Committee or any

other person or entity to object to or contest in any manner the Prepetition Secured Obligations or Prepetition Liens, or to assert or prosecute any actions, claims or causes of action against any of the Prepetition Agents or Prepetition Secured Lenders without the consent of the applicable Prepetition Agents and the Prepetition Secured Lenders; *provided, however*, subject in all respects to the time limitations and other provisions specified in paragraph 35 below, that nothing herein shall limit or otherwise affect the ability of any Committee or any person or entity to investigate the Prepetition Secured Obligations or Prepetition Secured Liens in any manner.

8. The Debtors are hereby authorized and directed to enter into any additional agreements providing for the establishment of lock boxes, blocked accounts or similar arrangements required or requested by the Postpetition Agents (or other banks or financial institutions acceptable to the Postpetition Agents) for the benefit and in favor of the Postpetition Secured Parties for purposes of facilitating cash collections from the Debtors in accordance with and subject to the terms of the Postpetition Financing Documents.

9. The Postpetition Agents may from time to time establish or modify availability reserves and/or eligibility reserves and otherwise modify the Borrowing Base established under the Postpetition Credit Agreement in accordance with and subject to the terms and provisions thereof.

10. Interest on the Postpetition Obligations shall accrue at the rates (including any applicable default rates) and shall be paid at the times as provided in the Postpetition Financing Documents.

11. Any and all fees paid or required to be paid in connection with the Postpetition Financing Documents are hereby authorized and shall be paid to the extent disclosed in the Motion or contained in the Postpetition Financing Documents filed with the Court.

12. Subject to the Carve-Out (as defined herein), all Postpetition Obligations hereby constitute allowed superpriority administrative expense claims under section 364(c)(1) of the Bankruptcy Code against each of the Debtors (jointly and severally), having priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, including, without limitation, those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code, or otherwise (whether incurred in the Cases or any conversion thereof to a case under chapter 7 of the Bankruptcy Code or any other proceeding related hereto or thereto), which superpriority claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof.

13. As security for the Postpetition Obligations, the Postpetition Agents are each hereby granted pursuant to section 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, for the sole benefit of the Postpetition Secured Parties, valid, binding, continuing, enforceable, first priority and fully perfected priming Liens (the "*Postpetition Liens*") in the Collateral, which Liens are subject only to the Carve-Out (as defined below). Furthermore, from and after the Petition Date, the Debtors shall not create, incur, or suffer to exist any Liens of any kind or nature on any of their assets or properties except for the Postpetition Liens granted hereunder, the Adequate Protection Liens granted hereunder and Customary Permitted Liens (as that term is defined in the Postpetition Credit Agreement) and any other Liens permitted under the Postpetition Credit Agreement; *provided, however*, that for the avoidance of doubt and without limiting the foregoing, the Postpetition Liens shall be in all respects senior in rank and priority to any and all Customary Permitted Liens and other Liens securing any Prepetition Secured Obligations, including, without limitation, any and all Adequate Protection Liens granted hereunder. The term "*Collateral*" shall include Mortgaged Property (as defined in the Postpetition Credit

Agreement) and "Collateral" as referred to in the Collateral Documents, and all other property now existing or hereafter acquired and will include all that is or is intended to be subject to a first priority Lien, subject only to the Carve-Out, in favor of the Postpetition Administrative Agent for the benefit of the Secured Parties without limitation, all Borrowing Base Assets, accounts receivable, inventory, machinery, equipment, leases and Real Property (as defined in the Postpetition Credit Agreement) (whether owned or leased), general intangibles (including patents, trade names and trademarks and licenses thereof), books and records of the Borrowers, tax refunds, excess proceeds returned to the Borrowers from letter of credit beneficiaries, and all cash and all proceeds of the foregoing; *provided, however*, for the avoidance of doubt, prior to the entry of the Final Order, Collateral shall not include the proceeds of causes of action under Chapter 5 or Chapter 7 of the Bankruptcy Code; *provided, further, however*, the Postpetition Liens on the Collateral constituting customer deposits held in escrow shall be limited to those arising pursuant to Section 363(c)(3) of the Bankruptcy Code and shall be junior only to the claims and interests of the customers (it being understood that all Postpetition Liens shall apply with respect to the rights of the Borrowers to receive any proceeds from such deposits and the proceeds derived therefrom).

14. Subject only to the Carve-Out, the Postpetition Liens shall not be (i) subject to any Lien that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other Lien under section 364(d) of the Bankruptcy Code or otherwise. No claim or Lien having a priority superior to or *pari passu* with those granted by this Order with respect to the Postpetition Obligations shall be granted or allowed until the indefeasible payment in full in cash and satisfaction in the manner provided in the Postpetition Financing Documents of the Postpetition Obligations.

15. Subject to the terms and conditions contained in this paragraph 15, all liens on and security interests in Collateral granted pursuant to this Order and all superpriority administrative claims granted pursuant to this Order shall be subordinate to the following (the “*Carve-Out*”):

(i) unpaid fees of the Clerk of the Bankruptcy Court and the United States Trustee pursuant to 28 U.S.C. § 1930(a);

(ii) Professional Fees (as defined in the Postpetition Credit Agreement) incurred prior to the delivery of a Carve-Out Trigger Notice (as defined in the Postpetition Credit Agreement) provided that timely application is made for payment of such Professional Fees or fee statements for such Professional Fees have been delivered to the Administrative Agent and to the Bankruptcy Court and such fee statements are eventually approved by an order of the Bankruptcy Court; and

(iii) unpaid and allowed fees and expenses of Professionals incurred subsequent to the delivery of a Carve-Out Trigger Notice, in an aggregate amount not to exceed \$10,000,000;

provided, however, that the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party (including the Debtors or a single Official Committee of Unsecured Creditors appointed in the Cases) or its professionals in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against any of the Postpetition Secured Parties, including, without limitation, challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the Postpetition Obligations and Postpetition Liens.

