

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re

ULTIMATE ACQUISITION
PARTNERS, LP, *et al.*¹

Chapter 11
Case No. 11-____ ()

Debtors

(Joint Administration Requested)

MOTION OF DEBTORS FOR ENTRY OF AN ORDER PURSUANT TO 28 U.S.C. § 156(c), BANKRUPTCY RULE 2002(f) AND LOCAL RULE 2002-1(f) AUTHORIZING THE RETENTION OF KURTZMAN CARSON CONSULTANTS, LLC AS CLAIMS, NOTICING, AND BALLOTING AGENT TO THE DEBTOR AND DEBTOR IN POSSESSION *NUNC PRO TUNC* TO THE PETITION DATE

The above-captioned debtors and debtors in possession (the “Debtors”) hereby move (the “Motion”) for entry of an order, pursuant to Section 156(c) of title 28 of the United States Code (“Section 156(c)”), Rule 2002(f) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) authorizing the retention of Kurtzman Carson Consultants, LLC (“KCC”) as claims, noticing and balloting agent (the “Claims, Noticing and Balloting Agent”) to the Debtors and for the Office of the Clerk for the United States Bankruptcy Court for the District of Delaware (the “Clerk’s Office”). In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of F. Bruce Giesbrecht in support of Chapter 11 Petitions and First Day Pleadings (“Giesbrecht Declaration”) filed concurrently herewith respectfully represent:

¹ The Debtors and the last four digits of their respective tax payer identification numbers are as follows: Ultimate Acquisition Partners, LP (2837) and CC Retail, LLC (7780). The Debtors’ address is 321 West 84th Avenue, Suite A, Thornton, Colorado 80260.



BACKGROUND²

1. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of this bankruptcy case, is set forth in the Declaration, filed concurrently herewith and fully incorporated by reference.³

2. The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy code sections 1107 and 1108.

3. No trustee or examiner has been appointed in this chapter 11 case, and no committee has yet been appointed or designated.

JURISDICTION

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. sections 157(b). Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. sections 1408 and 1409. The statutory predicates for the relief sought herein are 11 U.S.C. § 105(a), 28 U.S.C. § 156(c), Bankruptcy Rule 2002(f) and Local Rule 2002-1(f).

² A detailed description of the Debtors and their business, and the facts and circumstances supporting this Motion, and the Debtors’ Chapter 11 cases are set forth in greater detail in the Giesbrecht Declaration filed on the Petition Date.

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Declaration.

RELIEF REQUESTED

5. By this Motion, the Debtors respectfully request the entry of an order authorizing them to retain and employ KCC as Claims, Noticing and Balloting Agent in these chapter 11 cases as of the Petition Date, subject to that certain agreement for services, dated as of January 26, 2011, by and between KCC and the Debtors (such agreement together with all amendments, modifications, renewals thereof and all documents ancillary thereto or otherwise entered into in connection therewith, are collectively referred to herein as the “KCC Agreement”), a copy of which is attached hereto as **Exhibit A** and incorporated by reference herein.

BASIS FOR RELIEF

6. Pursuant to 28 U.S.C. § 156(c),⁴ this Court is authorized to utilize facilities other than the Clerk’s Office for the administration of bankruptcy cases, including such matters as giving notice of hearings and orders filed in these chapter 11 cases, the meeting of creditors pursuant to section 341 of the Bankruptcy Code and claims bar dates, and providing record keeping and claims docketing assistance.

7. In addition, under Bankruptcy Rule 2002-1(f), the Court may direct that a person other than the Clerk of the Court to give notice of the various matters described therein. Moreover, Local Rule 2002-1(f) requires a debtor to file an application to retain a notice and/or claims clerk within seven (7) days of the petition date in all cases with more than 200 creditors. The Debtors believe that the number of creditors in these cases will exceed that number. Therefore, for all of the foregoing reasons, the Debtors believe that the retention of KCC as the

⁴ In relevant part, 28 U.S.C. section 156(c) provides, that “[a]ny court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States.”

Claims, Noticing, and Balloting Agent in these chapter 11 cases is in the best interests of the Debtors, their estates and their creditors. Furthermore, the Debtors respectfully submit that the fees and expenses that would be incurred by KCC under the proposed engagement would be administrative in nature and, therefore, should not be subject to standard fee application procedures of professionals.

8. The Debtors anticipate that there will be hundreds of entities that the Debtors will be required to serve with the various notices, pleadings, and other documents filed in these chapter 11 cases. Although the Clerk's Office ordinarily would serve notices on the Debtors' creditors and other parties in interest and administer claims against the Debtors, the Clerk's Office may not have the resources to undertake such tasks, especially in light of the sheer magnitude of the Debtors' creditor body and the tight timelines that frequently arise in chapter 11 case.

9. In consideration of the number of anticipated claimants and other parties in interest, the Debtors respectfully submit that the appointment of KCC will expedite the distribution of notices and relieve the Clerk's Office of the administrative burden of processing such notices. This retention is the most effective and efficient manner of noticing the thousands of creditors and parties in interest of the filing of these chapter 11 cases and other developments in these chapter 11 cases. In that capacity, KCC will transmit, receive, docket and maintain proofs of claim filed in connection with these chapter 11 cases.

10. KCC is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services including, claims processing, noticing, balloting, disbursement and other related services critical to the effective administration of chapter 11 cases. The Debtors propose to retain KCC on the terms and conditions set forth in the KCC Agreement.

11. KCC has substantial experience in matters of this size and complexity and has acted as the official notice, claims and solicitation agent in many large bankruptcy cases in this District and other districts nationwide. *See, e.g., In re Local Insight Media. Holdings, Inc., et al.*, Case No. 10-13677 (Bankr. D. Del. November 17, 2010); *In re Claim Jumper Restaurants, LLC, et al.*, Case No. 10-12819 (Bankr. D. Del. September 10, 2010); *In re Caribbean Petroleum Corp., et al.*, Case No. 10-12553 (Bankr. D. Del. August 12, 2010); *In re American Safety Razor Company, LLC, et al.*, Case No. 10-12351 (Bankr. D. Del. July 28, 2010); *In re OTC Holdings Corp.*, Case No. 10-12636 (Bankr. D. Del. August 25, 2010); *In re Specialty Packaging Holdings, Inc.*, Case No. 10-10142 (Bankr. D. Del. January 21, 2010); *In re Eddie Bauer Holdings, Inc.*, Case No. 09-12099 (Bankr. D. Del. June 18, 2009); *In re Premier Int'l Holdings Inc.*, Case no. 09-12019 (Bankr. D. Del. June 15, 2009); *In re Visteon*, Case No. 09-11786 (Bankr. D. Del. May 29, 2009); *In re Anchor Blue Retail Group, Inc.*, Case No. 09-11770 (Bankr. D. Del. May 28, 2009); *In re Accredited Home Lender Holding Co.*, Case No. 09-11516 (Bankr. D. Del. May 6, 2009); *In re Source Interlink Cos., Inc.*, Case No. 09-11424 (KG) (Bankr. D. Del. Apr. 29, 2009); *In re Vertis Holdings, Inc., et al.*, Case No. 10-16170 (Bankr. S.D.N.Y. November 17, 2010); *In re American Media, Inc., et al.*, Case No. 10-16140 (Bankr. S.D.N.Y. November 17, 2010); *In re Loehmann's Holdings, Inc., et al.*, Case No. 10-16077 (Bankr. S.D.N.Y. November 15, 2010); *In re Ambac Financial Group, Inc.*, Case No. 10-15973 (Bankr. S.D.N.Y. November 8, 2010); *In re Black Gaming, LLC*, No. 10-13301 (Bankr. D. Nev. Mar. 5, 2010); *In re Movie Gallery, Inc.*, No. 10-30696 (Bankr. E.D. Va. Feb. 3, 2010); *In re Fleetwood Enters., Inc.*, No. 09-14254 (Bankr. C.D. Cal. Mar. 20, 2009).⁵

⁵ Because of the voluminous nature of the orders cited herein, they are not attached to the Motion. Copies of these orders, however, are available on request of the Debtor's proposed counsel.

SERVICES TO BE PROVIDED

12. Under the KCC Agreement, KCC, at the request of the Debtors or the Clerk's Office, will provide the following services as the Claims, Noticing and Balloting Agent:

- (a) Prepare and serve required notices in the chapter 11 cases, including:
 - i. notice of the commencement of the chapter 11 cases and the initial meeting of creditors under Bankruptcy Code § 341(a);
 - ii. a notice of the claims bar date;
 - iii. notices of objections to claims and objections to transfers of claims;
 - iv. notices of hearings on motions filed by the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee");
 - v. notices of transfers of claims;
 - vi. notices of any hearings on a disclosure statement and confirmation of the Debtors' plan or plans of reorganization; and
 - vii. such other miscellaneous notices as the Debtors or Court may deem necessary or appropriate for an orderly administration of the chapter 11 cases;
- (b) Revise the creditor matrix after the objection period expires;
- (c) Record any order entered by the Court which may affect a claim by making a notation on the claims register;
- (d) Monitor the Court's docket for any claims related pleadings filed and making necessary notations on the claims register;
- (e) File with the Clerk an affidavit or certificate of service which includes a copy of the notice, indicating the name and complete address of each party served (in alphabetical order), and the date the notice was mailed, within seven days of service;
- (f) Receive, examine, and maintain copies of all proofs of claims and proofs of interest filed in the case;
- (g) Maintain the official claims register (the "Claims Register") by docketing all proofs of claim and proofs of interest in a claims database, and file with the Court a certified duplicate unofficial Claims Register on a quarterly basis, unless otherwise directed;

