

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
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In re:	)	Chapter 11 Cases
	)	
TOUSA, Inc., <i>et al.</i> ,	)	Case No. 08-10928 (JKO)
	)	
Debtors.	)	Jointly Administered
	)	

**STIPULATED ~~FURTHER INTERIM AND PARTIALLY FINAL ORDER (I)~~**  
**AUTHORIZING LIMITED USE**  
**OF CASH COLLATERAL PURSUANT**  
**TO SECTIONS 105, 361 AND 363**  
**OF THE BANKRUPTCY CODE, AND**  
**(II) GRANTING REPLACEMENT**  
**LIENS, ADEQUATE PROTECTION AND SUPER PRIORITY**  
**ADMINISTRATIVE EXPENSE PRIORITY TO SECURED LENDERS**

Upon the (I) the motion dated January 29, 2008 of TOUSA, Inc. (the "*Debtor*" or "*TOUSA*") and its affiliated debtors, as debtors and debtors-in-possession (each individually a "*Debtor*" and, collectively with TOUSA, the "*Debtors*"), (a) for the entry of the Interim DIP Order (as hereinafter defined) and ~~this Order~~ **a final order** authorizing the Debtors to, subject to the terms and limitations herein, use Cash Collateral (as defined below) pursuant to sections 105, 361, 362 and 363 of title 11 of the United States Code (the "*Bankruptcy Code*") and (b) requesting the granting of replacement liens, super priority adequate protection and

administrative expense priority to certain of the Debtors' Secured Lenders (as hereinafter defined) (the "*DIP Motion*") and (II) the further motion of the Debtors, dated April 25, 2008, ~~seeking Authority to Use~~ **2008 (the "Initial Cash Collateral, including Motion") and** the supplement thereto dated May 16, 2008 (together ~~the~~ **"Supplemental Cash Collateral Motion"** **and, together with the Initial Cash Collateral Motion,** the "*Cash Collateral Motion*" and, collectively with the DIP Motion, the "*Motions*") seeking Authority to Use Cash Collateral; and the Court having considered the Motions; and a hearing to consider approval of the Interim Commitment (as defined in the DIP Motion) having been held and concluded on January 30, 2008 (the "*Interim DIP Hearing*"); and an interim order approving, among other things, the interim use of Cash Collateral ~~(the "Interim DIP Order")~~ having been entered on January 31, 2008 subsequent to the Interim Hearing ~~(the "Interim DIP Order")~~; and ~~the~~ **on the use of Cash Collateral** ~~(the "Subsequent Interim Hearing")~~ having been held and concluded on {May 22, 2008}; and upon all of the pleadings filed with the Court and all of the proceedings held before the Court, ~~including the Interim Hearing and Subsequent Interim Hearing~~ **related to the Motions**; and after due deliberation and consideration and good and sufficient cause appearing therefor,

THE COURT HEREBY FINDS:

A. Petition Date. 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. No request has been

made for the appointment of a trustee or examiner. A statutory committee of unsecured creditors (the "*Creditors' Committee*") was appointed in the Debtors' chapter 11 cases (collectively, the "*Chapter 11 Cases*") on February 13, 2008.

B. Jurisdiction. Consideration of the ~~Motion~~Motions 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.

C. First Priority Secured Obligations. Subject to the time limitations and other provisions specified in paragraph ~~16~~15 below, the Debtors acknowledge, admit and confirm the following as of the Petition Date:

(1) ~~(a)~~ Pursuant to that certain (i) ~~Second Amended and Restated~~ Revolving Credit Agreement, dated ~~as of July 31, 2007~~ March 6, 2006 (as amended, restated, supplemented or otherwise modified from time to time, including the Second Amended and Restated Revolving Credit Agreement, dated as of July 31, 2007, the "*Revolver*"), by and 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*") named therein, Citicorp North America, Inc. ("*CNAI*") or one of its affiliates, as administrative agent (in such capacity, the "*Revolver Agent*") for the Revolver Lenders (as defined below) and certain financial institutions and other entities as lenders and

letters of credit issuers party thereto from time to time (collectively, the "*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 Revolver) (collectively, and as amended, restated, supplemented or otherwise modified from time to time, together with the Revolver, the "*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 "*First Priority Term Loan*" and, together with the Revolver, the "*First Priority Secured Facilities*"), by and among TOUSA, the other borrowers and Borrowers named therein, CNAI, as administrative agent (in such capacity, the "*First Priority Term Loan Agent*" and together with the Revolver Agent, the "*First Priority Agents*") for the certain financial institutions and other entities as lenders party thereto from time to time (collectively, the "*First Priority Term Loan Lenders*" and, together with the Revolver Lenders, the "*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 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 Revolver Financing Documents, the "*First Priority Financing Documents*");

the First Priority Agents and the 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.

(2) ~~(b)~~ Pursuant to the First Priority Secured Facilities and other First Priority Financing Documents, the Debtors were, as of the Petition Date, indebted to the First Priority Agents and the First Priority Lenders for the principal amount of the First Priority Indebtedness (as defined below), exclusive of accrued but unpaid interest, costs, fees and expenses, of approximately \$407,412,116.00,<sup>1</sup> plus approximately \$108,013,113.00 in issued and outstanding letters of credit under the Revolver. For purposes of this Order, the term "*First Priority Indebtedness*" shall mean and include, without duplication, any and all amounts owing or outstanding under the First Priority Secured Facilities (including, without limitation, all Obligations as defined in the First Priority Secured Facilities) or any other 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, *inter alia*, Sections 2.11 and 10.3 of the Revolver or Sections 2.11 and 10.3 of the First Priority Term Loan or any other First Priority Financing Document), and any and all obligations and liabilities,

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<sup>1</sup> First Priority Indebtedness includes \$199,000,000.00 owed under the First Priority Term Loan and \$208,412,116 owed under the ~~First Priority~~ Revolver (in addition to contingent obligations under outstanding letters of credit) as of the Petition Date.

contingent or otherwise, owed in respect of the letters of credit or other Obligations outstanding thereunder.

(3) ~~(e)~~ 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 "*First Priority Security Documents*"), and the other First Priority Financing Documents, the Debtors granted to and/or for the benefit of the First Priority Agents and First Priority Lenders first priority and continuing pledges, liens and security interests (collectively, the "*First Priority Liens*") to secure the 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 state and federal tax refunds or rebates, and all of the proceeds, products, offspring, rents and profits thereof, all as described in the First Priority Security Documents. All Collateral (solely for the purpose of this subparagraph C(3), such term is used as defined in the First Priority Secured Facilities) and any other collateral provided under any First Priority Financing Document, including that described in this subparagraph C(3), 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*."

(4) ~~(d)~~ (a) The First Priority Financing Documents are valid and binding agreements and obligations of the Debtors, (b) the First Priority Agents (on their behalf and on behalf of the

First Priority Lenders) properly perfected their security interests and liens in and on the Prepetition Collateral, and (c) the First Priority Liens (i) constitute valid, binding, enforceable and perfected first priority security interests and liens on the Prepetition Collateral 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.

(5) ~~(e)-(ia)~~ The First Priority Indebtedness constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with its terms, ~~(ib)~~ the Debtors have no objection, offset, defense or counterclaim of any kind or nature to the First Priority Indebtedness and ~~(ic)~~ the First Priority Indebtedness, and any amounts previously paid to any First Priority Agent or 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.

(6) ~~(f)~~ The value of the Prepetition Collateral exceeds the amount of the First Priority Indebtedness as of the Petition Date.

D. Second Priority Secured Obligations. Subject to the time limitations and other restrictions specified in paragraph ~~46~~15 below, the Debtors acknowledge, admit and confirm the following as of the Petition Date:

(1) ~~(a)~~ 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 "*Second Priority Credit Agreement*", and, together with all agreements, documents, notes,

instruments and any other agreements delivered pursuant thereto or in connection therewith, the "*Second Priority Financing Documents*", and together with the First Priority Financing Documents, the "*Prepetition Financing Documents*"), among TOUSA and certain of the Debtors, as borrowers or Borrowers and Wells Fargo Bank, N.A., as administrative agent (in such capacity, the "*Second Priority Agent*," and together with the First Priority Agents, the "*Prepetition Agents*") and the lenders from time to time party thereto (collectively, the "*Second Priority Lenders*" and, together with the First Priority Lenders, the "*Secured Lenders*"), the Second Priority Lenders made loans and extended other financial accommodations to or for the benefit of the Debtors.

(2) ~~(b)~~ Pursuant to the Second Priority Credit Agreement and other Second Priority Financing Documents, the Debtors were, as of the Petition Date, indebted to the Second Priority Agent and Second Priority Lenders pursuant to the Second Priority Credit Agreement in the aggregate principal amount of \$317,101,998.00, 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 Second Priority Credit Agreement or any other Second Priority Financing Documents, the "*Second Priority Indebtedness*" and, together with the First Priority Indebtedness, the "*Prepetition Secured Indebtedness*").

(3) ~~(e)~~ 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 "*Second Priority Security Documents*"), and the other Second Priority Financing Documents, the Debtors granted to the Second Priority Agent, for its benefit and the benefit of the Second Priority Lenders, a second priority ~~lien~~liens (collectively, the "*Second Priority Liens*" and, together with the First Priority Liens, the "*Prepetition Liens*") on all of the Prepetition Collateral.

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

(5) ~~(e)-(i)~~ The Second Priority Indebtedness constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with its terms, ~~(ii)~~(b) the Debtors have no

objection, offset, defense or counterclaim of any kind or nature to the Second Priority Indebtedness and ~~(iii)~~ the Second Priority Indebtedness, and any amounts previously paid to or on behalf of any 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.

E. Intercreditor Agreement. The First Priority Agents, on behalf of the First Priority Lenders (collectively, with the First Priority Agents, the "*First Priority Secured Parties*") and the Second Priority Agent, on behalf of the Second Priority Lenders (collectively, with the Second Priority Agent, the "*Second Priority Secured Parties*" and, the Second Priority Secured Parties, together with the First Priority Secured Parties, the "*Prepetition 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*").

F. Immediate Need. An immediate and critical need exists for the Debtors to continue to use "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*") **in accordance with the Budget (as defined below)**, in order to continue the operation of their businesses and their reorganization under chapter 11 of the Bankruptcy Code. Accordingly, the relief ~~requested in the~~ **Motions granted herein** 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 their creditors. Good, adequate and sufficient cause has been shown to justify the granting of the relief requested provided herein and the immediate entry of this Order.

G. DIP Financing. As a result of, among other things, the receipt of the Debtors' 2007 Federal Tax Refund of approximately \$207,000,000, the postpetition financing originally requested by the Debtors in the ~~Motion~~ DIP Motion to obtain, among other things, interim debtor-in-possession financing (the "*DIP Financing*") is no longer necessary and is hereby terminated as of the date of entry of this Order the Commitments (as defined in the DIP Motion) were terminated by the Order Further Extending Interim Termination Date Under the Senior Secured Super-Priority Debtor in Possession Credit and Security Agreement entered by the Court on May 27, 2008 (the "*Cash Collateral Termination Date Extension Order*") [D.E. # 113]; provided, however, that as set forth in the Cash Collateral Termination Date Extension Order, all other terms of the DIP Credit Agreement (as defined in the DIP Motion) and the Interim DIP Order continued to govern through and including the date hereof as provided herein. All fees and expenses incurred in connection with the DIP Financing were incurred in good faith and deemed to be fully earned and are not subject to challenge or disgorgement, and accordingly, the Postpetition Liens (as defined in the Interim DIP Order) ~~and claims~~ granted under the Interim DIP Order to CNAI as Postpetition Administrative Agent (as defined in the Interim DIP Order) are hereby released and terminated as of the date of the entry of this Order.

H. Good Faith. Based upon the record before the Court, the terms of the use of

the Cash Collateral as provided in this Order and the Interim DIP Order 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 Prepetition Agents, the First Priority Lenders and the Second Priority Lenders are permitting the use of their Cash Collateral in good faith.

I. No Secured Lender Objections. The First Priority Agents have consented and the First Priority Lenders have consented, or have not objected, and the Second Priority Agent and Second Priority Lenders are deemed to have consented to the Debtors' use of the Secured Lenders' Cash Collateral. 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.

J. Notice. ~~In accordance with the Interim DIP Order, notice of the Final Hearing~~ Notice of the final hearing to approve the Motions and the relief sought in the ~~DIP Motion~~ Motions (the "Final Hearing") was delivered on or before ~~May 16,~~ June, 2008] via United States mail, first class postage prepaid, 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 First Priority Agents; (iv) counsel to the Second Priority Agent; (v) counsel to the ad hoc Group of Second Priority Lenders (the "*Second Priority Lenders Group*"); (vi) counsel to the indenture trustee for the Debtors' 8 1/4% senior notes; (vii) counsel to the indenture trustee for the Debtors' 9% senior

notes; (viii) counsel to the indenture trustee for the Debtors' 10 3/8% senior subordinated notes; (ix) counsel to the indenture trustee for the Debtors' 7 1/2% senior subordinated notes due 2011; (x) counsel to the indenture trustee for the Debtors' 7 1/2% senior subordinated notes due 2015; (xi) the Internal Revenue Service; (xii) any party that has filed a lien against any of the Debtors' assets; and (xiii) all counterparties to nonresidential real property leases of the Debtors; (xiv) counsel to Aurelius Capital Master, Ltd., Aurelius Capital Partners, LP, GSO Capital Situations Fund L.P., GSO Special Situations Overseas Master Fund Ltd., GSO Credit Opportunities Fund (Helios), L.P., and Carlyle Strategic Partners; ~~and~~ (xv) all parties requesting service papers pursuant to Bankruptcy Rule 2002; and ~~on or before February 13, 2008 on~~ (xvi) counsel for the Creditors' Committee (collectively, the "*Notice Parties*"). Notices of each of the continuances of the Final Hearing have been filed with the Clerk of the Court. Notice of the Cash Collateral Motion was served upon the Notice Parties on or before April 25, 2008 via United States mail, first class postage prepaid. In addition, the supplement to the Cash Collateral Motion was served on the Notice Parties on or before May 16, 2008 via United States mail, first class postage prepaid. Given the nature of the relief sought in the Motions, 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)~~ 364(c) of the Bankruptcy Code, and no further notice of the ~~Motion~~ Motions or this Order is necessary or required.

NOW, THEREFORE, IT IS HEREBY ORDERED, STIPULATED AND AGREED:

1. Motions Granted. The ~~Cash Collateral Motion~~ relief granted herein is

granted ~~in its entirety on an interim~~ on a final basis subject to the provisions hereof. The Interim DIP Motion Order is ~~granted~~ approved on a final basis solely to the extent set forth herein. Any objections to the relief sought in the Motions that have not been previously resolved or withdrawn are hereby overruled on their merits. ~~This Order shall become effective immediately upon its entry.~~ or no longer relevant.

2. DIP Financing and Interim DIP Order. The ~~DIP Financing is hereby terminated as of the date of entry of this Order and the use of Cash Collateral from the date of this Order to the Cash Collateral Termination Date (as hereafter defined) shall be governed exclusively by this Order. The Postpetition Liens (as defined in the Interim DIP Order) granted under the Interim DIP Order to CNAI as Postpetition Administrative Agent (as defined in the Interim DIP Order) are hereby released and terminated as of the date of entry of this Order. The adequate protection granted to the Prepetition First Priority Secured Parties in the Interim DIP Order is hereby approved on a final basis.~~ provided, however, that any payments made as adequate protection including the payment of fees and expenses of professionals, shall remain subject to recharacterization and disgorgement in the event of a successful Challenge (as defined below). All fees and expenses incurred and paid in connection with the DIP Financing (other than adequate protection) in the amount as disclosed to the counsel to the Creditors' Committee and the U.S. Trustee were incurred and paid in good faith and deemed to be fully earned and are not subject to challenge or disgorgement. ~~This Order shall govern exclusively the use of Cash Collateral from the date of this Order to the Cash Collateral Termination Date (as hereafter defined).~~ To the extent that any terms of this Order conflict

**with the terms of the Interim DIP Order, the terms of this Order shall govern.**

3. Use of Cash Collateral. Except as otherwise set forth herein, and subject to the provisions of paragraph 13 of this Order, for as long as the Debtors comply with the terms and conditions of this Order, the Debtors are hereby authorized to use Cash Collateral for working capital and general corporate purposes that is not materially inconsistent with the budget (the "*Budget*") annexed hereto as Exhibit "A", subject to a variance as set forth in paragraph 4 below, *provided*, that the Prepetition Secured Parties are granted adequate protection as hereinafter set forth, and *provided, further*, that, absent the written consent of the First Priority Agents, the Debtors shall cease to be authorized to use Cash Collateral (other than the Carve-Out described hereinafter) pursuant to this Order upon the occurrence of ~~at~~the Cash Collateral Termination Date.

4. Budgets and Covenants.

(a) The annexed Budget contains monthly budgets covering the period beginning ~~May 23,~~June 10, 2008 through the week ending November 30, 2008 (the "*Budget Period*"). Subject to the provisions of paragraphs 3 and 11 of this Order, the Debtors are hereby authorized to use Cash Collateral in a manner that is not materially inconsistent with the Budget;~~*provided,*~~  
~~however, the Debtors shall not enter into any sale and leaseback transactions covering property with an aggregate fair market value in excess of \$15,000,000.~~ The Debtors are authorized, **without further order of the Court,** to make modifications to the Budget with the written consent of the First Priority Agents, with such consent to be granted in the First Priority Agent's Agents' sole discretion, ~~without further Court order. The;~~ ***provided, however, the***

Debtors shall be allowed to make a maximum of one request per month for modifications to the Budget and any requested modifications to the Budget shall be submitted to the First Priority Agents and the Creditors' Committee on or before the ~~15<sup>th</sup>~~20<sup>th</sup> calendar day of the month and shall be effective on the 1<sup>st</sup> day of the subsequent calendar month. Any such modifications to the Budget shall not amend the Financial Covenants (as defined below) unless specifically approved in writing by the First Priority Agents. The Debtors' authorization to use Cash Collateral shall terminate upon the earlier to occur of (i) the Cash Collateral Termination Date or (ii) expiration of the Budget Period unless the Debtors shall have proposed and the First Priority Agents, in their sole discretion, shall have approved, after five (5) business days notice to the Creditors' Committee and absent an objection thereto, an extension of the Cash Collateral Period (as provided in subparagraph 17(a) herein) and a budget for periods beyond the Budget Period.

(b) The Debtors' use of Cash Collateral is conditioned upon compliance by the Debtors with the financial covenants set forth herein (collectively, the "*Financial Covenants*").

(c) The Financial Covenants shall be measured as follows: (i) actual monthly Operating Cash Flow must not be less than ~~\$10.0 million~~ of the projected monthly Operating Cash Flow set forth in the Budget minus \$10 million; and (ii) cumulative Operating Cash Flow for the applicable period set forth below must be no less than the amounts set forth below for the applicable period:

<u>Minimum Operating Cash Flow</u>	<u>Period</u>
<del>\$12,895,000</del> <u>6,619,000</u>	<del>May 23,</del> <u>June 10</u> through June 30, 2008
<del>\$945,000</del> <u>5,931,000</u>	<del>July 1,</del> <u>June 10</u> through July



	31, 2008
<del>-\$13,839,000</del> <u><b>21,165,000</b></u>	<del>August 1</del> <u><b>June 10</b></u> through August 31, 2008
<del>-\$17,972,000</del> <u><b>25,748,000</b></u>	<del>September 1</del> <u><b>June 10</b></u> through September 30, 2008
<del>-\$18,379,000</del> <u><b>26,355,000</b></u>	<del>October 1</del> <u><b>June 10</b></u> through October 31, 2008
<del>=\$7,190,000</del> <u><b>1,087,000</b></u>	<del>November 1</del> <u><b>June 10</b></u> through November 30, 2008

The term “Operating Cash Flow” means, for the applicable period, the Debtors’ consolidated operating receipts (excluding proceeds and expenses from asset sales made pursuant to the Non-Core Asset Sale Order or another order from the Court authorizing the sale of assets outside the ordinary course pursuant to section 363 of the Bankruptcy Code) less the Debtors’ consolidated operating expenses (excluding financing fees, debt service and expenses relating to the Chapter 11 Cases such as court filing fees and fees incurred by Professionals (as defined below)).

TOUSA shall deliver to the First Priority Agents and the Creditors' Committee within seven (7) days of the last day of each applicable period a Certificate of a Responsible Officer of ~~the~~ TOUSA calculating in reasonable detail the covenant set forth in this subparagraph 4(c) for such period.

(d) The Debtors shall provide to the First Priority Agents and the Creditors' Committee monthly variance reports by 1:00 p.m. (prevailing Eastern Time) on the 7th of each month during the Budget Period (or the next business day if such day is not a business day). Such variance reports shall (i) include prior month actual and cumulative financial results compared to the budgeted amounts for each such month and a detailed explanation of material

variances and (ii) certify the Debtors' compliance with the Financial Covenants showing such calculations and support as reasonably requested by the First Priority Agents.

5. Borrowing Base. Notwithstanding anything herein to the contrary, it is a condition to each use of any Cash Collateral authorized in this Order that at all times during the Budget Period, and after giving effect to each use of Cash Collateral by the Debtors, that availability under the Borrowing Base (as such term is defined in Exhibit "B" hereto) as reported on the most recently delivered Borrowing Base Certificate (as such term is defined below) is greater than zero. ~~The First Priority Agents may from time to time establish or modify availability reserves and/or eligibility reserves and otherwise modify the Borrowing Base in accordance with and subject to the terms and provisions thereof, provided, however, that prior to the establishment or increase of any such reserves, the First Priority Agents shall provide the Debtors with at least two business days notice thereof, which notice shall set forth the reasons for the establishment of such reserves.~~

6. Use of Asset Sale Proceeds.

(a) Notwithstanding anything herein to the contrary, it is a condition to each use of any Cash Collateral authorized in this Order that at all times during the Budget Period all proceeds received by the Debtors from any sale, lease, assignment or other disposition (including by way of merger or consolidation) of any property to any party, excluding (i) inventory sold in the ordinary course of business, (ii) any sale or discount, in each case without recourse, of accounts receivable in the ordinary course of business, but only in connection with the compromise or collection thereof in the ordinary course of business, (iii) dispositions of cash and

cash equivalents, (iv) conveyances, sales, leases, subleases, assignments, transfers, exchanges or dispositions between the Debtors so long as the First Priority Liens continue to apply to such property after giving effect to such sale, transfer or disposition and (v) Asset Swaps (as defined in the First Priority Secured Facilities), consummated pursuant to the procedures authorized by the Interim Order Establishing Procedures for Non-Core Asset Sales Order (the "*Non-Core Asset Sale Order*"), or any other order of this Court, are greater than or equal to the amount attributed to the assets being sold in such sale in the Borrowing Base as reported on the most recently delivered Borrowing Base Certificate; **provided that in connection with any bulk sale, the aggregate proceeds received from such bulk sale are greater than or equal to the amount attributed to the aggregate assets being sold in such bulk sale in the Borrowing Base as reported on the most recently delivered Borrowing Base Certificate without regard to the amount attributed to any individual asset being sold in such bulk sale in the Borrowing Base.**

(b) Notwithstanding the foregoing authorization to use Cash Collateral, all proceeds of any sale or disposition of any assets of the Debtors pursuant to (i) the Non-Core Asset Sale Order or (ii) any other order of the Court approving any sale of assets of the Debtors outside of the ordinary course of business, shall be held by the Debtors in a segregated, **interest bearing** account pending (i) further order of the Court or (ii) written consent of the First Priority Agents **for the Debtors** to otherwise utilize such segregated Cash Collateral **in the ordinary course of business, a copy of such written consent being provided to the Creditors' Committee contemporaneously with the delivery thereof to the Debtors.**

(c) With respect to any sale and leaseback transaction entered into during the Cash Collateral Period (as defined below), the applicable lease payments for the Cash Collateral Period may be paid out of the segregated account described in subparagraph 6(b) above; provided, however, the Debtors shall not enter into any sale and leaseback transactions covering property with an aggregate fair market value in excess of [\$15,000,000.]

(d) Any sale or other disposition of the Debtors' assets in the ordinary course of the Debtors' business shall comply with Sections 6.18 of each of the Revolver, the First Priority Term Loan and the Second Priority Credit Agreement.

7. Adequate Protection. The Prepetition Agents and the Secured Lenders are hereby granted the following as adequate protection (which the Prepetition Agents acknowledge, subject to paragraph ~~19~~, 14, are acceptable to them):

(a) Adequate Protection Liens. As adequate protection of the respective interests of the Prepetition Agents and 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~~, or the use, sale or lease of the Prepetition Collateral, including the use of the Cash Collateral, the Prepetition Agents, are hereby granted for their benefit and the benefit of the Secured Lenders, replacement liens (the "*Adequate Protection Liens*"), subject only to the Carve-Out (as hereinafter defined) and to such other liens, if any, as may be senior, under applicable law, to ~~such the~~ the First Priority Liens in the relevant Collateral (as hereinafter defined), on all of the Debtors' rights, title and interest in, to and under all personal and real property and other

assets, whether now existing or at any time hereafter acquired and regardless of where located, including, but not limited to, all contracts of sale, pledged equity interests, tax refunds, general intangibles, copyrights, patents, trademarks, books and records, customer lists, credit files, computer files, programs, printouts, other computer materials and records related thereto, commercial tort claims, documents, letters of credit issued in favor of the Debtors, excess proceeds returned to the Debtors from letter of credit beneficiaries, equipment, fixtures, goods, inventory, machinery, pledged deposits (excluding the rights of customers in customer deposits held in escrow or required to be segregated), chattel paper, securities accounts, deposit accounts, and all other demand, time, savings and cash management, passbook and similar accounts, and all monies, securities, instruments and other investments deposited or required to be deposited in such accounts, (collectively, including the Prepetition Collateral, the "*Collateral*"); *provided, however, for the avoidance of doubt, the Adequate Protection Liens shall not include liens on the Debtors' estates' claims and causes of action under chapter 5 of the Bankruptcy Code or any avoidance action under the Bankruptcy Code or applicable state law (the "Avoidance Actions") and any proceeds or property recovered, unencumbered or otherwise, the subject of successful Avoidance Actions (collectively, the "Avoidance Proceeds"); provided, further, however,* that the Adequate Protection Liens of the Second Priority Agent on any Collateral shall be subordinate in priority to the Adequate Protection Liens of the First Priority Agents. **Secured Parties and the First Priority Liens.** 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 Chapter 11 Cases and shall be

granted the benefits of paragraph 8 hereof as applicable (subject in all respects to paragraph ~~4614~~ below).

(b) Adequate Protection Claims. Subject to the Carve-Out, and subject in all respects to paragraph ~~4615~~ below, as additional adequate protection of the interests of the Prepetition ~~Agents and the Secured Lenders~~ Parties in the Prepetition Collateral to the extent those interests are not later determined to be invalid, the Prepetition ~~Agents and the Secured Lenders~~ Parties are hereby granted 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~~ or the use, sale or lease of Prepetition Collateral, including the use of Cash Collateral: provided, however, the Adequate Protection Claims shall not be satisfied from Avoidance Actions or Avoidance Action Proceeds other than the amount sufficient to reimburse the First Priority Secured Parties for the aggregate amount of Collateral that is subject to a valid Prepetition Lien and claim (including Cash Collateral) used to fund the investigation, initiation and prosecution of such Avoidance Actions or tort actions. 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 Chapter 11 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 the Adequate Protection Claims in favor of the Second Priority Agent and 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 First Priority Agents Secured Parties and the First Priority Lenders Liens.

(c) Interest and Fees. As further adequate protection, subject to section 506(b) of the Bankruptcy Code, the Debtors shall, on a calendar monthly basis, promptly pay in cash (i) all accrued but unpaid reasonable costs and expenses of the First Priority Agents (including all reasonable fees and expenses of professionals engaged by the First Priority Agents as permitted by the First Priority Secured Facilities) for which an invoice was delivered to the counsel for the Debtors and the counsel for the Creditors' Committee; and (ii) an amount equal to all accrued but unpaid interest on the First Priority Indebtedness at the non-default rate specified in the First Priority Secured Facilities (with the ~~applicable default rate to accrue~~ First Priority Agents reserving their rights to seek default rate of interest and with other parties in interest reserving their rights to challenge such assertions) and all other reasonable fees, expenses, costs and charges provided under the First Priority Secured Facilities or any other First Priority Financing Document for which an invoice was delivered to the Debtors counsel for the Debtors and counsel for the Creditors' Committee (redacted for privilege as appropriate), 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 but subject to timely objection by the Creditors' Committee and any further resulting order of the Court. In addition, and subject to section 506(b) of the Bankruptcy Code, and, subject to paragraph 15 hereof, to the extent that

the Second Priority Agent consents to the entry of this Order, the Debtors shall, on a calendar monthly basis, promptly pay in cash all reasonable, documented out-of-pocket costs and expenses of the Second Priority Agent (including all reasonable and documented fees and expenses of professionals engaged by the Second Priority Agent in accordance with the Second Priority Credit Agreement, including, without limitation, Bracewell & Giuliani LLP, Seward & Kissell LLP, Bilzin Sumberg **Baena Price & Axelrod LLP** and Houlihan Lokey Howard & Zukin Capital, Inc.), for which an invoice was delivered to the Debtors **and the Creditors' Committee**, (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 Second Priority Agent, with the remainder of any such fees, to the extent payable under the Second Priority Credit Agreement, accruing and added to the claim of the Second Priority Lenders and Second Priority Agent, and (ii) all ~~other costs and expenses, including the costs and expenses of professionals~~ **reasonable expenses and disbursements**. In addition, in the event the professionals engaged by the 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 paragraph 16 below, the Debtors, the Prepetition Secured Parties and any other third party reserve all rights with respect to interest or otherwise under the Second Priority Credit Agreement or any other Second Priority Financing Documents. All payments made to~~ **(including any carried over amount of unused fees in accordance with the Interim DIP Order). All payments made to or for the benefit of the Prepetition Agents,** the First Priority Lenders or the Second Priority Lenders pursuant to



subparagraph 7(c) herein or paragraph 33(c) of this Order or the Interim DIP Order and approved herein (including the payment of professional fees) shall be without prejudice to the right of the Creditors' Committee or a party in interest to allege, and this Court or any other court of competent jurisdiction to order that, under applicable law, all or any portion of such payments should be applied to reduce the principal obligations owing under the First Priority Secured Facilities or the Second Priority Secured Facilities or should be disgorged, as applicable.

(d) Adequate Protection Payments. ~~Upon entry of the final order approving the Motions (the "Final Order"), the~~ The Debtors shall remit to the First Priority Agents, in the manner provided in the First Priority Financing Documents and Section 4.1 of the Intercreditor Agreement, the sum of \$175,000,000 out of available cash on-hand to be applied to the outstanding First Priority Indebtedness, *provided* that the Debtors reserve the right, ~~in their sole and absolute discretion~~ sole right, after five (5) business days notice to the Creditors' Committee and absent an objection thereto, to make an additional payment to the First Priority Agents during the Cash Collateral Period in an amount up to \$15,000,000 without further order of the Court. All payments made to the First Priority Lenders pursuant to this subparagraph 7(d) pending expiration of the Challenge Period (as hereinafter defined) shall be without prejudice to (i) the right of the Creditors' Committee or a party in interest, to the extent such entity has properly filed an adversary proceeding or contested matter as described below in paragraph 1615 prior to the expiration of the Challenge Period, to allege that all or any portion of such payments should be ~~returned~~ disgorged and/or applied to reduce the principal obligations

owing under the First Priority Secured Facilities; and (ii) the authority of the Court to grant any such relief; *provided, however*, that the First Priority Agents shall not disburse to any First Priority Lender any of the adequate protection payments set forth in this subparagraph 7(d) unless and until such party executes and delivers to the applicable First Priority Agent ~~an~~ acknowledgment, the counsel for the Debtors and the counsel for the Creditors' Committee an certification,<sup>2</sup> pursuant to a form provided by the Debtors to the First Priority Agents (a "Certification"): (i) consenting to the personal jurisdiction of this Court over such recipient with respect to any ~~adversary proceeding~~ Challenge (as defined below) related to such payment, including any discovery sought in connection therewith, seeking to recover, recharacterize or otherwise impose any legal or equitable remedy with respect to such adequate protection payments; (ii) agreeing to accept service by first class mail addressed to the recipient at the address set forth in the ~~acknowledgement~~ Certification of any summons and complaint relating to such adversary proceeding or any properly issued discovery demand served in contemplation thereof; ~~and~~ (iii) agreeing to (x) provide proof of liquid assets exceeding 200% of the amounts being repaid pursuant to this subparagraph 7(d) (the "*Applicable Repayment Amount*") or (y)

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<sup>2</sup> The contents of all such Certifications and reports referenced in this subparagraph 7(d) shall be treated as confidential and their dissemination shall be limited to the Debtors' and Creditors' Committee's professionals only except to the extent of any proceedings before the Court related thereto, in which instance, the acknowledgements, reports and all applicable pleadings related thereto shall be filed under seal or the identity of the First Priority Lender redacted.

identifying an affiliate of such First Priority Lender with liquid assets exceeding 200% of the amounts being repaid to such First Priority Lender pursuant to this subparagraph 7(d) Applicable Repayment Amount, with such affiliate expressly agreeing to be bound by each of the terms hereof, including this agreement and the consent to jurisdiction as set forth above, and the express agreement of any applicable First Priority Lender or its respective affiliate to timely report to the First Priority Agent<sup>2</sup> counsel for the Debtors and the counsel for the Creditors' Committee (but in no event less more than five three (3) business days after receipt of actual knowledge), with notice to the Debtors and the plaintiff in the action against such applicable First Priority Lender Agent, of such First Priority Lender's or its affiliate's assets falling below 200% of the Applicable Repayment Amount; and (iv) acknowledging that receipt of the Applicable Repayment Amount does not constitute a defense in any adversary proceeding or contested matter described in paragraph 15 herein. Upon notice (to the Debtors and the Creditors' Committee) and a hearing, nothing herein shall impair or otherwise restrict any First Priority Lender from proposing to the Court an alternate mechanism to ensure repayment of its Applicable Repayment Amount. To the extent a final judgment directing repayment hereunder is entered against a First Priority Lender directing repayment hereunder which received a distribution, such First Priority Lender expressly agrees (i) to comply with any disgorgement

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<sup>2</sup> — For purposes of subparagraph 7(d), notices to the First Priority Agents should be addressed to: Citicorp North America, Inc., 388 Greenwich Street, New York, NY 10010, Attention: Carol Flaton (carol.flaton@citi.com); with a copy to: Chadbourne & Parke, LLP, 30 Rockefeller Plaza, New York, New York 10112, Attention: Joseph Smolinsky, Esq. (jsmolinsky@chadbourne.com)

order and (ii) return the applicable funds to the applicable Debtors no later than five (5) business days after service by overnight mail of the final judgment; provided that any such First Priority Lender that fails to return such amounts in accordance with the terms hereof is subject to penalty as determined by the Court. Nothing set forth in this Order shall limit the rights of the plaintiff in any action against any First Priority Lender from seeking any other pre-judgment or post-judgment remedy that may be available under applicable law.

(e) Reporting Requirements. The Debtors shall furnish to the First Priority Agents and the Creditors' Committee each of the following:

(1) ~~(1) Weekly Cash Flow Budget.~~ ~~TOUSA shall furnish to the First Priority Agents on~~ On the Wednesday of each calendar week (or, if such Wednesday is not a business day, on the next succeeding business day), (i) a Weekly Cash Flow Budget covering the period from the Monday of such calendar week to and including the date that ends thirteen weeks thereafter, (ii) a report setting forth in reasonable detail any material variances from the Weekly Cash Flow Budget on the basis of the actual prior week, (iii) a report setting forth a list of all asset sales made pursuant to the Non-Core Asset Sale Order or any other order of the Court approving asset sales made outside of the ordinary course of the Debtors' business since the date of the latest Borrowing Base reporting period and their respective sales price, and (iv) a report of cumulative Net Cash Proceeds (as defined in Exhibit "B" attached hereto) received by the Debtors with respect to asset sales since the date of the last such report ~~and (v) a weekly inventory aging report and schedule of home closings since the date of the latest Borrowing Base reporting period.~~

**(II)** ~~(2) Quarterly Reports. Within 90 days~~ **Promptly after becoming available** after the end of each of the first three fiscal quarters of each fiscal year of TOUSA (or such ~~earlier~~ **later** date on which TOUSA is required to file a Form 10-Q under the Exchange Act, including all permitted extensions), financial information regarding the Debtor and its subsidiaries consisting of consolidated and consolidating unaudited balance sheets as of the close of such quarter and the related statements of income and cash flow for such quarter and that portion of the fiscal year ending as of the close of such quarter, setting forth in comparative form the figures for the corresponding period in the prior year, in each case certified by the Chief Financial Officer of TOUSA as fairly presenting in all material respects the consolidated and consolidating financial position of TOUSA and its subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in conformity with GAAP (subject to normal year-end audit adjustments); *provided, however*, that the deadline for delivery of the financial statements as set forth herein may be extended upon request of the Debtors and the consent of the First Priority Agents, with such consent to be granted in the First Priority Agents' sole and absolute discretion, but such consent shall not be unreasonably withheld. Such financial statements shall include a variance report reflecting the variances, if any, between such financial statements and the projections for the corresponding quarter. To the extent the information set forth in this ~~clause~~ **(subparagraph (II))** is included in TOUSA's Quarterly Report on Form 10-Q as filed with the ~~SEC~~ **Securities and Exchange Commission** **(the "SEC")**, such information shall be deemed delivered for the purposes hereof.

**(III)** ~~(3) Annual Reports.~~ Promptly after becoming available after the

end of each fiscal year, financial information regarding TOUSA and its subsidiaries consisting of consolidated and consolidating balance sheets of TOUSA and its subsidiaries as of the end of such year and related statements of income and cash flows of TOUSA and its subsidiaries for such fiscal year, all prepared in conformity with GAAP and certified, in the case of such Consolidated Financial Statements, by Ernst & Young LLP or another nationally recognized independent certified public accountant, together with the report of such accounting firm stating that (i) such financial statements fairly present in all material respects the consolidated financial position of TOUSA and its subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except for changes with which such independent certified public accountants shall concur and which shall have been disclosed in the notes to the financial statements) and (ii) the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards, and accompanied by a certificate stating that in the course of the regular audit of the business of TOUSA and its subsidiaries such accounting firm has obtained no knowledge that a Cash Collateral Termination Event (as hereafter defined) has occurred and is continuing or, if in the opinion of such accounting firm, a Cash Collateral Termination Event has occurred and is continuing, a statement as to the nature thereof. To the extent the information set forth in this ~~clause~~subparagraph 7(e)(~~3~~III) is included in TOUSA's Annual Report on Form 10-K as filed with the SEC, such information shall be deemed delivered for the purposes hereof.

(IV) ~~(4)~~ Cash Collateral Termination Event Notices. As soon as

practicable, and in any event within five business days after a Responsible Officer (as defined in the Revolver) of TOUSA has actual knowledge of the existence of any Cash Collateral Termination Event, the Debtors shall give the First Priority Agents and the Creditors' Committee notice specifying the nature of the Cash Collateral Termination Event, which notice, if given by telephone, shall be promptly confirmed in writing on the next business day.

(V)      ~~(5)~~ Borrowing Base Determination.

(1)      ~~(i)~~ No later than the ~~fifteenth~~ 15th day of each calendar month, TOUSA shall provide a Borrowing Base Certificate (capitalized terms used in subparagraph 7(e)~~(5V)~~ herein have the meaning ascribed to them in Exhibit "B" attached hereto) as of the last day of the prior month executed by a responsible officer of TOUSA; *provided* that such Borrowing Base Certificate shall give pro forma effect to the exclusion of any Borrowing Base Asset excluded from the Borrowing Base pursuant to a Borrowing Base Certificate delivered in accordance with this Order and its Exhibit "B" hereto after the last day of the prior month. Together with each such Borrowing Base Certificate, TOUSA shall deliver a monthly inventory aging report and schedule of home closings for the Borrowing Base reporting period covered by such Borrowing Base Certificate. In addition, if TOUSA performs any impairment calculation due to GAAP requirements or otherwise and if such calculation shows a decline in the Borrowing Base of more than \$5,000,000 from that shown on the most recently delivered Borrowing Base Certificate, TOUSA shall, within five (5) Business Days of TOUSA's Chief Accounting Officer having recognized any such impairment calculation, provide a Borrowing Base Certificate executed by a Responsible Officer of TOUSA giving effect to such impairment calculation.

(2) ~~(ii)~~ The First Priority Agents and their agents and representatives may, upon reasonable prior notice to TOUSA and at ~~TOUSAs'~~ TOUSA's sole cost and expense, make physical verifications of the Borrowing Base Assets in any reasonable manner and through any reasonable medium that the First Priority Agents consider reasonably advisable, but not more frequently than once each fiscal quarter prior to the occurrence of the Cash Collateral Termination Date. TOUSA shall furnish all such reasonable assistance and information as the First Priority Agents may reasonably require in connection with any such verification.

(VI) ~~(6)~~ Material Developments with Respect to Joint Ventures.

TOUSA shall deliver to the First Priority Agents and the Creditors' Committee reports with respect to ~~its~~ the Debtors' Joint Ventures (as defined in Exhibit "B" attached hereto) covering material developments affecting any Joint Venture that would be required to be disclosed by the Joint Venture in a Form 8-K filing with the SEC if such Joint Venture were a public company, such reports to be delivered promptly following such material development. In addition, promptly following receipt thereof, TOUSA shall deliver to the First Priority Agents and the Creditors' Committee a copy of any notice making a claim against any Debtor for any recourse obligation, a copy of any notice or communication with respect to the termination of any Joint Venture, and a copy of any notice or communication with respect to the cancellation, termination, surrender, sale, transfer or other disposition of the interest of any Debtor or any of their subsidiaries or affiliates in any Joint Venture.

(VII) ~~(7)~~ Other Information. Subject to all applicable privileges, the Debtors will provide the First Priority Agents ~~or any Secured Lender~~ and the Creditors'



Committee with such other reasonable information respecting the business, properties, condition, financial or otherwise, or operations of any Debtor, (including projections) as the First Priority Agents ~~or any Secured Lender through the First Priority Agents~~ and the Creditors' Committee may from time to time reasonably request. In addition, the Debtors shall cooperate with and permit representatives of the Prepetition Agents and the Creditors' Committee 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 previously publicly filed by the Debtors, comprise confidential information under the Prepetition ~~Secured Facilities~~ Financing Documents and any confidentiality agreements entered into with any Secured Lenders and the Creditors' Committee.

8. Perfection of Adequate Protection Liens. The Adequate Protection Liens granted pursuant to this Order and the Interim DIP Order shall be deemed to be perfected automatically as of the Petition Date, 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, *provided, however*, that if the Prepetition 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 ~~earlier~~later of the Petition Date or the date upon which the Debtors acquired the property subject to the mortgages, financing statements, notices of liens and other similar instruments and documents at issue. Each and every federal, state and local government agency or department is hereby directed to accept a copy of this Order as evidence of the validity, enforceability and perfection as of the Petition Date of the liens granted or authorized pursuant to this Order to or for the benefit of the Prepetition Secured Parties.

9. Limitation on Charging Expenses Against Collateral. Except for the Carve-Out, no administrative claims, including fees and expenses of professionals, shall be assessed against or attributed to any of the Prepetition Secured Parties with respect to their interests in the Prepetition Collateral for the period of consensual use of Cash Collateral (the "*Cash Collateral Period*") or any subsequent period in which the Debtors are permitted to use Cash Collateral pursuant to the terms of this Order, 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 Prepetition Secured Parties, as applicable, and no such consent shall be implied from any action, inaction or acquiescence by, either with or without notice to, the Prepetition Secured Parties, or otherwise. The limitations and restrictions set forth in the Interim DIP Order on assessing administrative expense claims pursuant to the provisions of 506(c) against or attributed to any of the Prepetition Agents or Secured Lenders with respect to their interests in the Prepetition Collateral from the Petition Date to the date hereof are hereby approved on a final basis. Nothing herein shall otherwise preclude the incurrence of administrative expenses that are neither paid from Cash Collateral nor assessed against the

Prepetition Secured Parties.

10. Priority of Obligations. ~~Pursuant~~ **Except as otherwise set forth herein,** **pursuant** to Bankruptcy Code section 507(b), all of the Debtors' obligations arising under this Order in respect of the Prepetition Secured Indebtedness, the Prepetition Collateral, or the Adequate Protection Liens shall constitute obligations of the Debtors with priority over any and all administrative expenses or other claims arising or granted under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 546(c) or 726, subject only to the payment of the Carve-Out.

11. Carve-Out. Subject to the terms and conditions contained in this paragraph 11, all liens on and security interests in the 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*"):

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

(b) **in the event of a conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, the fees and expenses incurred by such chapter 7 trustee and any professionals retained by such trustee, in an aggregate amount not exceeding \$50,000;**

(c) ~~(ii).~~ fees and expenses of the professionals retained by the Debtors (the "*Debtors' Professionals*") incurred from the Petition Date until the date of this Order totaling, as of April 30, 2008, \$[~~\_\_\_\_\_~~ **8,036,496.56**], plus, for the period from May 1, 2008 to the date of this Order, the estimated amount of \$[~~\_\_\_\_\_~~ **2,390,000**] (plus any other expenses incurred but not

invoiced), of which total amount, \$[\_\_\_\_\_] has been paid as of the date hereof, *provided*, that timely ~~fee statements for such professional fees have been delivered to the First Priority Agents and timely applications for payment of such professional fees have been made and eventually approved by an order of the Court~~ in accordance with this Courts' Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals [D.E. #103] (the "Interim Compensation Order");

(d) ~~(iii)~~ fees and expenses of the professionals retained by the Creditors' Committee (the "*Committee's Professionals*" and together with the Debtors' Professionals, the "*Professionals*") incurred from February 14, 2008 until March 31, 2008, totaling \$[\_\_\_\_\_] plus, for the period from March 31 to the date of this Order, the estimated amount of \$[\_\_\_\_\_] (plus any other expenses incurred but not invoiced), of which total amount \$[\_\_\_\_\_] has been paid as of the date hereof, *provided*, that timely ~~fee statements for such professional fees have been delivered to the First Priority Agents and timely applications for payment of such professional fees have been made and eventually approved by an order of the Court~~ in accordance with the Interim Compensation Order;

(e) ~~(iv)~~ subject to the limitation set forth in paragraph ~~16~~ 17(a)(2II) herein, unpaid fees and expenses of the Debtors' Professionals incurred during the Cash Collateral Period and, *provided*, that timely ~~fee statements for such professional fees have been delivered to the First Priority Agents and timely applications for payment of such professional fees have been made and eventually approved by an order of the Court~~ in accordance with the Interim Compensation Order; and

(f) ~~(v)~~ -unpaid fees and expenses of the Committee's Professionals incurred during the Cash Collateral Period in an amount not to exceed [\$450,000] on a monthly basis for any and all Professionals employed by the Committee (the "Committee Carve-Out Cap") ~~and~~ (to be reduced dollar for dollar for any amounts paid under the Budget), *provided*, that timely fee ~~statements~~ applications for payment of such professional fees have been ~~delivered to the First Priority Agents and timely applications for payment of such fees have been made and such fee statements are eventually approved by an order of the Court~~ made in accordance with the Interim Compensation Order. In the event that the Committee's Professionals do not incur fees and expenses, in any given month, equal to the Committee Carve-Out Cap, any portion of such fees and expenses shall be added to the next month's Committee Carve-Out Cap.

(g) ~~(vi)~~ -unpaid fees and expenses of the Debtors' Professionals subsequent to ~~the~~ a Cash Collateral Termination Date Event (other than as provided in subparagraph 17(a)(V)), in an aggregate amount not to exceed \$1,000,000, *provided*, that timely fee ~~statements~~ applications for payment of such professional fees have been ~~delivered to the First Priority Agents and timely applications for payment of such fees have been made and such fee statements are eventually approved by an order of the Court~~ made in accordance with the Interim Compensation Order; and

(h) ~~(vii)~~ -unpaid fees and expenses of the Creditors' Committee's Professionals subsequent to the Cash Collateral Termination Date, in an aggregate amount not to exceed \$250,000, *provided*, that timely ~~fee statements~~ applications for payment of such professional fees have been ~~delivered to the First Priority Agents and timely applications for payment of such fees~~

have been made and such fee statements are eventually approved by an order of the Court made in accordance with the Interim Compensation Order.

12. Interim DIP Order Carve-Out. All other Carve-Out obligations set forth in the Interim DIP Order that are not expressly adopted in paragraph 11 above shall terminate upon the entry of this Order and be of no further force and effect.

13. Limitations on the Use of Cash Collateral. Notwithstanding anything herein to the contrary, for so long as the Debtors are authorized to use Cash Collateral with the consent of the Prepetition Secured Parties, no portion of Cash Collateral may be used by any of the Debtors, the Creditors' Committee or any other person or entity to object to or contest in any manner the Prepetition Secured Indebtedness or Prepetition Liens, or to assert or prosecute any actions, claims or causes of action against any of the Prepetition Secured Parties without the consent of the applicable Prepetition Secured Parties.

14. ~~Automatic Stay. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the Prepetition Secured Parties to terminate the Debtors' use of Cash Collateral upon the occurrence of a Cash Collateral Termination Event; and take any other actions or exercise any other rights or remedies permitted under the Prepetition Financing Documents or this Order; provided, however, that any Prepetition 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 and counsel to the Creditors' Committee prior to exercising any enforcement rights or remedies in respect of the Collateral (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).~~

~~Notwithstanding anything herein to the contrary, the Prepetition First Priority Agents retain the right, in their sole discretion, to waive any such Cash Collateral Termination Event permanently or temporarily. 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, a Cash Collateral Termination Event has occurred and is continuing. At the expiration of such five (5) business day period, the Prepetition Secured Parties shall be entitled to pursue all remedies. The rights and remedies of the Prepetition Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that the Prepetition Secured Parties may have under the Prepetition Financing Documents or otherwise. Upon written notice (by facsimile, telecopy, electronic mail or otherwise) to the U.S. Trustee, counsel to the Debtors and counsel to the Creditors' Committee, nothing herein shall preclude the Prepetition Secured Parties from seeking an order from the Bankruptcy Court authorizing the Prepetition Secured Parties to exercise any enforcement rights or remedies with respect to the Collateral on less than five (5) business days notice. The failure or delay by any Prepetition Secured Party to seek relief or otherwise exercise its rights and remedies under this Order or any of the Prepetition Financing Documents shall not constitute a waiver of any of the rights of such Prepetition Secured Party 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.~~

**14.** ~~15. Reservation of Rights of Prepetition Secured Parties.~~ 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 Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of any of the Prepetition Secured Parties to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases, conversion of any of the Chapter 11 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 for any of the Debtors; (b) any of 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; or (c) any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the Prepetition Secured Parties. **Nothing herein shall prejudice the rights of any party to oppose any of the foregoing forms of relief that may be sought by any of the Prepetition Secured Parties. No actions of any of the Prepetition Secured Parties may be violative of the Intercreditor Agreement.**

**15.** ~~16. Challenge Period.~~

- (a) With a full reservation and no waiver of any rights of the Creditors' 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 Secured Party, together with their 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 Financing Documents, any aspect of the prepetition relationship between any Debtor relating to any of the Prepetition 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 Financing Documents or their prepetition relationship with any Debtor or any affiliate thereof relating to any of the Prepetition Financing Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses as to the extent, validity, priority, enforceability, or perfection of the Prepetition Liens or Prepetition Secured Indebtedness, "lender liability" claims and causes of action, any actions, claims or defenses under ~~Chapter~~chapter 5 or ~~Chapter~~chapter 7 of the Bankruptcy Code or any other claims and causes of action and any resulting subordination or re-characterization of any payments made to the 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 are collectively defined as the "*Claims and Defenses*"). Nothing contained in this subparagraph shall affect the rights of the Creditors' 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 or any other claims or causes of action against any party. For the avoidance of doubt, the release by the Debtors approved in this paragraph shall not constitute a defense by the Prepetition Secured Parties to any action commenced by any party other than the Debtors consistent with this paragraph ~~16,15,~~ even if such party is prosecuting a claim or defense that was the property of any Debtor's estate at the time of the giving of such release or such party is prosecuting such claim or cause of action in the name of any 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 First Priority Indebtedness, First Priority Liens, Second Priority Indebtedness and Second Priority Liens, and all acknowledgments, admissions and confirmations of the Debtors in paragraphs C and D above, are for all purposes subject to the rights of any party in interest (including the Creditors' Committee as representative of the Debtors' estates), other than any Debtor, to (1) file a complaint pursuant to Bankruptcy Rule 7001, (2) object to the allowability of any of, or any portion of, the Prepetition Secured Lenders' liens or claims in accordance with Bankruptcy Code sections 502 and 1109 and Bankruptcy Rule 3007 without the need to seek further relief from this Court, or (3) take such other action or seek another mechanism seeking to invalidate, avoid, subordinate or otherwise challenge the First Priority Indebtedness, First Priority Liens, Second Priority Indebtedness or Second Priority Liens or any liens, claims or other obligations incurred in

connection with any of the foregoing or pursue claims or causes of action against any  
Prepetition Secured Party (each of (1)-(3) above, a “Challenge”); *provided, however,* that any  
such ~~complaint~~Challenge(s) must be filed in this Court no later than July 26, 2008 (the  
“Challenge Period”); *provided, further, however,* that the Challenge Period may be extended  
either (i) by the Court pursuant to an order after notice and a hearing and for cause shown, or (ii)  
as may be agreed to in writing by (a) the Revolver Agent with respect to the time to file any such  
complaint relating to the liens and claims arising under the Revolver Financing Documents; (b)  
the First Priority Agent with respect to the time to file any such complaint relating to the liens  
and claims arising under the First Priority Term Loan Financing Documents; (c) the Second  
Priority Agent with respect to the time to file any such complaint relating to the liens and claims  
arising under the Second Priority Financing Documents. If no such ~~complaint is~~Challenge(s)  
are 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 the Creditors' Committee and any other person or  
entity. If such ~~complaint is~~Challenge(s) are timely filed on or before the date upon which the  
Challenge Period expires, 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 the Creditors' Committee and other person or entity, except with  
respect to Claims and Defenses that are expressly asserted in such ~~complaint~~Challenge(s). **For**  
**the avoidance of doubt, multiple Challenges may be brought prior to the expiration of the**  
**Challenge Period and the amendments or supplements to any timely Challenge filed**

**pursuant to this paragraph shall be governed by the applicable Federal Rules of Civil Procedure or other applicable law.**

(c) If no such ~~complaint~~**Challenge** as to any of the Revolver, the First Priority Term Loan, the First Priority Liens, the Second Priority Credit Agreement, the 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 First Priority Indebtedness as to any of the Revolver or the First Priority Term Loan, respectively, ~~not subject to any such complaint~~ and the Second Priority Indebtedness, ~~not subject to any such complaint~~, shall each constitute allowed, fully secured claims for all purposes in the Chapter 11 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 First Priority Liens, **as to any of the Revolver or the First Priority Term Loan, respectively,** and the Second Priority Liens, ~~in each case, not subject to any such complaint~~, shall be deemed legal, valid, binding, enforceable, perfected, not subject to subordination (except for the subordination thereof as otherwise specified in this Order, the First Priority Financing Documents, the Second Priority Financing Documents, and the Intercreditor Agreement, as applicable) or avoidance for all purposes in the Chapter 11 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 Chapter 11 Cases and any Successor Case, and (iv) the First Priority Indebtedness, the First Priority Liens, releases of the Claims and Defenses against the Released Parties, and prior payments on account of or with

respect to the First Priority Indebtedness as to any of the Revolver or the 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 Creditors' Committee or any other person or entity to bring, assert, commence, continue, prosecute or litigate the Claims and Defenses against any Released Party.

**16.** ~~17. Letters of Credit.~~ Notwithstanding anything herein to the contrary, ~~on~~**prior to** the Cash Collateral Termination Date, the Debtors (i) ~~shall~~**may**, pursuant to this Order, ~~be authorized to~~**request the renewal or extension of existing letters of credit, provided prior to, or contemporaneously with, the delivery of such a request, the Debtors** deposit in an account designated by the ~~Prepetition First Priority Agents~~**Revolver Agent** (the "*Letter of Credit Cash Collateral Account*") cash in an amount equal to ~~102.5~~**104.5**% of the face amount of ~~all outstanding~~**such** letters of credit **together with any fees associated with such renewal as provided in the Revolver.** This authorization shall not be subject to stay or injunction or affected by the Cash Collateral Termination Date, conversion of the Chapter 11 Cases to chapter 7, dismissal of the Chapter 11 Cases, the appointment of a trustee or examiner or otherwise.

**17.** ~~18. Cash Collateral Termination.~~

(a) Notwithstanding anything herein or in the Prepetition Financing Documents **to the contrary,** the Debtors shall no longer be authorized to use Cash Collateral pursuant to this Order, the Prepetition Financing Documents, or otherwise, and consent to the use of Cash

Collateral shall be terminated (the "*Cash Collateral Termination Date*") upon the earlier of (i) a date that is 180 days after entry of this Order and ~~(ii) (unless such date is extended in the sole discretion of the First Priority Agents after five (5) business days notice to the Creditors' Committee and absent an objection thereto) and (ii) absent further order of the Court, the date that is three (3) business days after the First Priority Agents deliver written notice to the Debtors and the Creditors' Committee of~~ the occurrence of any of the following events (any event shall be referred to as a "*Cash Collateral Termination Event*") ~~and notice (by facsimile, telecopy, electronic mail or otherwise) to the Debtors and the Committee in accordance with paragraph 14 hereof:~~

(I) ~~(1)~~ material non-compliance by the Debtors with any term, covenant or provision in this Order ~~and materially consistent with the Budget~~ (as it may be modified in accordance with this Order), subject to the Financial Covenant variance;

(II) ~~(2)~~ the incurrence by the Debtors of Professional fees and expenses in the aggregate in excess of the Non-Core Debtor Professional Fee Limitation as set forth in the Budget as evidenced by the timely delivery to the Debtors of monthly fee statements submitted by the Debtors' Professionals;

(III) ~~(3)~~ the occurrence after the date hereof of a material adverse effect on any of the business, prospects, performance, assets, operations, condition (financial or otherwise), contingent and other liabilities or material agreements of the Debtors, taken as a whole;

(IV) ~~(4)~~ the entry of an order pursuant to Bankruptcy Code section 363 approving the sale of all or substantially all of the Debtors' assets (but only in the event that the First Priority Agents have not first consented to such sale), *provided, however, that to the extent that the net proceeds of such sale are sufficient to satisfy all of the Prepetition Secured Indebtedness, then such sale shall not constitute a Cash Collateral Termination Event until the closing of the sale;*

(V) ~~(5)~~ the effective date of any plan of reorganization or liquidation of one or more of the Debtors;

(VI) ~~(6)~~ conversion or dismissal of the Chapter 11 Cases, *provided, however,* that if an order dismissing any of the Chapter 11 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 or the Interim DIP Order to or for the benefit of the Prepetition Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in *and subject to the express limitations contained 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 Prepetition Financing Documents (and that such claims and liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (ii) ~~that~~ prior to dismissal, the applicable Debtors shall deliver to the First Priority Agents and record, at the Debtors' cost, financing statements, mortgages and other documentation evidencing perfected liens in the Collateral and (iii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of

enforcing such claims and liens;

(VII) ~~(7)~~ entry of any order pursuant to sections 364(c)(1) and (d)(1) of the Bankruptcy Code authorizing the Debtors to obtain credit that is payable on a senior priority or pari passu basis with the Prepetition Secured Indebtedness without the written consent of the First Priority Agents; *provided, however*, that the Debtors may, upon further order of the Court, (a) obtain credit that is payable on a junior basis to the Prepetition Secured Indebtedness ~~with the written consent of a majority of the First Priority Secured Lenders or upon further order of the Court~~ and (b) incur obligations contemplated by the Budget that are secured by letters of credit or Cash Collateral; *provided, further, however*, that nothing herein shall prevent or restrict the rights of the First Priority Secured Parties from objecting to the request for any such an order; referenced in (a) or (b) herein;

(VIII) ~~(8)~~ failure of the Debtors to make the payments specified in paragraph 7 to or on behalf of the First Priority Secured Parties;

~~(9) ——— this Order shall not have been replaced by the Final Order by June 12, 2008; provided, however, that such date may be extended upon the request of the Debtors and the written consent of the First Lien Agent; or~~

(IX) ~~(10)~~ this Order ceases to be in full force and effect unless replaced by the Final Order. this Order ceases to be in full force and effect.

(b) Prepetition Secured Party Remedies.

(I) Upon the occurrence of a Cash Collateral Termination Event, any



Prepetition Secured Party shall provide three (3) business days written notice (by facsimile, telecopy, electronic mail or otherwise) to the U.S. Trustee, counsel to the Debtors and counsel to the Creditors' Committee prior to terminating the Debtors' use of cash collateral under this Order. Notwithstanding anything herein to the contrary, the Prepetition First Priority Agents retain the right, in their sole discretion, to waive any such Cash Collateral Termination Event permanently or temporarily. The Debtors, the U.S. Trustee, the Creditors' Committee and any other parties in interest may seek within the three (3) business day notice period an expedited hearing before this Court solely for the purpose of considering whether, in fact, a Cash Collateral Termination Event has occurred and is continuing. At the expiration of such three (3) business day period, the Prepetition Secured Parties shall be authorized to take whatever actions necessary to terminate the Debtors' use of Cash Collateral, including freezing any deposit or securities accounts.

(II) On or after the Cash Collateral Termination Date, the Prepetition Secured Parties shall not exercise any of their respective rights and remedies hereunder, under the other Prepetition Financing Documents or under applicable law (to the extent they might be deemed remedies in respect of the Collateral and other than with respect to freezing any deposit or securities accounts as set forth in subparagraph 17(b)(I) above) in order to effect payment or satisfaction of the Prepetition Secured Indebtedness or to receive any amounts or remittances due hereunder or under the Prepetition Financing Documents, including without limitation, foreclosing upon and selling all or a portion of the Collateral, without further of the Court after notice and a hearing.

(III) (b) Prepetition Secured Party Remedies. ~~If, on or after the Cash Collateral Termination Date, the Prepetition Secured Parties shall at any time exercise any of their respective rights and remedies hereunder, under the other Prepetition Financing Documents or under applicable law in order to effect payment or satisfaction of the Prepetition Secured Indebtedness or to receive any amounts or remittances due hereunder or under the Prepetition Financing Documents, including without limitation, foreclosing upon and selling all or a portion of the Collateral, the Prepetition 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 Prepetition Secured Parties shall elect in their sole discretion, subject to the provision by the applicable Prepetition Secured Parties of the written notice as provided in paragraph 14 and subject in all respects to paragraph 16. The failure or delay by any Prepetition Secured Party to seek relief or otherwise exercise its rights and remedies under this Order or any of the Prepetition Financing Documents shall not constitute a waiver of any of the rights of such Prepetition Secured Party 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.~~ No holder of a lien that is subject to 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 Prepetition Secured Parties of their respective rights and remedies hereunder, under the Prepetition Financing Documents or under applicable law to effect satisfaction of the Prepetition Secured Indebtedness or to receive any amounts or

remittances due hereunder or under the Prepetition Financing Documents. Notwithstanding the occurrence of the Cash Collateral Termination Date or anything herein to the contrary, all of the rights, remedies and benefits and protections provided to the Prepetition Secured Parties under this Order shall survive the Cash Collateral Termination Date.

**18.** ~~19. No Granting of Liens.~~ Except as expressly provided in this Order, the Debtors shall be enjoined and prohibited at any time during the Chapter 11 Cases from granting claims or liens in the Prepetition 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', tax, artisans', protective ~~liens~~lien to sale-leaseback counterparties that are otherwise permitted under this agreement or other lien by operation of law without further action by the Debtors shall not violate anything to the contrary in this Order; *provided, further, however,* and subject to the written consent of the First Priority Agents, with such consent to be granted in the First Priority Agents' sole discretion, the Debtors shall be permitted to incur Liens (as defined in the First Priority Secured Facilities) ~~securing~~as necessary in the ordinary course of business to secure obligations not in excess of \$15,000,000 at any time during the Cash Collateral Period.

**19.** ~~20. Postpetition Intercompany Transfer Protections.~~ Notwithstanding anything to the contrary contained in (i) the Interim DIP Order, (ii) this Order, (iii) the Interim Order (A) Authorizing the Debtors to Continue Using Their Existing Cash Management System, Bank Accounts and Business Forms, (B) Granting Administrative Expense Priority to

Postpetition Intercompany Claims and (C) Authorizing Continued Intercompany Arrangements and Historical Practices and (D) Scheduling a Final Hearing with Respect to the Relief Granted Herein (the "*Interim Cash Management Order*") or (iv) any final order with respect to the Interim Cash Management Order (collectively, the "*Financing Orders*"), to the extent it is determined by final, non-appealable order that all or a portion of the Prepetition Liens or claims held by the Prepetition Secured Parties against any Debtor that has transferred or transfers property (including cash and Cash Collateral) (the "*Transferring Debtor*") from and after the Petition Date to or for the benefit of any other Debtor are avoided, no provision of the Financing Orders shall impair or otherwise prejudice the ability of the Court to fashion a legal or equitable remedy to ensure that the position of the Prepetition Secured Parties is neither improperly enhanced nor impaired by such Transferring Debtor's transfer and that neither the Transferring Debtor and its creditors nor the Prepetition Secured Parties are prejudiced by such transfer and, upon either occurrence, this Court shall fashion such a remedy. **To the extent it is determined that all or a portion of the 2007 Federal Tax Refund is property of the estate of one or more of the Debtors other than, or in addition to, TOUSA, Inc., this Court shall fashion a legal or equitable remedy to ensure that the 2007 Federal Tax Refund is so transferred so the creditors of one Debtor are not inappropriately advantaged over the creditors of another Debtor which estate owns all or a portion of the 2007 Federal Tax Refund.**

**20.** ~~21. Leased Premises.~~ Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the First Priority Secured Parties contained in this Order or the First Priority Financing Documents, or otherwise available at law

or in equity, and subject to the terms of the First Priority Financing Documents, upon written notice to the Debtors and others, as specified in paragraph ~~13~~17 above, and to the landlord of any leased premises that a Cash Collateral Termination Date has occurred, the First Priority Secured Parties may 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 First Priority Secured Parties shall only pay rent under such leases that first accrues after provision of the First Priority Secured Parties' written notice referenced above and that is payable during the period of any occupancy by the First Priority Secured Parties, calculated on a *per diem* basis. Nothing herein shall require the First Priority Secured Parties to assume any lease as a condition to the rights afforded to the First Priority 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 Prepetition Liens.

21. ~~22.~~ Successors and Assigns. The provisions of this Order shall be binding upon and inure to the benefit of each of the Prepetition Secured Parties 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 any Debtor or with respect to the property of the estates of any Debtor).

22. ~~23.~~ No Discharge. The obligations of the Debtors under this Order shall not be discharged (and the Debtors waive the right to seek or obtain a discharge of such obligations

under section 1141 of the Bankruptcy Code or otherwise) until all obligations arising or payable under this Order are indefeasibly paid in full in cash by the Debtors.

23. ~~24. No Modification. Based~~ **Subject to paragraph 15 herein, based** upon the findings set forth in this Order, in the event that any or all of the provisions of this 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 Prepetition Secured Indebtedness incurred hereunder. ~~Notwithstanding~~ **Subject to paragraph 15 herein, notwithstanding** any such modification, amendment or vacation, any Prepetition Secured Indebtedness incurred and any claim granted to the Prepetition Secured Parties hereunder 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 Prepetition 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 Prepetition Secured Indebtedness and claims.

24. ~~25. No Setoff.~~ Notwithstanding anything herein to the contrary, this Order shall not require any First Priority Agent or 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 setoff under the Bankruptcy Code (as defined in the First Priority Financing Documents); *provided* that, until the occurrence of a Cash Collateral Termination Event, no such First Priority Agent or 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.

25. ~~26.~~ Affiliates. 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 Chapter 11 Cases, automatically and immediately shall be applicable in all respects to such Affiliate and its chapter 11 estate.

26. ~~27.~~ This Order is hereby deemed effective immediately pursuant to Federal Bankruptcy Rules of Procedure §6004(h). ~~The Debtors shall, on or before May \_\_, 2008, serve by United States mail, first class postage prepaid, copies of this Order and a notice of the Final Hearing (the "Final Hearing Notice") to be held on June 10, 2008 at 9:30 a.m. to consider entry of the Final Order on the Notice Parties. 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 5:00 p.m. on June 5, 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 First Priority Agents; (d) local counsel to the First Priority Agents; (e) the Office of the United States Trustee; (f) counsel to the Second Priority Agent; (j) counsel to the Creditors' Committee.~~

27. ~~28. Subject to entry of the Final Order with respect to the interim relief granted herein, the~~ **The** provisions of this Order, including the grant of claims and liens to or for the benefit of the Prepetition Agents and the Secured Lenders, and any actions taken pursuant hereto shall survive the entry of any order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code.

28. ~~29. This Order shall constitute findings of fact and conclusions of law;~~  
**provided, however, that the representations contained in paragraphs C and D herein remain subject to the provisions of paragraph 15 herein.**

###

Paul Steven Singerman, Esq.  
200 South Biscayne Boulevard  
Suite 1000  
Miami, Florida 33131  
**Phone:** (305) 755-9500  
**Fax:** (305) 714-4340

Attorney Singerman is directed to serve copies of this Order on the parties listed herein and to file a certification of service.



Document comparison done by DeltaView on Thursday, June 05, 2008 1:51:53 PM

**Input:**

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**Legend:**

**Insertion**

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Style change

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**Statistics:**

	Count
Insertions	261
Deletions	257
Moved from	29
Moved to	29
Style change	0
Format changed	0
Total changes	576