Notwithstanding anything to the contrary in this Order or in the Postpetition Credit Agreement, the terms and provisions of the Postpetition Credit Agreement relating to the funding from time

to time of the Carve-Out (prior to and following the delivery of the Carve-Out Trigger Notice) set forth in Section 6.19 of the Postpetition Credit Agreement, and the treatment of the Carve-Out in the Borrowing Base (as defined in the Postpetition Credit Agreement), shall govern with respect to such matters.

16. Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair (a) any of the rights of any of the Postpetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of any of the Postpetition Secured Parties to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases, conversion of any of the Cases to cases under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner (including with expanded powers) or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans or (b) any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the Postpetition Secured Parties.

17. Notwithstanding anything herein to the contrary, this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Secured Parties to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection at any time, including prior to a Cash Collateral Termination Event and nothing herein shall affect the rights of any other party or entity to seek or oppose such modification of the grant of the adequate protection provided hereby. Nothing herein shall impair the rights of any party or entity to challenge or otherwise modify the adequate protection provided herein to the Prepetition Second Priority Secured Parties; *provided, however*, that if any additional adequate protection claims, Liens or other rights are awarded at any time to or for the benefit of any of the Prepetition First Priority Agents

or Prepetition First Priority Lenders, such claims, Liens and/or other rights shall be at all times junior in all respects to the claims and Liens granted to or for the benefit of the Postpetition Secured Parties and shall not affect the priority, validity, binding nature, enforceability or perfection of any of such claims and Liens granted to or for the benefit of the Postpetition Secured Parties; *provided, further, however*, that the foregoing is without prejudice to the right of the Debtors or any other party in interest, including the Postpetition Secured Parties, to challenge any such request.

18. Notwithstanding anything herein or in the other Postpetition Financing Documents, on either the Scheduled Termination Date or the Final Termination Date (as applicable and as both terms are defined in the Postpetition Credit Agreement) of the Postpetition Credit Agreement, the Debtors (i) shall no longer, pursuant to this Order, the other Postpetition Financing Documents, or otherwise, be authorized to borrow funds or incur indebtedness hereunder or under the other Postpetition Financing Documents or to use any proceeds of the Postpetition Obligations already received (and any obligations of the Postpetition Lenders to make loans or advances or issue letters of credit hereunder or under the other Postpetition Financing Documents automatically shall be terminated) and (ii) shall deposit in an account designated by the Postpetition Agents (the "*Letter of Credit Cash Collateral Account*") cash in an amount equal to 102.5% of the face amount of all outstanding letters of credit. Whether as a result of a Scheduled Termination Date, Final Termination Date or otherwise, the Postpetition Agent under the Postpetition Financing Documents, pursuant to section 2.3 of the Postpetition Credit Agreement, is authorized and empowered to draw upon the Letter of Credit Term Loan and deposit such funds in the Letter of Credit Cash Collateral Account. This authorization shall not be subject to stay or injunction or affected by any Event of Default, conversion of the Cases to chapter 7, dismissal of the Cases, the appointment of a trustee or examiner or otherwise.

19. Notwithstanding anything herein or the occurrence of either Scheduled Termination Date or the Final Termination Date (as applicable) under the Postpetition Credit Agreements, all of the rights, remedies, benefits and protections provided (i) to the Postpetition Secured Parties under this Order and the other Postpetition Financing Documents, and (ii) to the Prepetition Agents and Prepetition Secured Lenders under this Order, shall survive such Scheduled Termination Date or Final Termination Date (as applicable). Upon such Scheduled Termination Date or Final Termination Date (as applicable), the principal of and all accrued interest and fees and all other Postpetition Obligations shall be immediately due and payable and the Postpetition Secured Parties shall have all other rights and remedies provided in this Order, the other Postpetition Financing Documents and applicable law.

20. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the Postpetition Secured Parties to exercise, upon the occurrence and during the continuation of any Event of Default (as defined in the Postpetition Credit Agreement), all rights and remedies provided for in the Postpetition Financing Documents, and to take any or all of the following actions without further order of or application to this Court: (a) terminate the Debtors' use of Cash Collateral and cease to make any loans or advances to the Debtors; (b) declare all Postpetition Obligations to be immediately due and payable; (c) terminate the Interim Commitment and any unfunded Commitments under the proposed Postpetition Credit Agreement; (d) set off and apply immediately any and all amounts in accounts maintained by the Debtors with any Postpetition Secured Parties against the Postpetition Obligations, and otherwise enforce rights against the Collateral in the possession of any of the Postpetition Secured Parties for application towards the Postpetition Obligations; and (e) take any other actions or exercise any other rights or remedies permitted under this Order, the other Postpetition Financing Documents or applicable law to effect the repayment and

satisfaction of the Postpetition Obligations; *provided, however*, that any Postpetition Secured Party shall provide five (5) business days written notice (by facsimile, telecopy, electronic mail or otherwise) to the U.S. Trustee, counsel to the Debtors, counsel to the respective Prepetition Agents, counsel to the *ad hoc* group of senior noteholders and counsel to a Committee prior to exercising any enforcement rights or remedies in respect of the Collateral (other than the rights described in clauses (a), (b) and (c) above (to the extent they might be deemed remedies in respect of the Collateral) and other than with respect to freezing any deposit accounts or securities accounts). The Debtors and any other parties in interest may seek within the five (5) business day notice period an expedited hearing before this Court solely for the purpose of considering whether, in fact, an Event of Default has occurred and is continuing. At the expiration of such five (5) business day period, in the absence of a determination by this Court that an Event of Default has occurred or is not continuing, the Postpetition Secured Parties shall be entitled to pursue all remedies. The rights and remedies of the Postpetition Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that the Postpetition Secured Parties may have under the other Postpetition Financing Documents or otherwise. Upon written notice (by facsimile, telecopy, electronic mail or otherwise) to the U.S. Trustee, counsel to the Debtors, counsel to the respective Prepetition Agents, counsel to the *ad hoc* group of senior noteholders and counsel to a Committee, nothing herein shall preclude the Postpetition Secured Parties from seeking an order from the Bankruptcy Court authorizing the Postpetition Secured Parties to exercise any enforcement rights or remedies with respect to the Collateral on less than five (5) business days notice.

21. If the Postpetition Secured Parties shall at any time exercise any of their respective rights and remedies hereunder, under the other Postpetition Financing Documents or under applicable law in order to effect payment or satisfaction of the Postpetition Obligations or

to receive any amounts or remittances due hereunder or under the other Postpetition Financing Documents, including without limitation, foreclosing upon and selling all or a portion of the Collateral, the Postpetition Secured Parties shall have the right without any further action or approval of this Court to exercise such rights and remedies as to all or such part of the Collateral as the Postpetition Secured Parties shall elect in their sole discretion, subject to the provision by the applicable Postpetition Secured Parties of the written notice as provided in the preceding paragraph. No holder of a Lien primed by this Order or granted by the Debtors as adequate protection shall be entitled to object on the basis of the existence of any such Lien to the exercise by the Postpetition Secured Parties of their respective rights and remedies under the Postpetition Financing Documents or under applicable law to effect satisfaction of the Postpetition Obligations or to receive any amounts or remittances due hereunder or under the other Postpetition Financing Documents. The Postpetition Secured Parties shall be entitled to apply the payments or proceeds of the Collateral in accordance with the provisions of this Order and the other Postpetition Financing Documents, and in no event shall any of the Postpetition Secured Parties be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Collateral or otherwise.

22. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the Postpetition Secured Parties contained in this Order or the other Postpetition Financing Documents, or otherwise available at law or in equity, and subject to the terms of the other Postpetition Financing Documents, upon written notice to the Debtors and others, as specified in paragraph 21 above, and to the landlord of any leased premises that an Event of Default (as defined in the Postpetition Credit Agreement) has occurred and is continuing under the Postpetition Credit Agreement, the Postpetition Secured Parties may, so long as an Event of Default is continuing, 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 Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder, *provided that* the Postpetition Secured Parties shall only pay rent under such leases that first accrues after provision of the Postpetition Secured Parties' written notice referenced above and that is payable during the period of any occupancy by the Postpetition Secured Parties, calculated on a *per diem* basis. Nothing herein shall require the Postpetition Secured Parties to assume any lease as a condition to the rights afforded to the Postpetition Secured Parties in this paragraph. Furthermore, any landlord's lien, right of distraint or levy, security interest or other Lien or interest that any landlord, warehouseman or landlord's mortgagee may have in any Collateral located on such leased premises is hereby subordinated to the Postpetition Liens.

23. The failure or delay by any (i) Postpetition Secured Party to seek relief or otherwise exercise its rights and remedies under this Order or any other Postpetition Financing Documents or (ii) Prepetition Agent or Prepetition Secured Lender to exercise its rights and remedies under this Order shall not constitute a waiver of any of the rights of such Postpetition Secured Party, Prepetition Agent or Prepetition Secured Lender hereunder, thereunder or otherwise, and any single or partial exercise of such rights and remedies against any party or Collateral shall not be construed to limit any further exercise of such rights and remedies against any or all of the other party and/or Collateral.

24. Except as expressly provided in the Postpetition Financing Documents, including this Order, the Debtors shall be enjoined and prohibited at any time during the Cases from granting claims or Liens in the Collateral or any portion thereof to any other parties pursuant to sections 364(d), 503(b) or 507(b) of the Bankruptcy Code or otherwise; *provided, however,* and notwithstanding anything to the contrary in this Order, the statutory imposition of a

materialmans', mechanics', artisans' or other lien by operation of law without further action by the Debtors shall not violate anything to the contrary in this Order. The Debtors shall be enjoined and prohibited at any time from (i) using the Collateral except pursuant to the terms and conditions of this Order and the other Postpetition Financing Documents and (ii) applying to any court for an order authorizing the use of the Collateral except on the terms of this Order and the other Postpetition Financing Documents.

25. In accordance with the terms of section 6.6 of the Postpetition Credit Agreement, the Postpetition Agents and the Postpetition Lenders under the Postpetition Financing Documents, shall be permitted to visit and inspect any of the Debtors' properties, to inspect, copy and take extracts from the Debtors' financial and accounting records and to discuss the Debtors' affairs, finances and accounts with their officers and independent public accountants.

26. All Liens granted or authorized pursuant to this Order to or for the benefit of the Postpetition Secured Parties or the Prepetition Secured Parties (but, with respect to the Prepetition Secured Parties, subject in all respects to paragraph 35 below) shall pursuant to this Order be, and they hereby are, valid, enforceable and perfected, effective as of the Petition Date, and (notwithstanding any provisions of any agreement, instrument, document, the Uniform Commercial Code or any other relevant law or regulation of any jurisdiction) no further notice, filing or other act shall be required to effect such perfection, and all Liens that may be created upon any Designated Accounts (as defined in the Postpetition Credit Agreement) and any other deposit accounts or securities accounts shall, pursuant to this Order be, and they hereby are, deemed to confer "control" for purposes of sections 8-106, 9-104 and 9-106 of the New York Uniform Commercial Code as in effect as of the date hereof in favor of the Postpetition Secured Parties, *provided, however*, that if the Postpetition Agents shall, in their sole discretion, choose to

require the execution of and/or file (as applicable) such mortgages, financing statements, notices of Liens and other similar instruments and documents, all such mortgages, financing statements, notices of Liens or other similar instruments and documents shall be deemed to have been executed, filed and/or recorded *nunc pro tunc* at the time and on the date of the Petition Date. Each and every federal, state and local government agency or department is hereby directed to accept the entry by this Court of this Order as evidence of the validity, enforceability and perfection on the Petition Date of the Liens granted or authorized pursuant to this Order to or for the benefit of the Postpetition Secured Parties or the Prepetition Secured Parties (but, with respect to the Prepetition Secured Parties, subject in all respects to paragraph 35 below).

27. The provisions of this Order shall be binding upon and inure to the benefit of each of the Postpetition Secured Parties, Postpetition Agents, Prepetition Agents, Prepetition Secured Lenders and Debtors and their respective successors and assigns (including any chapter 7 trustee or other trustee or fiduciary hereafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors).

28. Based upon the findings set forth in this Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the Interim Commitment contemplated by this Order, in the event that any or all of the provisions of this Order or any other Postpetition Financing Documents, including the Final Order, are hereafter modified, amended or vacated by a subsequent order of this or any other Court, no such modification, amendment or vacation shall affect the validity, enforceability or priority of any Lien or claim authorized or created hereby or thereby or any Postpetition Obligations incurred hereunder or thereunder. Notwithstanding any such modification, amendment or vacation, any Postpetition Obligations incurred and any claim granted to the Postpetition Secured Parties hereunder or under the other Postpetition Financing Documents, including the Final Order, arising prior to the

effective date of such modification, amendment or vacation shall be governed in all respects by the original provisions of this Order and the other Postpetition Financing Documents, including the Final Order, and the Postpetition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits, including the Liens and priorities granted herein and therein, with respect to any such Postpetition Obligations and claim.

29. The validity, enforceability, priority or amount of any of the claims and Liens granted to or for the benefit of the Postpetition Secured Parties under this Order or any other Postpetition Financing Documents with respect to the Postpetition Obligations shall not be affected by any finding or order of this Court or any other court regarding any Prepetition Secured Lender or Prepetition Liens, including, without limitation, any order of this Court or any other Court invalidating any Prepetition Secured Loans or Prepetition Liens.

30. The Debtors are authorized and directed, and the automatic stay imposed by section 362 of the Bankruptcy Code is hereby lifted to the extent necessary, to do and perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution of additional security agreements, pledge agreements, control agreements, mortgages and financing statements), and shall pay fees and expenses that may be required or necessary for the Debtors' performance under the Postpetition Financing Documents, including, without limitation, (i) the execution of the Postpetition Financing Documents and (ii) the payment of the fees and other expenses described in the Postpetition Financing Documents as such become due, including, without limitation, agent fees, commitment fees, letter of credit fees and underwriting fees and reasonable attorneys', financial advisers' and accountants' fees and disbursements and fees in respect of internal auditors, all as provided for in and subject to the Postpetition Financing Documents. None of such reasonable attorneys', financial advisers', accountants' and internal auditors' fees and disbursements shall be subject to the approval of this

Court or the U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court. To the extent requested by the Postpetition Administrative Agent pursuant to Section 6.11(c) of the Postpetition Credit Agreement, each Debtor shall deliver to the Postpetition Administrative Agent original counterpart Mortgages covering all Mortgaged Property then owned by such Debtor within ten (10) business days of such request and shall satisfy the requirements set forth in Section 6.12 of the Postpetition Credit Agreement with respect to each such Mortgage. In addition, the Debtors are hereby authorized and directed to indemnify the Postpetition Secured Parties, exclusively in their capacity as Postpetition Secured Parties and not in their capacity as lender under any other facility, against any liability arising in connection with the Postpetition Financing Documents to the extent provided in and subject to the Postpetition Financing Documents. All such fees, expenses and indemnities of the Postpetition Secured Parties shall constitute Postpetition Obligations and shall be secured by the Postpetition Liens and afforded all of the priorities and protections afforded to the Postpetition Obligations under this Order and the other Postpetition Financing Documents.

31. The obligations of the Debtors in respect of the Postpetition Obligations, and the claims and Liens granted to or for the benefit of the Postpetition Secured Parties pursuant to this Order and the other Postpetition Financing Documents, are not subject to any setoff or reduction of any kind, including, without limitation, under section 502(d) of the Bankruptcy Code and shall not be discharged by the entry of an order (a) confirming a chapter 11 plan in any of the Cases (and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors hereby waive such discharge) or (b) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code. Under no circumstances shall any chapter 11 plan in any of these Cases be confirmed or become effective unless such plan provides that the Postpetition Obligations shall

be paid in full in cash and satisfied in the manner provided in the Postpetition Financing Documents on or before the effective date of such plan.

32. Until all obligations and indebtedness owing to the Postpetition Secured Parties shall have been paid in full in cash and satisfied in the manner provided in the Postpetition Financing Documents, no Debtor shall seek 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(b) of the Bankruptcy Code) that (i) the claims and Liens granted pursuant to this Order to or for the benefit of the Postpetition Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in this Order until all obligations in respect thereof shall have been paid in full in cash and satisfied in the manner provided in the Postpetition Financing Documents (and that such claims and Liens shall, notwithstanding such dismissal, remain binding on all parties in interest), (ii) the claims and Liens granted pursuant to this Order to or for the benefit of the Prepetition Agents and Prepetition Secured Lenders shall continue in full force and effect and shall maintain their priorities as provided in this Order (and that such claims and Liens shall, notwithstanding such dismissal, remain binding on all parties in interest), (iii) that prior to dismissal, the applicable Debtors shall deliver to the Postpetition Agent and record, at the Debtors' cost, financing statements, mortgages and other documentation evidencing perfected Liens in the Collateral and (iv) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and Liens.

33. Subject in all respects to the Postpetition Obligations and Postpetition Liens (which shall at all times rank senior and prior to the Prepetition Secured Claims, Prepetition Liens, Adequate Protection Liens, Adequate Protection Claims (as defined below) and the rights of the Prepetition Agents and Prepetition Secured Lenders under this Order), the Prepetition

Agents and the Prepetition Secured Lenders are hereby provided with the following forms of adequate protection (which the Postpetition Agents acknowledge are acceptable to them):

(a) As adequate protection of the respective interests of the Prepetition Agents and Prepetition Secured Lenders in the Prepetition Collateral, to the extent of any diminution in the value of the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, whether as a result of the imposition of the automatic stay, priming of the Prepetition Liens, use of the Prepetition Secured Lenders' Cash Collateral or otherwise, the Prepetition Agents, for their benefit and the benefit of the Prepetition Secured Lenders, shall be entitled to replacement Liens (the "*Adequate Protection Liens*") (which are hereby granted to the Prepetition Agents), subject and junior only to the Postpetition Liens and the Carve-Out (and to such Customary Permitted Liens and other Liens, if any, as may be senior, under applicable law, to such liens of the Prepetition Agents or Prepetition Secured Lenders, as the case may be, in the relevant Collateral), on all Collateral; *provided, however*, that the Adequate Protection Liens of the Prepetition Second Priority Agents on any Collateral shall be subordinate in priority to the Adequate Protection Liens of the Prepetition First Priority Agents. Except as provided in this Order, the Adequate Protection Liens shall not be made subject to or *pari passu* with any Lien on the Collateral by any order subsequently entered in the Cases and shall be granted the benefits of paragraph 26 hereof as applicable (subject in all respects to paragraph 35 below).

(b) Subject to the Carve-Out, and subject in all respects to paragraph 35 below, as additional adequate protection of the interests of the Prepetition Agents and the Prepetition Secured Lenders in the Prepetition Collateral, the Prepetition Agents and the Prepetition Secured Lenders shall be entitled to allowed administrative priority claims

under section 507(b) of the Bankruptcy Code (the "*Adequate Protection Claims*") for any diminution in value of the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, whether as a result of the imposition of the automatic stay, priming of the Prepetition Liens, use of the Prepetition Secured Lenders' Cash Collateral or otherwise. The Adequate Protection Claims shall have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, including, without limitation, those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code, or otherwise (whether incurred in the Cases or any conversion thereof to a case under chapter 7 of the Bankruptcy Code or any other proceeding related hereto or thereto), provided that (x) the Adequate Protection Claims in favor of the Prepetition Second Priority Agents or Prepetition Second Priority Lenders shall be subordinate and junior in all respects in right of payment and otherwise, to the Adequate Protection Claims in favor of the Prepetition First Priority Agents and Prepetition First Priority Lenders and (y) the Adequate Protection Claims in favor of any of the Prepetition Agents or Prepetition Secured Lenders shall be subordinate and junior in all respects in right of payment and otherwise, to the payment in full in cash and satisfaction in the manner provided in the Postpetition Financing Documents of the Postpetition Obligations and the Carve-Out.

- (c) Subject to section 506(b) of the Bankruptcy Code, the Debtors shall, upon entry of this Order, and on a calendar monthly basis thereafter, promptly pay in cash
- (i) all accrued but unpaid reasonable costs and expenses of the Prepetition First Priority Agents (including all reasonable fees and expenses of professionals engaged by the Prepetition First Priority Agents as permitted by the Prepetition First Priority Secured

Facilities) for which an invoice was delivered to the Debtors, and (ii) all accrued but unpaid interest on the Prepetition First Priority Indebtedness at the non-default rate specified in the Prepetition First Priority Secured Facilities (with the applicable default rate to accrue) and all other reasonable fees, expenses, costs and charges provided under the Prepetition First Priority Secured Facilities or any other Prepetition First Priority Financing Document for which an invoice was delivered to the Debtors, in each case regardless of whether such amounts accrued prior to the Petition Date and all without further motion, fee application or order of the Court. In addition, and subject to section 506(b) of the Bankruptcy Code, and, subject to paragraphs 17 and 34 hereof, to the extent that the Prepetition Second Priority Agent and the Ad Hoc Group of Prepetition Second Priority Lenders (the "*Second Priority Lenders Group*") consent to the entry of this Order and the Final Order, the Debtors shall, promptly following entry of this Order, and on a calendar monthly basis thereafter, promptly pay in cash all reasonable, documented out-of-pocket costs and expenses of the Prepetition Second Priority Agent (including all reasonable and documented fees and expenses of professionals engaged by the Prepetition Second Priority Agent in accordance with the Prepetition Second Priority Credit Agreement, including, without limitation, Bracewell & Giuliani LLP, Seward & Kissell LLP, Bilzin Sumberg and Houlihan Lokey Howard & Zuckin Capital, Inc.), for which an invoice was delivered to the Debtors, (i) up to an amount of professional fees not to exceed \$450,000 on a monthly basis (the "*Monthly Cap*") for any and all such professionals employed by the Prepetition Second Priority Agent, with the remainder of any such fees, to the extent payable under the Prepetition Second Priority Credit Agreement, accruing and added to the claim of the Prepetition Secured Priority Lenders and Prepetition Second Priority Agent, and (ii) all other costs and expenses, including the

costs and expenses of professionals. In addition, in the event the professionals engaged by the Prepetition Second Priority Agent do not incur fees, in any given month, equal to the Monthly Cap, any portion of fees remaining within the Monthly Cap shall be added to the next month's Monthly Cap. Subject in all respects to paragraphs 18 above and 34 below, the Debtors, the Prepetition Secured Parties, the Prepetition Agents and any other third party reserve all rights with respect to interest or otherwise under the Prepetition Second Priority Credit Agreement or any other Prepetition Second Priority Financing Documents.

(d) The Adequate Protection Liens granted pursuant to subparagraph (a) above shall be deemed to be perfected automatically upon entry of this Order, without the necessity of the filing of any UCC-1 financing statement, state or federal notice, mortgage or other similar instrument or document in any state or public record or office and without the necessity of taking possession or "control" (within the meaning of the Uniform Commercial Code) of any Collateral.

(e) The Debtors shall provide the Prepetition Agents with copies of all reports, information and other materials delivered to the Postpetition Agents and the Postpetition Lenders pursuant to Section 6.1 of the Postpetition Credit Agreement and such other reports, information and materials as reasonably requested by the Prepetition Agents. In addition, the Debtors shall cooperate with and permit representatives of the Prepetition Agents 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). All such copies of reports, information and other materials shall, unless publicly filed, comprise confidential information under the Prepetition

Secured Facilities and any confidentiality agreements entered into with any Prepetition Secured Lenders.

(f) The consent of the Prepetition First Priority Agents and Prepetition First Priority Lenders to the use of their Cash Collateral by the Debtors shall terminate upon the Debtors' failure to make any payment specified in this paragraph to or on behalf of the Prepetition First Priority Agents or Prepetition First Priority Lenders.

34. The Debtors believe that the Intercreditor Agreement is in full force and effect, and that the financing contemplated under the Postpetition Financing Documents is permitted under sections 5.2 and 6.1 of the Intercreditor Agreement, and the adequate protection provided hereunder is subject in all respects to section 5.4 of the Intercreditor Agreement. The Prepetition Second Lien Agent and the Group of Second Lien Lenders dispute these contentions, including, without limitation, that any of the postpetition borrowings in excess of \$100 million does not constitute a violation of section 6.1 of the Intercreditor Agreement. The parties, including the Prepetition First Priority Lenders, reserve all of their rights with respect to the Intercreditor Agreement and the issues set forth in this paragraph 34.

35. (a) Subject to entry of the Final Order, and with a full reservation and no waiver of any rights of a Committee (as representative of the Debtors' estates or otherwise) or other party in interest as provided in the following subparagraph, each Debtor in its individual capacity hereby forever releases, waives and discharges each Prepetition First Priority Agent and Prepetition First Priority Lender (whether in its prepetition or postpetition capacity), together with its respective officers, directors, employees, agents, attorneys, professionals, affiliates, subsidiaries, assigns and/or successors (collectively, the "*Released Parties*"), from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, any of the Prepetition First Priority Financing Documents, any aspect of the prepetition relationship

between any Debtor relating to any of the Prepetition First Priority Financing Documents or any transaction contemplated thereby, on the one hand, and any or all of the Released Parties, on the other hand, or any other acts or omissions by any or all of the Released Parties in connection with any of the Prepetition First Priority Financing Documents or their prepetition relationship with any Debtor or any affiliate thereof relating to any of the Prepetition First Priority Financing Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses as to the extent, validity, priority or perfection of the Prepetition First Priority Liens or Prepetition First Priority Indebtedness, "lender liability" claims and causes of action, any actions, claims or defenses under chapter 5 of the Bankruptcy Code or any other claims and causes of action and any resulting subordination or recharacterization of any payments made to the Prepetition Secured Lenders pursuant to this Order (for the avoidance of doubt, all parties reserve their rights as to the ultimate characterization of any fees payable hereunder, as applicable as principal, interest or fees) (all such claims, defenses and other actions described in this paragraph are collectively defined as the "*Claims and Defenses*"). Nothing contained in this subparagraph shall affect the rights of any Committee or any other party in interest to undertake any action with respect to, including, without limitation, any investigation or prosecution of, Claims and Defenses that is permitted in the other subparagraphs of this paragraph. For the avoidance of doubt, the Release by the Debtors approved in this paragraph shall not constitute a defense by the Prepetition First Priority Agents or any Prepetition First Priority Lenders to any action commenced by any party other than the Debtors consistent with this paragraph 35, even if such party is prosecuting a claim or defense that was the property of any Debtor at the time of the giving of such Release or such party is prosecuting such claim or cause of action in the name of the Debtor or as a representative of the estate of any Debtor.

(b) Notwithstanding anything contained herein to the contrary, the extent, validity, priority, perfection and enforceability of the Prepetition First Priority Indebtedness, Prepetition First Priority Liens, Prepetition Second Priority Indebtedness and Prepetition Second Priority Liens, and all acknowledgments, admissions and confirmations of the Debtors in paragraphs D and E above, are for all purposes subject to the rights of any party in interest (including the Committee as representative of the Debtors' estates), other than any Debtor, to file a complaint pursuant to Bankruptcy Rule 7001 seeking to invalidate, avoid, subordinate or otherwise challenge the Prepetition First Priority Indebtedness, Prepetition First Priority Liens, Prepetition Second Priority Indebtedness or Prepetition Second Priority Liens; *provided, however,* that any such complaint must be filed in this Court no later than one hundred twenty (120) days after entry of this Order (the "Challenge Period"); *provided, however,* that the Challenge Period may be extended either (i) by the Court pursuant to an order after a hearing and for cause shown-or (ii) as may be agreed to in writing by (a) the Prepetition First Priority Revolver Administrative Agent with respect to the time to file any such complaint relating to the Liens and claims arising under the Prepetition First Priority Revolver Financing Documents; (b) the Prepetition First Priority Administrative Agent with respect to the time to file any such complaint relating to the Liens and claims arising under the Prepetition First Priority Term Loan Documents; (c) the Prepetition Second Priority Administrative Agent with respect to the time to file any such complaint relating to the Liens and claims arising under the Prepetition Second Priority Documents. If no such complaint is filed within such time period, then any and all Claims and Defenses against any of the Released Parties shall be, without further notice to or order of the Court, deemed to have been forever relinquished, released and waived as to such Committee and other person or entity, and if such complaint is timely filed on or before such date, any and all Claims and Defenses against any of the Released Parties shall be deemed,

immediately and without further action, to have been forever relinquished, released and waived as to such Committee and other person or entity, except with respect to Claims and Defenses that are expressly asserted in such complaint.

(c) If no such complaint as to any of the Prepetition First Priority Revolver, the Prepetition First Priority Term Loan, the Prepetition First Priority Liens, the Prepetition Second Priority Term Loan, the Prepetition Second Priority Liens, respectively, or the Released Parties is filed within such time period, then, without the requirement or need to file any proof of claim with respect thereto, (i) the Prepetition First Priority Indebtedness as to any of the Prepetition First Priority Revolver or the Prepetition First Priority Term Loan, respectively, not subject to any such complaint and the Prepetition Second Priority Indebtedness shall each constitute allowed, fully secured claims for all purposes in the Cases and any subsequent proceedings under the Bankruptcy Code, including, without limitation, any chapter 7 proceedings if any Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code (each, a "*Successor Case*"), (ii) the Prepetition First Priority Liens as to any of the Prepetition First Priority Revolver or the Prepetition First Priority Term Loan, respectively, not subject to any such complaint and the Prepetition Second Priority Liens shall be deemed legal, valid, binding, enforceable, perfected, not subject to subordination (except for the subordination thereof to the Postpetition Liens and as otherwise specified in this Order, the other Postpetition Financing Documents, the Prepetition First Priority Financing Documents, and the Prepetition Second Priority Financing Documents, as applicable) or avoidance for all purposes in the Cases and any Successor Case, (iii) the release of the Claims and Defenses against the Released Parties shall be binding on all parties in interest in the Cases and any Successor Case, and (iv) the Prepetition First Priority Indebtedness, the Prepetition First Priority Liens, releases of the Claims and Defenses against the Released Parties, and prior payments on account of or with respect to the Prepetition First Priority Indebtedness as

to any of the Prepetition First Priority Revolver or the Prepetition First Priority Term Loan, respectively, not subject to any such complaint shall not be subject to any other or further claims, cause of action, objection, contest, setoff, defense or challenge by any party in interest for any reason, including, without limitation, by any successor to or estate representative of any Debtor. Nothing in this Order shall confer or deny standing upon the Committee or any other person or entity to bring, assert, commence, continue, prosecute or litigate the Claims and Defenses against any Released Party.

36. Notwithstanding anything herein to the contrary, this Order shall not require any Prepetition First Priority Agent or Prepetition First Priority Lender to turn over or release to any party any Cash Collateral in its possession as of the Petition Date that is subject to set off under the Bankruptcy Code (as defined in the Prepetition First Priority Credit Agreement); *provided* that, until the occurrence of a Cash Collateral Termination Event, no such Prepetition First Priority Agent or Prepetition First Priority Lender shall exercise, or seek to exercise, any such setoff rights; *provided further* that all parties hereby reserve all of their rights as to whether any such setoff is valid and enforceable under the Bankruptcy Code and applicable nonbankruptcy law.

37. Notwithstanding anything to the contrary herein or in any other Postpetition Financing Document, or in any Prepetition First Priority Financing Document or Prepetition Second Priority Financing Document, the Postpetition Liens and the superpriority claims granted to the Postpetition Secured Parties hereunder and under the other Postpetition Financing Documents are and shall be at all times (including, without limitation, after the occurrence of a Cash Collateral Termination Event) senior and prior in all respects to (a) the Adequate Protection Liens and all other Liens securing any Prepetition Collateral, in all cases, whether granted under this Order, the Prepetition First Priority Financing Documents, the Prepetition Second Priority

Financing Documents (together with the Prepetition First Priority Financing Documents, the "*Prepetition Financing Documents*") or otherwise, and (b) the Adequate Protection Claims, any other obligations in respect of adequate protection and all other claims held by the Prepetition Agents and Prepetition Secured Lenders (including, without limitation any superpriority claims in addition to the Adequate Protection Claims), in each case, whether arising under or related to the Prepetition Financing Documents, this Order or otherwise.

38. As further Adequate Protection any sale or other disposition of the Debtors' homes in the ordinary course of the Debtors' business shall comply with sections 6.18 of each of the Prepetition First Priority Revolver, the Prepetition First Priority Credit Agreement and the Prepetition Second Priority Credit Agreement.

39. The Debtors shall, on or before February 5, 2008, serve by United States mail, first class postage prepaid, copies of the Motion, this Order and a notice of the Final Hearing (the "*Final Hearing Notice*") to be held on February 28, 2008 at 9:30 a.m. to consider entry of the Final Order on the Interim Notice Parties. Copies of the Motion, this Order and the Final Hearing Notice also shall be served upon all persons requesting service of papers pursuant to Bankruptcy Rule 2002 by United States mail, first class postage prepaid, within one business day following the receipt of such request. The Final Hearing Notice shall state that any party in interest objecting to the entry of the Final Order shall file written objections with the Court no later than 4:00 p.m. on February 21, 2008, which objections shall be served so that the same are received on or before such date and time by: (a) Kirkland & Ellis LLP, Citigroup Center 153 East 53rd Street New York, New York 10022-4611, Attn: Paul M. Basta, Esq. counsel to the Debtors , (b) Berger & Singerman, 200 South Biscayne Boulevard, Suite 1000, Miami, Florida 33131, Attn: Paul Steven Singerman, Esq., local counsel to the Debtors, (c) Chadbourne & Parke, LLP, 30 Rockefeller Plaza, New York, New York, 10112, Attn: Joseph Smolinsky, Esq.,

counsel to the Postpetition Agents and Postpetition Lenders; (d) local counsel to the Postpetition Agents and Postpetition Lenders; (e) the Office of the United States Trustee; (f) counsel to the Prepetition First Priority Administrative Agent; (i) counsel to the Prepetition Second Priority Administrative Agent; (j) counsel to the Second Priority Lenders Group.

40. Any Affiliate (as defined by the Bankruptcy Code) of any Debtor that hereafter becomes a debtor in a case under chapter 11 of the Bankruptcy Code in this Court automatically and immediately, upon the filing of a petition for relief for such Affiliate, shall be deemed to be one of the "Debtors" hereunder in all respects, the chapter 11 case of such Affiliate shall be deemed to be a "Chapter 11 Case" hereunder in all respects and all of the terms and provisions of this Order, including, without limitation, those provisions granting Liens on the Collateral of each of the Debtors and claims in each of the Cases, automatically and immediately shall be applicable in all respects to such Affiliate and its chapter 11 estate.

41. This Order is hereby deemed effective immediately pursuant to Federal Bankruptcy Rules of Procedure §6004(h).

42. The Fee Letter dated December 21, 2007, by and between Citigroup Global Markets, Inc. and TOUSA, Inc. is hereby approved in all respects.

43. The provisions of this Order, including the grant of claims and Liens to or for the benefit of the Postpetition Secured Parties, the Prepetition Agents and the Prepetition Secured Lenders, and any actions taken pursuant hereto shall survive the entry of any order converting any of the Cases to a case under chapter 7 of the Bankruptcy Code.

44. For the avoidance of doubt, the Roll-Up Event and the payment of any fees related to the Roll-Up Event shall not occur until such time as the Final Order has been entered approving the Roll-Up Event.

45. This Order shall constitute findings of fact and conclusions of law.

46. In the event that any provision of this Order conflicts with any term of the other Postpetition Financing Documents, this Order shall govern.

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Submitted by:

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-and-

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Proposed Co-Counsel to the Debtors

Copies to:

Paul Steven Singerman

(Attorney Singerman shall upon receipt serve a copy of this Order upon the Office of the United States Trustee and all counsel or parties who have filed notices of appearance in these cases.)