- (h) Specify, in the Claims Register, the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the asserted amount of the claim, if liquidated, and (v) the classification(s) of the claim (e.g., secured, unsecured, priority, etc.) according to the proof of claim, and (vi) the applicable Debtor against which the claim or interest is asserted;
- (i) Implement necessary security measures to ensure the completeness and integrity of the Claims Register;
- (j) Comply with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements;
- (k) Provide temporary employees to process claims as necessary;
- (l) Record all transfers of claims pursuant to Bankruptcy Rule 3001;
- (m) Maintain the Claims Register for public examination without charge during regular business hours;
- (n) maintain an up-to-date mailing list for the Debtors of all creditors and all entities who have filed a proof of claim or proof of interest and/or request for notices in the case, which list shall be available upon request by a party in interest or the Clerk (within 48 hours);
- (o) Providing access to the public for examination of claims and the claims register at no charge;
- (p) Provide balloting and solicitation services, including preparing ballots, producing personalized ballots and tabulating creditor ballots on a daily basis;
- (q) Provide such other claims processing, noticing, disbursing and related administrative services as may be required from time to time by the Debtors;
- (r) Promptly comply with such further conditions and requirements as the Clerk's Office or the Court may at any time prescribe; and
- (s) Within 14 days of entry of an order converting a case or within 30 days of entry of a Final Decree, forward all claims and the updated claims register to the Court, along with an updated mailing list. The claims register and mailing list will be provided in both paper and on disc and in alphabetical and numerical order. The mailing list disc will be in .txt format.

13. In addition to the foregoing, KCC will assist with, among other things: (a) maintaining and updating the master mailing lists of creditors; (b) to the extent necessary, gathering data in conjunction with the preparation of the Debtors' schedules of assets and liabilities and statements of financial affairs; (c) tracking and administration of claims; and (d) performing other administrative tasks pertaining to the administration of the chapter 11 cases, as may be requested by the Debtors or the Clerk's Office.

14. KCC will follow the notice and claim procedures that conform to the guidelines promulgated by the Clerk of the Court and the Judicial Conference of the United States, and as may be entered by the Court's order.

KCC'S DISINTERESTEDNESS

15. Attached as **Exhibit B** and incorporated herein by reference is the Affidavit of Albert Kass (the "Kass Affidavit"), Vice President of Corporate Restructuring Services. Except to the extent specifically disclosed in the Kass Affidavit, KCC is not connected with the Debtors, their creditors, the Office of the United States Trustee for the District of Delaware or any person employed by the Office of the United States Trustee for the District of Delaware. Although the Debtors do not propose to retain KCC under § 327 of the Bankruptcy Code, to the best of KCC's knowledge, and except as set forth in the Kass Affidavit, KCC neither holds nor represents any interest materially adverse to the Debtors' estate on matters for which it is to be retained or employed and that it is a "disinterested person" as referenced in section 327(a) of the Bankruptcy Code and as defined in section 101(14) and modified by section 1107(b) of the Bankruptcy Code. KCC may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as claims and noticing agent for another chapter 11 debtor.

16. As set forth in the Kass Affidavit, KCC represents, among other things, that:

- (a) KCC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims, Noticing and Balloting Agent in this chapter 11 case;
- (b) by accepting employment in this chapter 11 case, KCC waives any rights to receive compensation from the United States government;
- (c) in its capacity as the Claims, Noticing and Balloting Agent in this chapter 11 case, KCC will not be an agent of the United States and will not act on behalf of the United States; and
- (d) KCC will not employ any past or present employees of the Debtors in connection with its work as the Claims, Noticing and Balloting Agent in this chapter 11 case.

17. Should KCC discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, KCC will use reasonable efforts to file promptly a supplemental affidavit.

COMPENSATION

18. The Debtors propose that the cost of KCC's services be paid from the Debtors' estate as provided by 28 U.S.C. § 156(c) and 11 U.S.C. § 503(b)(1)(A). The Debtors respectfully submit that KCC's rates for its services in connection with the notice, claims processing and solicitation services are competitive and comparable to the rates charged by its competitors for similar services.

19. Furthermore, the Debtors respectfully request that the fees and expenses of KCC incurred in the performance of the above services be treated as an administrative expense of the Debtors' chapter 11 estate and be paid by the Debtors in the ordinary course of business without the need for KCC to file any fee applications or otherwise seek court approval for compensation

for its services and reimbursement of its expenses.⁶ KCC will serve monthly invoices on the Debtors, counsel for the Debtors, the Office of the United States Trustee, the DIP Lender, and any official committees that may be appointed in this case. If any dispute arises between KCC and the Debtors with respect to fees and expenses that cannot be resolved by KCC and the Debtors, such dispute shall be presented to the Court for resolution thereof. Prior to the filing of these chapter 11 cases, the Debtors' paid KCC a retainer of \$15,000.

20. In the event these cases are converted to a case under chapter 7 of the Bankruptcy Code, the Debtors request that KCC continue to be paid for its services until the claims filed in this case have been completely processed, and that if claims agent representation is necessary in the converted chapter 7 case, KCC would continue to be paid in accordance with Section 156(c).

21. For all of the foregoing reasons, the Debtors believe that the appointment of KCC as the Claims, Noticing and Balloting Agent is in the best interests of the Debtors, their estate, their creditors and other parties in interest.

NOTICE

22. The Debtors shall provide notice of this Motion by facsimile, email and/or overnight mail to: (i) the Office of the U.S. Trustee for the District of Delaware; (ii) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (iii) the agent for Debtors' prepetition lender; (iv) counsel to the Debtors' prepetition lender; (v) the Internal Revenue Service; (vi) the Office of the United States Attorney for the District of Delaware; and (vi) applicable state regulatory authorities. As this Motion is seeking first-day relief, notice of this Motion and any other entered hereon will be served on all parties by Local Rule 9013-1(m).

⁶ As an administrative agent and an adjunct to the Court, the Debtors do not believe that KCC is a "professional" whose retention is subject to approval under Section 327 of the Bankruptcy Code or whose compensation is subject to approval of the Court under Sections 330 and 331 of the Bankruptcy Code.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form submitted herewith, granting the relief requested in the Motion and such other and further relief as may be just and proper.

CAMPBELL & LEVINE, LLC

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Proposed Counsel for Debtors and Debtors-in-Possession

Dated: January 26, 2011
Wilmington, Delaware

EXHIBIT A

KCC Agreement



KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 26th day of January, 2011, between Ultimate Acquisition Partners, LP and CC Retail, LLC. (together with its affiliates and subsidiaries, the "Company"),¹ and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, "KCC").

In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Terms and Conditions

I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC's standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the "KCC Fee Structure").

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company's representatives, employees, agents and/or professionals (collectively, the "Company Parties") with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.

¹ The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company's chapter 11 case.



KCC AGREEMENT FOR SERVICES

II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services, expenses and supplies at the rates or prices set by KCC and in effect as of the date of this Agreement in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment. KCC reserves the right to reasonably increase its prices, charges and rates annually. If any price increases exceed 10%, KCC will give thirty (30) days written notice to the Company.

B. The Company agrees to pay the reasonable out of pocket expenses incurred by KCC in connection with services provided under this Agreement, including but not limited to, transportation, lodging, and meals.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and expenses related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. However, where total fees and expenses are expected to exceed \$10,000 in any single month, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) as well as certain expenses must be paid at least three (3) days in advance of those fees and expenses being incurred.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) ("Section 156(c)") and that all fees and expenses due under this Agreement shall be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Company shall cause a motion to be filed with the Bankruptcy Court seeking entry of an order pursuant to Section 156(c) approving this Agreement in its entirety (the "Section 156(c) Order"). The form and substance of the motion



KCC AGREEMENT FOR SERVICES

and the Section 156(c) Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with Section 156(c) and under the terms of this Agreement.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$15,000 (the "Retainer") that may be held by KCC as security for the Company's payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC's performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company's use during and in connection with the services provided by KCC under this Agreement.

IV. NON-SOLICITATION

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

V. CONFIDENTIALITY

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.



KCC AGREEMENT FOR SERVICES

VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of KCC that causes serious and material harm to the Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Section 156(c) Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility under Section 156(c) and this Agreement.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Section 156(c) Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.



KCC AGREEMENT FOR SERVICES

VIII. BANK ACCOUNTS

At the Company's request, KCC shall be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

- A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.
- B. Except as provided herein, KCC's liability to the Company or any person making a claim through or under the Company for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Company for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.
- C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Company and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs and data submitted by the Company to KCC.
- D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.



KCC AGREEMENT FOR SERVICES

X. FORCE MAJEURE

Whenever performance by KCC of any of its obligations hereunder is materially prevented or impacted by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war condition, or by reason of any other matter beyond KCC's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

XI. INDEPENDENT CONTRACTORS

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC
2335 Alaska Ave.
El Segundo, CA 90245
Attn: Drake D. Foster
Tel: (310) 823-9000
Fax: (310) 823-9133
E-Mail: dfoster@kccllc.com

Ultimate Acquisition Partners, LP and CC Retail,
LLC.
Address
City, ST Zip
Attn:
Tel:
Fax:

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this



KCC AGREEMENT FOR SERVICES

Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Company and an officer of KCC.

XV. COUNTERPARTS; EFFECTIVENESS

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

XVI. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

XVII. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof. For that purpose, the parties hereto consent to the jurisdiction and venue of an appropriate court located in Los Angeles County, State of California.

XVIII. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]



KCC AGREEMENT FOR SERVICES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

A handwritten signature in dark ink, appearing to read 'Albert H. Kates', written over a horizontal line.

BY: ALBERT H. KATES

DATE: 1/26/2011

TITLE: VP, Corporate Restructuring

Company

A large, stylized handwritten signature in dark ink, written over a horizontal line.

BY:

DATE:

TITLE:

EXHIBIT B

Declaration of Albert Kass

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

ULTIMATE ACQUISITION
PARTNERS, LP, *et al.*¹

Chapter 11
Case No. 11-____ (___)

Debtors

(Joint Administration Requested)

**AFFIDAVIT OF ALBERT KASS IN SUPPORT OF
DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
EMPLOYMENT AND RETENTION OF KURTZMAN CARSON CONSULTANTS
AS NOTICE, CLAIMS AND BALLOTING AGENT**

1. I, Albert Kass, being duly sworn, state the following under penalty of perjury:
2. I am the Vice President of Corporate Restructuring Services of Kurtzman Carson Consultants LLC ("KCC"), a company specializing in the administration of large bankruptcy cases.
3. I submit this Affidavit in support of the motion (the "Motion") of the Debtors² for authorization pursuant to 28 U.S.C. § 156(c) to employ and retain KCC as notice, claims and balloting agent in connection with these chapter 11 cases. Except as otherwise noted, I have personal knowledge of the matters set forth herein.

KCC's Qualifications

4. KCC is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services including noticing, claims processing, balloting and other

¹ The Debtors and the last four digits of their respective tax payer identification numbers are as follows: Ultimate Acquisition Partners, LP (2837) and CC Retail, LLC (7780). The Debtors' address is 321 West 84th Avenue, Suite A, Thornton, Colorado 80260.

² All capitalized terms used but otherwise not defined herein shall have the same meanings set forth in the Application.

related services critical to the effective administration of chapter 11 cases. Indeed, KCC has developed efficient and cost-effective methods to handle properly the voluminous mailings associated with the noticing, claims processing and balloting portions of chapter 11 cases to ensure the orderly and fair treatment of creditors, equity security holders and all parties in interest. Further, KCC will work with the Clerk's Office to ensure that such methodology conforms with all of the Court's procedures, the Local Rules and the provisions of any orders entered by this Court.

5. KCC has substantial experience in matters of this size and complexity and has acted as the official notice, claims and solicitation agent in many large bankruptcy cases in this District and other districts nationwide. *See, e.g., In re Local Insight Media Holdings, Inc., et al.*, Case No. 10-13677 (Bankr. D. Del. November 17, 2010); *In re Claim Jumper Restaurants, LLC, et al.*, Case No. 10-12819 (Bankr. D. Del. September 10, 2010); *In re Caribbean Petroleum Corp., et al.*, Case No. 10-12553 (Bankr. D. Del. August 12, 2010); *In re American Safety Razor Company, LLC, et al.*, Case No. 10-12351 (Bankr. D. Del. July 28, 2010); *In re OTC Holdings Corp.*, Case No. 10-12636 (Bankr. D. Del. August 25, 2010); *In re Specialty Packaging Holdings, Inc.*, Case No. 10-10142 (Bankr. D. Del. January 21, 2010); *In re Eddie Bauer Holdings, Inc.*, Case No. 09-12099 (Bankr. D. Del. June 18, 2009); *In re Premier Intl Holdings Inc.*, Case no. 09-12019 (Bankr. D. Del. June 15, 2009); *In re Visteon*, Case No. 09-11786 (Bankr. D. Del. May 29, 2009); *In re Anchor Blue Retail Group, Inc.*, Case No. 09-11770 (Bankr. D. Del. May 28, 2009); *In re Accredited Home Lender Holding Co.*, Case No. 09-11516 (Bankr. D. Del. May 6, 2009); *In re Source Interlink Cos., Inc.*, Case No. 09-11424 (KG) (Bankr. D. Del. Apt. 29, 2009); *In re Vertis Holdings, Inc., et al.*, Case No. 10-16170 (Bankr. S.D.N.Y. November 17, 2010); *In re American Media, Inc., et al.*, Case No. 10-16140 (Bankr. S.D.N.Y.

November 17, 2010); *In re Loehmann's Holdings, Inc., et al.*, Case No. 10-16077 (Bankr. S.D.N.Y. November 15, 2010); *In re Ambac Financial Group, Inc.*, Case No. 10-15973 (Bankr. S.D.N.Y. November 8, 2010); *In re Black Gaming, LLC*, No. 10-13301 (Bankr. D. Nev. Mar. 5, 2010); *In re Movie Gallery, Inc.*, No. 10-30696 (Bankr. E.D. Va. Feb. 3, 2010); *In re Fleetwood Enters., Inc.*, No. 09-14254 (Bankr. C.D. Cal. Mar. 20, 2009).

Services to be Provided

6. Specifically, the Debtors seek to engage KCC to provide certain noticing, claims processing and balloting administration services including, without limitation:

- (a) Preparing and serving required notices in the chapter 11 cases, including:
 - i. notice of the commencement of the chapter 11 cases and the initial meeting of creditors under Bankruptcy Code § 341(a);
 - ii. a notice of the claims bar date;
 - iii. notices of objections to claims and objections to transfers of claims;
 - iv. notices of hearings on motions filed by the Office of the United States Trustee for the District of Delaware (the "United States Trustee");
 - v. notices of transfers of claims;
 - vi. notices of any hearings on a disclosure statement and confirmation of the Debtors' plan or plans of reorganization; and
 - vii. such other miscellaneous notices as the Debtors or Court may deem necessary or appropriate for an orderly administration of the chapter 11 cases.
- (b) Revising the creditor matrix after the objection period expires;
- (c) Recording any order entered by the Court which may affect a claim by making a notation on the claims register;
- (d) Monitoring the Court's docket for any claims related pleading filed and making necessary notations on the claims register;

- (e) filing with the Clerk an affidavit or certificate of service which includes a copy of the notice, indicating the name and complete address of each party served (in alphabetical order), and the date the notice was mailed, within seven days of service;
- (f) Receiving, examining, and maintaining copies of all proofs of claims and proofs of interest filed in the case;
- (g) Maintaining the official claims register (the “Claims Register”) by docketing all proofs of claim and proofs of interest in a claims database, and file with the Court a certified duplicate unofficial Claims Register on a quarterly basis, unless otherwise directed;
- (h) Specifying, in the Claims Register, the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the filed amount of the claim, if liquidated, and (v) the classification(s) of the claim (e.g., secured, unsecured, priority, etc.) according to the proof of claim;
- (i) Implementing necessary security measures to ensure the completeness and integrity of the Claims Register;
- (j) Complying with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements;
- (k) Providing temporary employees to process claims as necessary;
- (l) Recording all transfers of claims pursuant to Bankruptcy Rule 3001;
- (m) Maintaining the Claims Register for public examination without charge during regular business hours;
- (n) Maintaining an up-to-date mailing list for the Debtors of all creditors and all entities who have filed a proof of claim or proof of interest and/or request for notices in the case, which list shall be available upon request by a party in interest or the Clerk (within 48 hours);
- (o) Providing access to the public for examination of claims and the claims register at no charge;
- (p) Providing balloting and solicitation services, including preparing ballots, producing personalized ballots and tabulating creditor ballots on a daily basis;
- (q) Providing such other claims processing, noticing, disbursing and related administrative services as may be required from time to time by the Debtors;

- (r) Promptly complying with such further conditions and requirements as the Clerk's Office or the Court may at any time prescribe; and
- (s) Within 14 days of entry of an order converting a case or within 30 days of entry of a Final Decree, forward all claims and the updated claims register to the Court, along with an updated mailing list. The claims register and mailing list will be provided in both paper and on disc and in alphabetical and numerical order. The mailing list disc will be in .txt format.

7. In addition to the foregoing, KCC will assist with, among other things:

(a) maintaining and updating the master mailing lists of creditors; (b) to the extent necessary, gathering data in conjunction with the preparation of the Debtors' schedules of assets and liabilities and statements of financial affairs; (c) tracking and administration of claims; and (d) performing other administrative tasks pertaining to the administration of the chapter 11 cases, as may be requested by the Debtors or the Clerk's Office. KCC will follow the notice and claim procedures that conform to the guidelines promulgated by the Clerk of the Court and the Judicial Conference of the United States and as may be entered by the Court's order.

8. KCC also has agreed to provide noticing services in these cases to the U.S. Trustee.

Compensation

9. The KCC Agreement sets forth the fees KCC charges for the services it will provide to the Debtors. The proposed compensation arrangement is consistent with, and typical of, arrangements of KCC and its competitor firms to provide claims and noticing agent services in chapter 11 cases.

10. KCC requests that the Debtors pay its fees and expenses in accordance with the terms of the KCC Agreement. KCC will submit invoices summarizing, in reasonable detail, the services and expenses for which compensation is sought.

KCC's Disinterestedness

11. Although the Debtors do not propose to retain KCC under § 327 of the Bankruptcy Code, KCC has nonetheless conducted a conflicts analysis and, to the best of its knowledge, KCC neither holds nor represents an interest materially adverse to the Debtors' estates nor has a material connection to the Debtors, their creditors or their related parties with respect to any matter for which KCC will be employed. KCC may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as claims and noticing agent for another chapter 11 debtor. To the best of my knowledge, such relationships are materially unrelated to the chapter 11 cases. In addition, KCC personnel may have relationships with some of the Debtors' creditors or other parties in interest. However, to the best of my knowledge, such relationships, to the extent they exist, are of a personal financial nature and completely unrelated to the chapter 11 cases. KCC has and will continue to represent clients in matters materially unrelated to these chapter 11 cases. In addition, KCC has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals and other parties in interest that may be involved in the Debtors' cases in matters unrelated to these cases.

12. KCC is an indirect subsidiary of Computershare Limited. Computershare Limited is a financial services and technologies provider for the global securities industry. Within the Computershare corporate structure, KCC operates as a separate, segregated business unit. As such, any relationships that Computershare Limited and its affiliates maintain do not create an interest of KCC that would be materially adverse to the Debtors' estates or any class of creditors or equity security holders. Administar, a claims and noticing agent, is also an indirect subsidiary of Computershare Limited. On June 10, 2009, the marketing and operation of Administar's restructuring services were consolidated under KCC.

13. To the best of my knowledge and except as disclosed herein, KCC neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed and that it is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 as referred to in section 327(a) of the Bankruptcy Code. KCC will supplement its disclosure to the Court if any facts or circumstances are discovered that would require disclosure.

14. KCC represents, among other things, that:

- (a) it will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as Agent;
- (b) by accepting employment in this bankruptcy case, KCC waives any right to receive compensation from the United States government;
- (c) in its capacity as Agent, KCC will not be an agent of the United States and will not act on behalf of the United States; and
- (d) KCC will not employ any past or present employees of the Debtors in connection with its work as Agent.

15. Should KCC discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, KCC will use reasonable efforts to file promptly a supplemental affidavit.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 26, 2011

By: 
Albert Kass
Vice President of Corporate
Restructuring Services

State of California
County of Los Angeles

Subscribed and sworn to before me on this 26th day of January, 2011, by Albert Kass, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

WITNESS my hand and official seal.

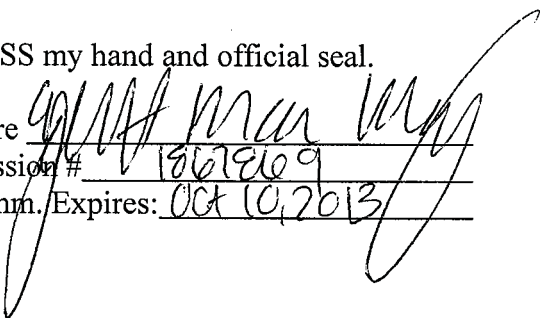
Signature 
Commission # 1867869
My Comm. Expires: OCT 10, 2013



EXHIBIT C

Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

ULTIMATE ACQUISITION
PARTNERS, LP, *et al.*¹

Chapter 11
Case No. 11-____ (___)

Debtors

(Joint Administration Requested)

**ORDER PURSUANT TO 28 U.S.C. § 156(c), BANKRUPTCY RULE 2002(f) AND LOCAL
RULE 2002-1(f) AUTHORIZING THE RETENTION OF KURTZMAN CARSON
CONSULTANTS AS CLAIMS, NOTICING, AND BALLOTING AGENT TO THE
DEBTORS AND DEBTORS IN POSSESSION**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”), for entry of an order, pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002(f) and Local Rule 2002-1(f), authorizing the retention of Kurtzman Carson Consultants, LLC (“KCC”) as claims, noticing and balloting agent (the “Claims, Noticing and Balloting Agent”) to the Debtors; and upon the Affidavit of Albert Kass in support of the Motion; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and upon the record herein; and it appearing that the relief requested by the Motion is in the best interest of the Debtors, their estate, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

¹ The Debtors and the last four digits of their respective tax payer identification numbers are as follows: Ultimate Acquisition Partners, LP (2837) and CC Retail, LLC (7780). The Debtors’ address is 321 West 84th Avenue, Suite A, Thornton, Colorado 80260.

² Capitalized terms not defined herein are defined in the Motion.

2. The Debtors are authorized to employ and retain KCC as their Claims, Noticing and Balloting Agent in these chapter 11 cases, as of the Petition Date, on the terms and conditions set forth in the agreement attached to the Motion as Exhibit A (the “KCC Agreement”).

3. KCC is authorized to provide noticing, claims processing, and other administrative services as set forth in the Motion and the KCC Agreement.

4. The terms of the KCC Agreement are approved as provided herein subject to the terms of this Order.

5. In addition to the services set forth in the Motion and the KCC Agreement, KCC is authorized to provide other noticing, claims processing, solicitation and administrative services the Debtors may request from time to time; provided, however, that KCC shall not provide disbursement services under any plan prior to the effective date of such plan absent further order of the Court; provided further, that the services to be provided by KCC that are not specifically described in the Motion shall be limited to ministerial services incident to the firm’s role as claims and noticing agent.

6. KCC is appointed as agent for the office of the Clerk of this Court (the “Clerk’s Office”) and, as such, is designated as the authorized repository for all proofs of claims filed in these chapter 11 cases and is authorized and directed to maintain official claims register for the Debtors and to provide the Clerk’s Office with a certified duplicate thereof as the Clerk’s Office may direct.

7. KCC is authorized to provide noticing services in these chapter 11 cases to the U.S. Trustee.

8. KCC shall not cease providing claims processing services during these chapter 11 cases for any reason without prior order of this Court authorizing KCC to do so; provided, however, that KCC may seek such an order on expedited notice by filing a request with the Court with notice of such request to be served on the Debtors, the Office of the United States Trustee and any official committee of creditors appointed in these cases by facsimile or overnight delivery; provided further, that except as expressly provided herein, the Debtors and KCC may otherwise terminate or suspend other services as provided under the KCC Agreement.

9. If these cases convert to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services until the claims filed in these chapter 11 cases have been completely processed, and that if claims agent representation is necessary in the converted chapter 7 case, KCC will continue to be paid in accordance with 28 U.S.C. § 156 (c) on the terms set forth in this Order.

10. Without further order of the Court, the Debtors are authorized to compensate KCC in accordance with the terms and conditions of the KCC Agreement, upon KCC's submission to the Debtors of invoices summarizing in reasonable detail the services and expenses for which compensation is sought; provided, however, that KCC shall provide copies of such invoices to the Office of the United States Trustee and any official committee of creditors appointed in the chapter 11 case.

11. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC incurred in the performance of services in accordance with the KCC Agreement shall be treated as an administrative expense of the Debtors' chapter 11 estate and be paid by the Debtors in the ordinary course of business without the need for KCC to file any fee applications or otherwise seek court approval for compensation for its services and reimbursement of its

expenses. KCC may hold its retainer under the KCC Agreement during the chapter 11 case as security for the payment of expenses only under the KCC Agreement.

12. Notwithstanding any provision in the KCC Agreement, the Debtors shall indemnify KCC solely to the extent set forth below:

- (a) Subject to the provisions of subparagraphs (c) and (d) below, the Debtors shall indemnify, KCC for any claim arising from, related to or in connection with their performance of the services described in the KCC Agreement;
- (b) KCC shall not be entitled to indemnification, contribution or reimbursement for services other than the services to be provided under the KCC Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court;
- (c) Notwithstanding anything to the contrary in the KCC Agreement, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from that person's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege breach of the KCC's contractual obligations under the KCC Agreement unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (ii) settled prior to a judicial determination as to that person's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the KCC Agreement as modified by the Motion and Order;
- (d) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in this case (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing this chapter 11 case, KCC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Indemnification Agreement (as modified by this Motion Order), including without limitation the advancement of defense costs, KCC must file an application before this Court, and the Debtors may not pay any such amounts before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time under which the court shall have jurisdiction over any request for fees and expenses for

indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify KCC.

- (e) Notwithstanding anything contained in Section VII of the KCC Agreement to the contrary, KCC's liability shall not be limited to (i) the total amount billed or billable to the Debtors for the portion of the particular work which gave rise to the loss or damage or (ii) the total amount billed to the Debtors and paid to KCC for the services contemplated under the KCC Agreement.

13. The Debtors are authorized and empowered to take all actions necessary to implement this Order.

14. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated: January __, 2011
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE