

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
Waste2Energy Holdings, Inc., <i>et al</i> ¹)	Case No. 11-12504 (KJC)
)	
Debtors.)	Jointly Administered
)	Related to Docket Nos. 88 and 94

**FINAL ORDER (I) AUTHORIZING POST-PETITION SECURED
FINANCING PURSUANT TO SECTIONS 105, 361, 362, 364(c)(1),
364(c)(2),364(c)(3), 364(e) AND 503(b) OF THE BANKRUPTCY CODE;
(II) MODIFYING THE AUTOMATIC STAY PURSUANT
TO SECTION 362(d) OF THE BANKRUPTCY CODE; AND
(III) PROVIDING RELATED RELIEF**

Upon the motion (the "Motion") dated January 24, 2012 of Wayne P. Weitz, as Chapter 11 Trustee for the above captioned debtor Waste2Energy Holdings, Inc., ("W2E Holdings," and together with debtors Waste2Energy, Inc., Waste2Energy Group Holdings PLC, and Waste2Energy Technologies International Ltd., the "Debtors") in these cases (the "Chapter 11 Cases"), and upon this Court's interim order approving the Motion on an interim basis [Docket No. 94] (the "Interim Order"), for the entry of this Order (the "Final Order") approving the DIP Facility (defined below) on a final basis (the "Final Order," and together with the Interim Order entered by the Court on January 26, 2012, the "DIP Orders") authorizing the Debtors, pursuant to title 11 of the United States Code (the "Bankruptcy Code"), including sections 105(a), 361, 362, 363, 364(c)(1), 364(c)(2), and 364(c)(3) thereof, and the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), including Rules 2002, 4001, 9007 and 9014, to (i) obtain post-petition financing pursuant to a credit facility (the "DIP Facility") not to exceed US\$500,000 (the "Loan Amount"), subject to all of the terms and conditions herein, by and among the Debtors as

¹ The Debtor in these chapter 11 cases are: Waste2Energy Holdings, Inc.; Waste2Energy Inc.; Waste2Energy Group Holdings PLC; and Waste2Energy Technologies International Limited.

borrowers (collectively, the “Borrowers”), and WTE Waste To Energy Canada, Inc., as lender (the “DIP Lender”), all in respect of the obligations set forth herein (the “DIP Obligations”), (ii) grant security interests, liens and superpriority claims for the benefit of the DIP Lender in respect of the DIP Obligations as provided herein, (iii) modify the automatic stay pursuant to section 362 of the Bankruptcy Code, (iv) fund post-petition allowed fees and expenses of Retained Professionals (defined below) and the Carve-Out (defined below), and (v) grant related relief; and the Court, having considered the Motion and in accordance with Bankruptcy Rule 4001(c)(2) and (c)(3); and due and proper notice of the Motion having been given under the circumstances; and a hearing to consider final approval of the DIP Facility having been held and concluded (the “Final Hearing”); and upon all of the pleadings filed with the Court and evidence presented in support of the Motion; and the Court having noted the appearances of parties in interest at the Final Hearing on the record; and all of the proceedings held before the Court; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates (the “Estates”) and their creditors; and after due deliberation and consideration, and sufficient cause appearing therefor,

THIS COURT HEREBY FINDS:²

A. Chapter 11 Filed. On August 8, 2011, (the “Involuntary Petition Date”), Luppino Landscaping & Masonry, LLC, Andrew John Savage, William Paul Simmelink, and Steven Benkovsky (collectively, the “Petitioning Creditors”) commenced these proceedings by filing an involuntary petition for reorganization under Chapter 11 of the Bankruptcy Code against W2E Holdings. Initially, W2E Holdings was in possession and management of its businesses and properties as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108. On

²Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the extent appropriate.

August 9, 2011, the Petitioning Creditors moved pursuant to 11 U.S.C. §§ 1104(a)(1) and 1104(a)(2) and Rule 2007 of the Federal Rules of Bankruptcy Procedure for an order appointing an operating Chapter 11 Trustee for the involuntary debtor W2E Holdings. A hearing on the matter was held before the Court on August 26, 2011, and subsequently thereto, the Court entered an Order on September 15, 2011 (which constituted an order for relief under section 303(h) of the Bankruptcy Code) authorizing and directing the appointment of a Chapter 11 Trustee for W2E Holdings. Subsequently, on October 7, 2011 the Court entered an Order approving the U.S. Trustee's application to appoint Wayne P. Weitz, as Chapter 11 Trustee for Debtor W2E Holdings (solely in his official capacity, the "Trustee"). On January 24, 2012 (the "Voluntary Petition Date," and together with the Involuntary Petition Date, the "Petition Date"), the Trustee for W2E Holdings has caused it to file voluntary chapter 11 petitions for its direct and indirect wholly owned subsidiaries: Waste2Energy, Inc., Waste2Energy Group Holdings PLC, and Waste2Energy Technologies International, Inc. The Trustee, in his capacity as Trustee of W2E Holdings, has caused the Debtors to be authorized to grant the security interest in the DIP Collateral (as defined in paragraph 8 below) and to incur the obligations set forth herein.

B. Jurisdiction and Venue. Consideration of this Motion constitutes a "core proceeding" as defined in 28 U.S.C. §§ 157(b)(2). 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. Notice and Hearing. Notice of the relief sought by the Motion, and the Final Hearing with respect thereto was delivered to the following parties in interest: the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"); all of the Debtors' creditors known to the Trustee; the Internal Revenue Service; all federal, state, and local

regulatory authorities with jurisdiction over the Debtors to the extent known by the Trustee, all parties that filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002 (collectively, the “Final Notice Parties”). Under the circumstances, such notice constitutes due, sufficient and adequate notice of the Motion, Final Hearing and this Final Order pursuant to the Bankruptcy Rules, including Bankruptcy Rules 2002, 4001(b), 4001(c) and (d), 5003(e), 9007 and 9014 and section 102(1) of the Bankruptcy Code, as required by sections 363(b) and 364(c) of the Bankruptcy Code, and no further notice of the Motion or this Final Order is necessary or required.

D. Necessity and Best Interest.

(1) An immediate and critical need exists for the Trustee to obtain funds in order to administer the Debtors’ Estates and maximize the value of the Debtors’ businesses, through a sale or otherwise. The Estates currently do not have enough available cash to meet the post-petition liquidity needs of the Trustee, which must be funded if value for the assets of the Estates is to be realized. The Trustee is unable to obtain the required funds (i) in the forms of (w) unsecured credit or debt allowable under section 503(b)(1) of the Bankruptcy Code, (x) an administrative expense pursuant to section 364(a) or (b) of the Bankruptcy Code, (y) unsecured debt having the priority afforded by section 364(c)(1) of the Bankruptcy Code or (z) debt secured only as described in section 364(c)(2) of the Bankruptcy Code or (ii) on terms more favorable than those offered by the DIP Lender under the DIP Budget (defined below), and this Final Order.

(2) The Trustee has requested that the DIP Lender make further loans and advances and provide other financial accommodations to the Estates. The ability of the Trustee to continue to administer these chapter 11 proceedings depends upon the Trustee obtaining such

financing. The DIP Lender is willing to make such loans and advances and provide such other financial accommodations on a secured basis, as more particularly described herein, pursuant to the terms and conditions of this Final Order. Accordingly, the relief requested in the Motion is necessary, essential and appropriate for the Trustee to administer this Chapter 11 proceeding so as to, among other things, manage a sale process of the Estates' assets in order to realize value for the benefit of the Estates and their creditors.

(3) The terms of the DIP Facility 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 Estates and their creditors. The DIP Lender is extending financing to the Estates in good faith and the DIP Lender is entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code.

(4) The Trustee (in consultation with his advisors) has determined that (i) the Final DIP Budget (as defined below) is reasonable and will allow the Estates to operate in the Chapter 11 Case and to pay accrued and allowed administrative expenses; and (ii) the Final DIP Budget includes all reasonable, necessary, and foreseeable expenses to be incurred for the period set forth in the Final DIP Budget.

(5) It is in the best interests of the Debtors' Estates that the Trustee be allowed to explore a sale process or other strategy under the terms and conditions set forth herein, which he will be unable to do without the DIP Facility. The relief requested by the Motion is necessary to avoid harm to the Debtor's Estates, and good, adequate and sufficient cause has been shown to justify the granting of the relief requested herein, and the entry of this Final Order. The terms of the DIP Facility are fair and reasonable, reflect the Trustee's exercise of his prudent business

judgment consistent with his fiduciary duties, and constitute reasonably equivalent value and fair consideration.

The Court, having determined that good cause exists for the relief requested in the Motion,

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

(1) Motion. The Motion is granted to the extent provided herein. Any objections to the relief sought in the Motion that have not been previously withdrawn or resolved by the terms of this Final Order are hereby overruled on their merits.

(2) DIP Borrowing Authorization.

(a) The Trustee is hereby authorized to (i) utilize the DIP Facility pursuant to the terms of this Final Order; and (ii) borrow funds, incur debt and perform his obligations in connection therewith in accordance with the terms and conditions of this Final Order. The Trustee is authorized to enter into and perform the transactions contemplated in this Final Order and to borrow from the DIP Facility on a Final Basis, subject to the terms and conditions of the Final DIP Budget, subsequent DIP Budgets as permitted hereunder, and this Final Order. The DIP Obligations incurred pursuant this Final Order shall constitute and are hereby deemed to be the legal, valid and binding obligations of the Trustee (solely in his capacity as Trustee) and the Estates, enforceable against the Trustee (solely in his capacity as Trustee), the Estates and any successor of the Debtors in accordance with the terms hereof or any successor representative of the Estates (including any Chapter 7 trustee). The DIP Lender and any other parties to whom obligations are or may be owed pursuant to this Final Order shall have the rights set forth in this Final Order to make loans, advances and/or financial accommodations pursuant to the terms and conditions thereof.

(3) Covenants, Representations and Warranties. The Trustee covenants, acknowledges, represents, stipulates and agrees, and the Court hereby finds and orders, that:

(a) The Trustee shall disclose any event, occurrence, action, suit, investigation or proceeding pending or threatened in any court or before any arbitrator or governmental authority of which he first obtains actual notice on or after the date of the filing of the Motion and any of which could reasonably be expected to (i) have a material adverse effect on the business, assets, properties, liabilities (actual and contingent), operations, condition (financial or otherwise) or prospects of the Borrowers, including without limitation the intellectual property of the Borrowers, (ii) have a material adverse affect on the ability of the Borrowers to perform their obligations under the DIP Facility, or (iii) have a material adverse effect on the rights and remedies of the DIP Lender under the DIP Facility and the DIP Orders (collectively, a "Material Adverse Effect"). The Trustee further covenants that he will provide written notice to the DIP Lender within three (3) business days of the receipt of any notice of or upon discovery of the prior existence of (a) the commencement of any litigation against or involving the Borrowers or any of their wholly owned direct or indirect subsidiaries (including any insolvency, administration, liquidation, or similar proceeding thereto), other than with respect to proceedings brought in these Chapter 11 Cases or in any adversary proceeding related to the Chapter 11 Cases, (b) termination of or default under any material contract, (c) noncompliance with any rule, statute, law, permit or license that could have a Material Adverse Effect, or (d) a Material Adverse Effect. If an event giving rise to a Material Adverse Effect shall have occurred of which the DIP Lender was unaware of as of the date of the Interim Order, the DIP Lender's obligation to provide funding under the DIP Facility shall cease, the principal of and all accrued interest and fees and all other amounts owed to the DIP Lender under the

Interim Order or Final Order shall be immediately due and payable, and the DIP Lender shall have all the rights and remedies provided in this Final Order or the Interim Order, as applicable.

(b) Prior to the entry of this Final Order, the Trustee shall have filed an application pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for the production of certain documents from and depositions of Christopher d'Arnaud Taylor and Joseph Murphy (the "2004 Discovery") relating to, *inter alia*, (a) the up to date patent application position for each patent application filed in regards to the intellectual property assets of the Borrowers, (b) any potential patent litigation or outstanding patent litigation relating to the intellectual property assets of the Borrowers, (c) any potential patent infringement issues relating to the intellectual property assets of the Borrowers, (d) any agreements entered into by the Borrowers for the use of the intellectual property assets of the Borrowers including, but not limited to, any license and manufacturing agreements between the Borrowers and 4C Design Group Ltd., Amber Programmable Designs Ltd., Ascot Environmental Ltd., SITA UK, or Shanghai Huanuan Boiler Vessel Co. Limited, (e) any agreements entered into by the Borrowers for the development of the Borrowers' intellectual property assets, including but not limited to, any such agreements with 4C Design Group Ltd., Amber Programmable Designs Ltd., or Renewable Energy Technology Ltd., and (f) any liens asserted on all intellectual property assets of the Borrowers, and any claims or interests related thereto. The Trustee further covenants that he shall use good faith efforts to complete the 2004 Discovery no later than March 15, 2012.

(c) On or before February 24, 2012, the Trustee shall remove all directors and management currently in place at Waste2Energy Inc., Waste2Energy Groups Holdings PLC, and Waste2Energy Technologies International, Inc.

(d) The Trustee shall cause any subsidiary who subsequently files for relief under chapter 11 of the Bankruptcy Code to be added as a debtor and borrower under the DIP Orders and that thereby each such entity and its estate shall be subject to the terms of the DIP Orders.

(e) The Trustee hereby agrees that until such time as all of the DIP Obligations are indefeasibly paid in full in cash and the DIP Facility is terminated in accordance with the terms thereof, the Trustee shall not in any way prime or seek to prime the DIP Obligations, the DIP Liens, or the DIP Superpriority Claims (defined below) provided to the DIP Lender under this Interim Order by offering a subsequent lender or a party in interest a superior or a *pari passu* lien or administrative expense pursuant to sections 326, 330, 331, 364(d), 503(b), 506, 507(a), 507(b), or 726 of the Bankruptcy Code or otherwise or acquiescing thereto. Each Borrower is jointly and severally liable for, and hereby absolutely and unconditionally guarantees to the DIP Lender and its successors and assigns, the full and prompt payment when due (whether at maturity or earlier, by reason of acceleration or otherwise, and at all times thereafter) and performance of, all DIP Obligations owed or hereafter owing to the DIP Lender by each Borrower.

(f) The Trustee agrees (solely in his capacity as Trustee) that his and the Estates' obligations under this Final Order shall not be discharged until the indefeasible payment, in full, in cash of the DIP Obligations, and the termination of the lending commitments under the DIP Facility.

(g) In no event shall the DIP Lender, whether in connection with the extension of financing to the Estates or the exercise of any rights or remedies under the DIP Facility, hereunder or otherwise, be deemed to be in control of the operations of the Trustee or

the Borrowers or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Trustee, the Debtors, the Borrowers or the Estates.

(h) The Trustee and the Debtors covenant that in no event shall they file a sale motion, sale procedures order, plan or any similar pleading in a form that is not reasonably acceptable to the DIP Lender and that fails to provide for the DIP Lender’s right to credit bid as set forth in Paragraph 15 of this Final Order.

(4) DIP Interest, Fees, Expenses and Reserves.

(a) The DIP Obligations shall bear interest at 15% per annum (the “Interest”) chargeable to any and all funded Loan Amounts under the DIP Facility, and be due and payable in accordance with this Final Order, in each case without further notice, motion or application to, order of, or hearing before, this Court.

(b) The DIP Obligations shall include the following fees payable to the DIP Lender: (i) a facility fee of 3% of the Loan Amount (the “Facility Fee”) and (ii) an administrative fee in the amount of all of the total actual costs and expenses incurred prior and subsequent to entry of the DIP Orders by the DIP Lender, solely in its capacity as DIP Lender, in connection with the Cases, including, without limitation, reasonable attorneys’ fees and actual costs of the DIP Lender’s counsel not to exceed US\$125,000 in the aggregate (the “Administrative Fee” and together with the Facility Fee, the “Fees”). None of such Fees payable pursuant to this Paragraph shall be subject to any other approval by this Court.

(5) DIP Obligations. Upon entry of this Final Order, the DIP Obligations shall constitute valid and binding obligations of the Trustee (in his capacity as such) and the Estates, enforceable against the Trustee and the Estates in accordance with the terms of this Final Order provided, however, that notwithstanding any other provision of this Final Order, the

Trustee shall not incur any administrative expenses, excluding legal fees for DIP Lender's counsel, in an amount greater than the DIP Facility. As to the Debtors, no obligation, payment, transfer or grant of security under this Final Order shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim. The Trustee shall use the DIP Facility solely as provided in the DIP Orders. The DIP Facility shall not, directly or indirectly, be used to pay expenses of the Trustee or otherwise disbursed except for those expenses and/or disbursements that are expressly permitted under the DIP Budgets.

(6) DIP Budgets. The amount of the DIP Facility authorized to be used shall be pursuant to budgets (as amended, supplemented, extended or otherwise modified from time to time, the "DIP Budgets"). All loans under the DIP Facility will be used strictly in accordance with Budgets created by the Trustee, and provided to and approved by the DIP Lender, which Budgets may only be modified with the prior written consent of the DIP Lender. The final DIP Budget (the "Final DIP Budget") is attached hereto and is approved. Subsequent DIP Budgets shall be in a form substantially similar to the Final DIP Budget and shall include specific line items and amounts and details as requested by the DIP Lender. Any subsequent DIP Budget shall be for the time period set forth therein, but in no event beyond the Maturity Date. Any DIP Budget may be amended, supplemented, extended or otherwise modified from time to time in any manner as to which the Trustee and the DIP Lender mutually agree without further order of this Court. The Debtors shall provide any amended DIP Budget to the U.S. Trustee and file such amendment with the Court. Items on the DIP Budget that are subject to Court approval and inclusion in and acceptance of any such item is not a waiver of any parties' (except for DIP Lender's) objections thereto.

(7) DIP Reporting Requirements. The Trustee shall deliver to the DIP Lender

(a) on Thursday of each week, commencing with the first full calendar week ending after the entry of this Final Order, a DIP Budget, (b) on Thursday of each week commencing with the first full calendar week ending after the entry of this Final Order, a variance report in form and substance that meets customary industry practices, and (c) any additional financial reporting requirements or other documentation as may be reasonably requested by the DIP Lender.

(8) Superpriority Claims and DIP Liens. Pursuant to the Bankruptcy Code, including sections 364(c)(1), 364(c)(2) and 364(c)(3) thereof, in respect of the DIP Obligations under the Interim Order and this Final Order, the DIP Lender is granted the following:

(a) Superpriority administrative expense claims pursuant to Bankruptcy Code sections 364(c)(1) with priority over all other administrative expenses pursuant to the Bankruptcy Code (including the kinds specified in or arising or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment), which superpriority expenses DIP Lender shall be subject and subordinate only to the Carve-Out (the "DIP Superpriority Claims");

(b) Fully perfected first priority, valid, binding, enforceable, non-avoidable and automatically perfected security interest in and liens (the "DIP Financing Liens") upon all existing and after acquired real and personal, tangible and intangible, assets of the Borrowers whether created, existing or acquired prior or subsequent to the commencement of the Chapter 11 Case, including, without limitation, all cash and cash equivalents, and any investment in such cash or cash equivalents, money, inventory, goods, accounts receivable, other rights to

payment, intercompany loans and other investments, investment property, contracts, contract rights, properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds, real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, capital stock of subsidiaries, tax and other refunds, insurance proceeds, commercial tort claims, rights under section 506(c) of the Bankruptcy Code, all other collateral and all other “property of the estate” (within the meaning of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible or mixed, and all rents, products, substitutions, accessions, profits, replacements and cash and non-cash proceeds of all of the foregoing (collectively, the “DIP Collateral”), with priority over any and all existing interests or claims in any such DIP Collateral except and subject only to (i) the Carve-Out, and (ii) any pre-existing secured claims but only to the extent that they that are secured by valid, enforceable, binding, non-avoidable and fully perfected, first priority security interests, liens and secured claims (“Permitted Encumbrances”) and in such cases, the DIP Financing Liens shall be junior liens in such collateral subject only to the Permitted Encumbrances.

(9) Carve-Out.

(a) Generally. Upon the occurrence of the Carve-Out Trigger Date (defined below), the DIP Financing Liens, and the DIP Superpriority Claims, shall each be subject and subordinate to the payment of the following: (i) the amount of all unpaid fees, costs and disbursements (collectively, the “Professional Fees”) of the Trustee’s retained professionals and the Chapter 11 Trustee (collectively, the “Retained Professionals”), and Trustee compensation under section 326 of the Bankruptcy Code, incurred before the existence of an

Event of Default (as defined below) or the Maturity Date (as defined below) (the “Carve-Out Trigger Date”) that have been approved by this Court during the Chapter 11 Cases pursuant to sections 327 and 328 of the Bankruptcy Code or otherwise which were incurred on or after the Petition Date and prior to the Carve Out Trigger Date in amounts not in excess, in the aggregate, of the amounts set forth in the DIP Budgets, provided that the Professional Fees are in accordance with the DIP Budgets on a cumulative basis for the applicable periods and are ultimately allowed on a final basis by this Court (whether or not such fees and expenses are allowed by this Court as of or after the Carve-Out Trigger Date) pursuant to sections 330 and 331 of the Bankruptcy Code, provided, however, nothing herein shall waive the right of any third party to object to the allowance of any such fees and expenses, and provided further, that the Carve-Out shall not include any bonus, transaction, success or completion fees or any other fees of similar import for Retained Professionals (all such amounts in this Paragraph, together with the limitations set forth therein, are collectively referred to as the “Carve-Out”).

(b) Reservation of Rights. The payment of any fees or expenses of the Retained Professionals pursuant to the Carve-Out shall not, and shall not be deemed to modify, alter or otherwise affect any of the liens and security interests of the DIP Lender in the DIP Collateral other than with respect to the Carve-Out. Except as otherwise set forth in Paragraph 9(a), the DIP Lender shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Retained Professionals, the U.S. Trustee or Clerk of the Bankruptcy Court (or of any other entity) incurred in connection with the Chapter 11 Case or any successor case, and nothing in the DIP Orders or otherwise shall be construed to obligate the DIP Lender in any way to pay such compensation to or to reimburse such expenses and the DIP Lender shall

not be responsible for payment of the Carve-Out from a source other than the proceeds of the DIP Facility and/or DIP Collateral.

(10) Waiver of Right to Surcharge. Because of (i) the consent of the DIP Lender to the current payment of administrative expenses of the Debtors' Estates in accordance with the DIP Budget, and (ii) the subordination of the DIP Financing Lien to the Carve-Out, the DIP Lender is entitled to a waiver of (a) the provisions of section 506(c) of the Bankruptcy Code and (b) any "equities of the case" claims or other claims under sections 105(a) or 552(b) of the Bankruptcy Code. Accordingly, it is expressly understood by all parties that in making all such undertakings and proceeding in compliance with any DIP Budget and this Final Order, the DIP Lender has relied on the foregoing provisions of this Paragraph 10. Notwithstanding any approval of or consent to any DIP Budget, nothing in this Final Order shall constitute or be deemed to constitute the consent by the DIP Lender to the imposition of any costs or expense of administration or other charge, lien, assessment or claim (including, without limitation, any amounts set forth in any DIP Budget) against the DIP Lender, its claims or its collateral under sections 105(a), 506(c) or 552(b) of the Bankruptcy Code or otherwise and no such consent shall be implied from any other action or inaction by such parties.

(11) Automatic Perfection. The DIP Financing Liens granted to the DIP Lender pursuant to this Final Order shall be valid, binding, perfected and enforceable by operation of law upon entry of this Final Order by the Court without any further action by any party. The DIP Lender in respect of the DIP Financing Liens shall not be required to enter into or to obtain any control agreements, or to give, file or record any financing statements, mortgages, deeds of trust, leasehold mortgages, notices to account debtors or other third parties, notices of lien or similar instruments in any jurisdiction (including filings with the United States

Patent and Trademark Office, the United States Copyright Office or any similar agency in respect of trademarks, copyrights, trade names or patents with respect to intellectual property) (collectively, the "Perfection Documents"), or obtain consents from any licensor or similarly situated party in interest, or take any other action in order to validate and to perfect the DIP Financing Liens granted under this Final Order and approved hereby, all of which are automatically perfected by the entry of this Final Order. Notwithstanding the foregoing, the DIP Lender may take action, and shall be granted relief from the automatic stay, to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Financing Liens granted to the DIP Lender, and the Trustee and the Borrowers shall execute and deliver to the DIP Lender all such financing statements, mortgages, notices and other documents as the DIP Lender may reasonably request in connection therewith. If the DIP Lender, in its sole discretion, chooses to enter into, give, record or file any Perfection Documents, (x) all such Perfection Documents shall be deemed to have been obtained, entered into, given, recorded or filed, as the case may be, as of the Petition Date, (y) no defect in any such act shall affect or impair the validity, perfection, priority or enforceability of the DIP Financing Liens, and (z) such liens shall have the relative priority set forth herein notwithstanding the timing of filing of any such Perfection Documents. In lieu of recording or filing any Perfection Documents, the DIP Lender may, in its sole discretion, choose to record or file a true and complete copy of this Final Order in any place that any Perfection Document would or could be recorded or filed (which may include a description of the collateral appropriate to be indicated in a recording or filing at such place of recording or filing), and such recording or filing by the DIP Lender shall have the same effect as if such Perfection Document had been filed or recorded as of the Petition Date. In addition, the DIP Lender may, in its sole discretion, and at the Trustee and the Estates' expense,

require the Trustee to file or record any Perfection Document on behalf of the Estates. The Trustee is authorized and directed to execute and deliver promptly upon demand by the DIP Lender all Perfection Documents as the DIP Lender may reasonably request.

(12) Limitation on Use of Proceeds. Notwithstanding anything in this Final Order to the contrary, no portion or proceeds of the DIP Facility, the DIP Collateral, or the Carve-Out, and no disbursements set forth in the DIP Budget shall be used for the payment of professional fees, disbursements, costs or expenses incurred in connection with: (a) objecting, contesting or raising any defense to the Motion or the validity, perfection, priority, or enforceability of, or any amount due under any security interests, liens or claims granted under this Final Order to secure such amounts; (b) asserting any challenges, claims, actions or causes of action against the DIP Lender or any of their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors; (c) preventing, hindering or otherwise delaying enforcement or realization on the DIP Collateral; or (d) seeking to amend or modify any of the rights granted to the DIP Lender under this Final Order, including seeking to use DIP Collateral on a contested basis.

(13) Cause of Action Proceeds. Notwithstanding anything in this Interim Order to the contrary, causes of action arising under Chapter 5 of the Bankruptcy Code or any other causes of action, including, without limitation, actions arising under the D&O insurance policies held by the Debtors, and any proceeds thereof shall not be DIP Collateral and shall not be subject to the DIP Financing Liens and DIP Superpriority Claims.

(14) Indemnification. The Trustee (solely in his capacity as such) and the Estates shall indemnify the DIP Lender and its respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of

the foregoing (each, an “Indemnified Person”) and hold each of them harmless from and against all costs, expenses (including reasonable fees, disbursements and other charges of counsel) and liabilities of such Indemnified Person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Trustee, or the Estates and/or any of their affiliates or shareholders) that relates to the DIP Facility or this Final Order, including the financial accommodations to the Trustee and the Estates contemplated hereby provided that no Indemnified Person will be indemnified for any cost, expense or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such Indemnified Person’s gross negligence or willful misconduct.

(15) Right to Credit Bid. Upon entry of the Final Order, the DIP Lender shall have the right to “credit bid” the amount of the DIP Obligations during any sale of all or substantially all of the assets of the Estates, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code. The DIP Lender shall be deemed a qualified bidder under any sales procedures order or other similar order entered by this Court.

(16) Events of Default. The DIP Facility will terminate and all amounts owing thereunder will immediately be due and payable without action or notice if any of the following (each an “Event of Default”) shall occur: (i) conversion of any of the Borrowers’ Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, (ii) if any of the Borrowers’ Chapter 11 Cases are dismissed, (iii) the granting of relief from the automatic stay to any creditor as to any material asset or that has a Material Adverse Effect on any of the Borrowers’ businesses or

assets, (iv) a motion is filed by the Borrowers or the Trustee seeking entry of an order granting any superpriority claim which is senior or *pari passu* with the DIP Lender's claims under the DIP Facility, (v) entry of an order without the prior consent of the DIP Lender amending, supplementing or otherwise modifying this Final Order, (vi) reversal, vacatur or stay of the effectiveness of this Final Order, (vii) payment of or granting adequate protection with respect to any prepetition debt or claim (other than as approved by the DIP Lender and the Court), (viii) a person or entity is appointed to the board of the Borrowers or to any subsidiary of the Borrowers who is not reasonably acceptable to the DIP Lender, (ix) any payment is made that is not in strict compliance with any DIP Budget, (x) any material term or provision of this Final Order is violated, (xi) an event occurs that has a Material Adverse Effect on the business, assets, liabilities, operations, conditions (financial or otherwise) or properties of the Borrowers, (xii) the venue of any of the Borrowers' Chapter 11 Cases is transferred outside of the jurisdiction of this Court, (xiii) subsequent to the date hereof, any bankruptcy, insolvency, administration, liquidation, or similar proceeding is commenced with respect to the Borrowers anywhere in the world other a proceeding authorized by the DIP Lender in connection with this Final Order; (xiv) any proceeds of the DIP Collateral or DIP Facility are utilized other than as provided for in the DIP Budgets, (xv) the Borrowers or the Trustee breach or otherwise fail to comply with any material provision of this Final Order, including without limitation the failure to timely perform the obligations set forth in Paragraph 3 herein, (xvi) the Borrowers close on a sale, transfer or other conveyance of the Estates' assets to any party other than the DIP Lender or an affiliate of the DIP Lender, or (xvii) the DIP Obligations have not been indefeasibly paid in full on or before April 30, 2012 (the "Maturity Date").

(17) Remedies. Upon the occurrence of an Event of Default under this Final Order, and without further notice, motion or application to, order of, or hearing before this Court, and with any automatic stay otherwise applicable to the DIP Lender hereby being modified, the DIP Lender is granted leave to cease making financial accommodations to the Borrowers, accelerate any or all of the DIP Obligations and declare such DIP Obligations to be immediately due and payable in full, in cash, and except for the Carve-Out, the Trustee shall use DIP Facility proceeds only with the written consent of the DIP Lender except solely with respect to the sale process set forth in the subsequent sentence. Upon the occurrence of an Event of Default, the Trustee may cause the DIP Lender to forebear the exercise of its remedies provided herein for a period that ends the earlier of either (i) forty-five (45) business days from the date of such Event of Default or (ii) April 30th, 2012 (the “Drop Dead Date”) only if: the Trustee provides within one (1) business day of such Event of Default a written representation by the Trustee to counsel for the DIP Lender via facsimile or electronic mail that he has commenced a sale process to sell all or substantially all of the Borrowers’ assets (other than causes of actions that the Borrowers may have) pursuant to section 363 of the Bankruptcy Code with the DIP Financing Liens and the DIP Superpriority Claims granted under the DIP Orders to attach to the proceeds of such sale, provided that any such sale must close no later than the Drop Dead Date and at such closing all DIP Obligations shall be indefeasibly paid in full, in cash, unless otherwise agreed to in writing by the DIP Lender. For the avoidance of doubt, the forbearance of the DIP Lender’s immediate exercise of its remedies as set forth in the preceding sentence is conditioned upon and requires the strict compliance with each and every requirement set forth in the preceding sentence and the failure to comply with any such requirement shall cause an immediate termination of such forbearance and allow the DIP Lender to immediately exercise its remedies (the “Termination”).

Date”). Upon the first to occur of the Drop Dead Date or the Termination Date, without further notice, motion or application to, order of, or hearing before this Court, and with any automatic stay otherwise applicable to the DIP Lender hereby being modified, the DIP Lender shall be entitled to exercise all of its rights and remedies under this Final Order, including, without limitation, to foreclose upon the DIP Collateral or otherwise enforce the DIP Obligations, DIP Financing Liens and DIP Superpriority Claims on any or all of the DIP Collateral and/or to exercise any other default-related remedies under this Final Order or applicable law in seeking to recover payment of the DIP Obligations. For the avoidance of doubt, with respect to Permitted Encumbrances, any exercise of such rights and remedies shall be in accordance with applicable bankruptcy and non-bankruptcy law in respect of Permitted Encumbrances.

(18) Successors and Assigns. This Final Order shall be binding upon all parties in interest in this Chapter 11 Case, the Trustee, any other Estate representative, or any successor representative of the Estates (including any Chapter 7 Trustee).

(19) Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive the entry of any subsequent order (other than entry of any subsequent Final Order), and the rights, remedies, powers, privileges, liens and priorities of the DIP Lender provided for in this Final Order shall not be modified, altered or impaired in any manner by any order, including any order (i) confirming any plan of reorganization or liquidation in any of the Chapter 11 Cases (and, to the extent not indefeasibly paid in full in cash, the DIP Obligations shall not be discharged by the entry of any such order, or pursuant to section 1141(d)(4) of the Bankruptcy Code, the Trustee and the Estates having hereby waived such discharge); (ii) converting the Chapter 11 Cases to Chapter 7 cases; (iii) dismissing the Chapter 11 Cases; or (iv) any superseding cases under the Bankruptcy Code. The terms and provisions of

this Final Order as well as the DIP Obligations, DIP Financing Liens, and DIP Superpriority Claims shall continue in full force and effect notwithstanding the entry of any such order, and such rights, claims and liens shall maintain their priority as provided by this Final Order to the maximum extent permitted by law until all of the DIP Obligations are indefeasibly paid in full, in cash.

(20) Good Faith. The DIP Facility and the other provisions of this Final Order have been negotiated in good faith and at arm's-length between the Trustee and the DIP Lender and the extension of the financial accommodations to the Trustee and the Estates by the DIP Lender pursuant to this Final Order has been and is deemed to be extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code. The DIP Lender is entitled to, and is hereby granted, the full protections of section 364(e) of the Bankruptcy Code.

(21) Subsequent Reversal or Modification. If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, that action will not affect (i) the validity of any obligation, indebtedness or liability under this Final Order by the Trustee or the Estates prior to the date of receipt of written notice to the DIP Lender of the effective date of such action; or (ii) the validity and enforceability of any lien, administrative expense, right, or priority authorized or created hereby or pursuant to this Final Order, including, without limitation, the DIP Obligations, DIP Financing Liens and DIP Superpriority Claims. Notwithstanding any such reversal, stay, modification or vacatur, any postpetition indebtedness, obligation or liability incurred by the Trustee and the Estates to the DIP Lender prior to written notice to the DIP Lender of the effective date of such action, shall be governed in all respects by the original provisions of this Final Order, and the DIP Lender shall be entitled to all the rights, remedies, privileges and benefits granted pursuant to this Final Order.

(22) No Waiver. This Final Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Lender may have to bring or be heard on any matter brought before the Court. Any consent, modification, declaration of default, or exercise of remedies or non-exercise of remedies under or in connection with this Final Order shall require the approval of DIP Lender, and shall not be deemed a waiver or relinquishment of any of the rights of the DIP Lender. Nothing contained in this Final Order shall impair, prejudice or modify any rights, claims or defenses available in law or equity to the DIP Lender, including, without limitation, the right to (a) request conversion of the Debtors' Chapter 11 Cases to cases under chapter 7, (b) seek to terminate the exclusive rights of the Trustee to file, and solicit acceptances of, a plan of reorganization on behalf of the Estates under section 1121 of the Bankruptcy Code or propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans, (c) object to the fees and expenses of any Retained Professionals to the extent that they are not in compliance with the DIP Budget, and (d) seek relief from the automatic stay. All such rights, claims and defenses, and the rights, objections and defenses of all parties in connection therewith, are hereby reserved.

(23) Additional Defaults. In addition and without limitation of the Events of Default set forth herein the following shall be a default hereunder if (a) a sale of substantially all assets is proposed by the Trustee on behalf of the Estates without the written consent of the DIP Lender that would not indefeasibly pay the DIP Obligations in full in cash, (b) any other motion is filed by the Trustee for any relief directly or indirectly affecting the DIP Collateral in a material manner unless all DIP Obligations have been indefeasibly paid in full, in cash, and completely satisfied upon consummation of the transaction contemplated thereby. No order providing for the sale of substantially all of the assets of the Estates under section 363 of the

Bankruptcy Code to an entity other than the DIP Lender or an affiliate of the DIP Lender shall be entered by the Court unless, upon the closing of such transaction, all liens securing the DIP Obligations are transferred to the proceeds of such sale and such proceeds are applied to permanently and indefeasibly repay the DIP Obligations, as applicable in cash. If an order dismissing any of the Chapter 11 Cases under section 305 or 1112 of the Bankruptcy Code or otherwise is at any time entered, (i) the claims, security interests, liens and claims granted to or for the benefit of the DIP Lender pursuant to this Final Order shall continue in full force and effect and shall maintain their priorities as provided in this Final Order, as applicable, until all DIP Obligations shall have been paid and satisfied in full (and that such claims and liens, shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and liens.

(24) No Marshaling. None of the DIP Collateral or the DIP Lender shall be subject to the doctrine of marshaling.

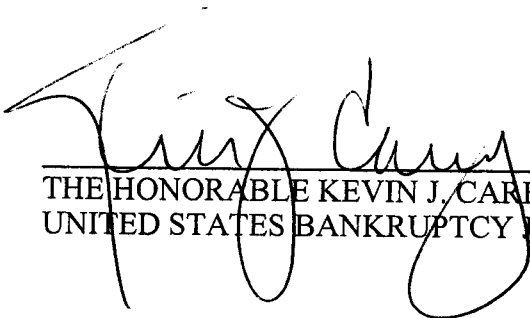
(25) Headings. The headings in this Final Order are for reference purposes only and will not in any way affect the meaning and interpretation of the terms of this Final Order.

(26) Immediate Effect. This Final Order is hereby deemed effective immediately pursuant to Bankruptcy Rule 6004(h).

(27) Notice. The Trustee shall, on or before February 28, 2012, serve by

United States mail, first class postage prepaid, copies this Final Order on the Final Notice
Parties.

Dated: Wilmington, Delaware
February 22, 2012



THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE