

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	Chapter 11
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HMX ACQUISITION CORP., <i>et al.</i> , <sup>1</sup>	)	Case No. 12-14300 (ALG)
	)	
Debtors.	)	(Joint Administration Requested)
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**INTERIM ORDER UNDER 11 U.S.C. §§ 105(a), 361, 362, 363 AND 364 AND FEDERAL BANKRUPTCY RULES 2002, 4001 AND 9014: (I) AUTHORIZING DEBTOR TO OBTAIN SECURED POST-PETITION FINANCING AND USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION; (III) MODIFYING THE AUTOMATIC STAY; (IV) SETTING FINAL HEARING; AND (V) GRANTING RELATED RELIEF**

This matter came before the Court for hearing on October 22, 2012 at 2:00 p.m. (the “**Interim Hearing**”) on the Motion of the above-captioned debtors (collectively, the “**Debtors**”) for Interim and Final Orders: (1) Authorizing the Debtors to Obtain Secured Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364(c) and Federal Bankruptcy Rules 2002, 4001 and 9014; (2) Granting Adequate Protection; (3) Modifying the Automatic Stay; (4) Scheduling and Approving the Form and Method of Notice of Final Hearing; and (5) Granting Related Relief (the “**Motion**”) [Docket No. 8], filed by the Debtors in the above-captioned chapter 11 case (the “**Case**”) on October 21, 2012; Debtors HMX Acquisition Corp. and HMX Poland Sp. z o. o. having filed voluntary petitions for reorganization pursuant to chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) on October 19, 2012 (the “**HMXAC Petition Date**”) and Debtors HMX, LLC, Quartet Real Estate, LLC, and HMX, DTC Co. having filed voluntary petitions for reorganization pursuant to chapter 11 of the Bankruptcy Code on October 21, 2012 (the “**HMX Petition Date**”)

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, to the extent applicable, are: HMX Acquisition Corp. (9861); HMX Poland Sp. z o. o.; HMX, LLC (8971); Quartet Real Estate, LLC (8973); and HMX, DTC Co. (0162).

and, together with the HMXAC Petition Date, respectively, the “**Petition Date**”), and the Debtors having requested in the Motion, *inter alia*, entry of interim and final orders:

(1) authorizing and approving, pursuant to section 364(c) of the Bankruptcy Code, the Debtors to obtain debtor in possession financing (the “**Post-Petition Financing**”) from the DIP Lenders (as defined herein below) pursuant to the terms and conditions of (a) this Interim Order and any final order on the Motion (the “**Final Order**”) entered after a Final Hearing (as defined herein below), (b) the DIP Loan Agreement (as defined herein below) and all other DIP Loan Documents (such term shall have the same meaning as the term “**Financing Documents**” as defined in the DIP Loan Agreement), including approval of all of the fees and interest agreed upon in the DIP Loan Agreement, and (c) the budget annexed as Exhibit A hereto (the “**Budget**”) ((a) through (c), collectively, the “**DIP Credit Facility**”);

(2) authorizing and approving, pursuant to section 363 of the Bankruptcy Code, the Debtors’ use of Cash Collateral (as defined herein below) of the Pre-Petition Lender (as defined herein below);

(3) granting the Pre-Petition Agent (as defined herein below) on behalf of itself and the Pre-Petition Lender adequate protection, including, without limitation, adequate protection against the diminution in the value or amount of the Pre-Petition Collateral (as defined herein below) in the form of Replacement Liens (as defined herein below) and a superpriority administrative expense claim under section 507(b) of the Bankruptcy Code, such Replacement Liens and section 507(b) superpriority administrative expense claim to be subject only to payment of the Carve-Out (as defined herein below), as more particularly set forth herein;

(4) authorizing and directing the Debtors to use Cash Collateral and proceeds of the DIP Credit Facility in accordance with the Budget and the terms of this Interim Order; and

(5) granting any further and related relief as the Court deems just and equitable.

Upon the record of the Case and the record of the Interim Hearing, good and sufficient cause appearing therefor, and it appearing to be in the best interests of the Debtors' estates and creditors;

THE DEBTORS STIPULATE AND THE COURT HEREBY FINDS, DETERMINES AND CONCLUDES THAT<sup>2</sup>:

A. On the Petition Date, the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") and a motion seeking authority to sell substantially all of their assets pursuant to section 363 of the Bankruptcy Code. The Debtors are continuing in the management and possession of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

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

C. Pursuant to Bankruptcy Rules 2002, 4001(b), (c) and (d) and 9014 and section 102(1) of the Bankruptcy Code, as required by sections 363(b) and 364(c) of the Bankruptcy Code, sufficient and adequate notice of the Motion has been provided under the present urgent circumstances, based upon the notice sent to the following parties in interest: the United States Trustee (the "**U.S. Trustee**"); the Agents, the Lenders, and the creditors holding the twenty (20) largest unsecured claims against the Debtors' estates; the Internal Revenue Service; and all state and local taxing authorities concerning the Debtors (collectively, the "**Interim Noticed**

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<sup>2</sup> Findings of fact contained herein shall be construed as conclusions of law, and conclusions of law herein shall be construed as findings of fact.

**Parties**”), and no further notice of, or interim or preliminary hearing on, the Motion or this Interim Order is necessary or required.

D. Salus Capital Partners, LLC (“**Salus**”), in its capacity as lender under the DIP Loan Agreement, the other lenders from time to time party to the DIP Loan Agreement (the “**DIP Lenders**”) and Salus, in its capacity as the agent under the DIP Credit Facility (the “**DIP Agent**”) are willing to advance monies to the Debtors only upon the terms and conditions contained in this Interim Order, any Final Order and the other DIP Loan Documents. The Pre-Petition Lender is willing to consent to the use of Cash Collateral, only upon the terms and conditions contained in this Interim Order.

E. The Debtors are unable to obtain sufficient levels of unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to maintain and conduct their businesses.

F. The Debtors are unable to obtain the necessary financing as unsecured credit allowable under section 364(a), (b) or (c)(1) of the Bankruptcy Code. Additionally, the Debtors are unable to procure the necessary financing on more favorable terms than those offered by the DIP Lenders or provided in this Interim Order.

G. The credit and financial accommodations to be extended under the DIP Credit Facility are being extended by the DIP Lenders in good faith; the conditions required by the Pre-Petition Lender in connection with the use of Cash Collateral are made in good faith; the Debtors, the DIP Lenders and the Pre-Petition Lender (the DIP Lenders and the Pre-Petition Lender are collectively and individually referred to as the “**Lenders**”), and the DIP Agent and the Pre-Petition Agent (the DIP Agent and the Pre-Petition Agent are collectively and individually referred to as the “**Agents**”), have negotiated the terms and conditions contained in

this Interim Order in an arms' length, open and honest fashion; and the Agents and the Lenders are entitled to the full protections of section 364(e) of the Bankruptcy Code.

H. It is in the best interests of the Debtors' estates and creditors that they be allowed to finance their operations under the terms and conditions set forth herein.

I. [Intentionally Omitted]

J. After consultation with their counsel and financial advisors, the Debtors and Agents and Lenders stipulate, acknowledge and agree (collectively, paragraphs J(i) through J(v) hereof shall be referred to herein as the "**Debtors' Stipulations**") that:

(i) **Pre-Petition Obligations.** As of the Petition Date, HMX LLC, HMX DTC Co., Quartet Real Estate, LLC, and Copley Corp., as borrowers, and Salus, in its capacity as agent (the "**Pre-Petition Agent**") and in its capacity as lender (the "**Pre-Petition Lender**") were parties to that certain Loan and Security Agreement dated August 7, 2009, (as subsequently amended, the "**Pre-Petition Loan Agreement**"). Pursuant to the Pre-Petition Loan Agreement, the Pre-Petition Lender provided the Debtors with debt financing in the approximate aggregate principal amount of \$60,000,000.00. As of the Petition Date, the outstanding unpaid principal balance under the Pre-Petition Loan Agreement was \$60,600,884.69, inclusive of interest, fees, and costs.

(ii) **Security.** Pursuant to the Pre-Petition Loan Agreement, the Debtors granted to the Pre-Petition Agent on behalf of itself and the Pre-Petition Lender to secure the prompt payment and performance of the Indebtedness (as defined in the Pre-Petition Loan Agreement), a lien on and continuing security interest in certain of their assets (as more particularly described in the Pre-Petition Loan Agreement (as defined herein below), the "**Pre-Petition Collateral**"). The liens and security interests granted by the Debtors to the Pre-Petition

Agent on behalf of itself and the Pre-Petition Lender prior to Petition Date are referred to herein as the “**Pre-Petition Liens**”.

(iii) **Validity and Priority of Pre-Petition Liens and Pre-Petition Obligations.** The Pre-Petition Liens are valid, binding, perfected and enforceable liens on the Pre-Petition Collateral, first in priority, subject only to liens and encumbrances permitted under the Pre-Petition Loan Agreement (“**Permitted Liens**”), on all post petition proceeds, products, offspring and profits thereof. The Pre-Petition Liens are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or otherwise. The Debtors’ indebtedness and other obligations, as of the Petition Date, to the Pre-Petition Agent on behalf of itself and the Pre-Petition Lender under the Pre-Petition Loan Agreement and the other agreements, documents and instruments executed and delivered in connection therewith (collectively, the “**Pre-Petition Loan Documents**”) constitute legal, valid, binding and non-avoidable obligations of the Debtors (the “**Pre-Petition Obligations**”) that, except for the stay of enforcement arising from section 362 of the Bankruptcy Code, are enforceable in accordance with the terms of the Pre-Petition Loan Documents. No offsets, defenses, challenges, claims, or counterclaims of any kind or nature to any of the Pre-Petition Obligations exist, and no portion of the Pre-Petition Obligations, and no amounts previously paid to the Pre-Petition Agent on behalf of itself and the Pre-Petition Lender on account thereof or with respect thereto, is subject to avoidance, recharacterization, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or otherwise. The Debtors and their estates have no offsets, defenses, claims, objections, challenges, causes of action, and/or choses in action, including, without limitation, claims under chapter 5 of the Bankruptcy Code, against the Pre-Petition Agent and the Pre-Petition Lender and/or its affiliates, agents, attorneys, advisors, professionals, officers, directors or employees.

(iv) **Cash Collateral.** All of the Debtors' cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, whether original collateral or proceeds, products, rents or profits of other Pre-Petition Collateral or the proceeds thereof (the "**Cash Collateral**"), constitute "cash collateral," as such term is defined in Bankruptcy Code section 363(a), of the Pre-Petition Agent on behalf of itself and the Pre-Petition Lender.

K. The Debtors represent, and the Court finds, determines and concludes, as follows:

(i) that without the use of Cash Collateral and the Post-Petition Financing proposed by the Motion, the Debtors will not have the funds necessary to pay post-petition payroll, payroll taxes, trade vendors, suppliers, overhead and other expenses necessary for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and properties. The Debtors have requested that pursuant to this Interim Order, the Pre-Petition Agent on behalf of the Pre-Petition Lender makes available to the Debtors the Cash Collateral, and pursuant to the DIP Credit Facility, the DIP Agent on behalf of the DIP Lenders makes loans and advances and provide other financial accommodations to the Debtors, in each case to be used by the Debtors solely for the purposes set forth in the Budget. The Debtors believe that the Budget is adequate, considering all its available assets, to pay all administrative expenses due or accruing during the period covered by the Budget. The ability of the Debtors to continue their businesses and reorganize under chapter 11 of the Bankruptcy Code depends upon the Debtors obtaining the use of Cash Collateral and the Post-Petition Financing as provided for herein. The Pre-Petition Agent on behalf of the Pre-Petition Lender is willing to make the Cash Collateral available, and the DIP Agent on behalf of the DIP Lenders is willing to make such loans and advances and provide such other financial accommodations on a secured basis, as more particularly described herein, solely in accordance with this Interim Order and

pursuant to the terms and conditions of the DIP Credit Facility. Accordingly, the relief requested in the Motion is necessary, essential and appropriate for the continued operation of the Debtors' businesses, the management and preservation of its assets and properties, and is in the best interests of the Debtors, their estates and creditors;

(ii) that the Debtors are unable to obtain the necessary financing as unsecured credit allowable under section 364(a), (b) or (c)(1) of the Bankruptcy Code, and that they are unable to procure the necessary financing on more favorable terms than those offered by the DIP Lenders or provided in this Interim Order and the DIP Loan Agreement; and,

(iii) that the relief requested by the Debtors in the Motion is necessary to avoid immediate and irreparable harm to their estates.

L. Soon after the filing of this Motion, the Debtors have filed a Motion for Orders: (a)(i) Authorizing the Debtors' Entry Into the Stalking Horse Purchase Agreement, (ii) Authorizing and Approving the Bid Procedures and Break-Up Fee, (iii) Approving the Notice Procedures, (iv) Setting a Date for the Sale Hearing (the "**Sale Hearing**") and (v) Authorizing the Debtors to File Certain Documents Under Seal; (b)(i) Authorizing and Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Claims and Interests and (ii) Authorizing the Assumption and Assignment of Certain Executory Contracts; and (c) Granting Related Relief.

M. Good, adequate and sufficient cause has been shown to justify the granting of the relief requested in the Motion and the immediate entry of this Interim Order, and such entry is necessary to prevent irreparable harm to the Debtors' estates prior to the Sale Hearing. To the extent any objections were made to the relief sought in the Motion and the entry of this Interim Order (and not withdrawn prior to the entry of this Interim Order) such objections are hereby expressly overruled.



N. As of the date of the entry of this Interim Order, the Office of the United States Trustee has not appointed a statutory committee under section 1102 of the Bankruptcy Code (a “**Committee**”).

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Motion Granted. The Motion is GRANTED on an interim basis as set forth herein.
2. Authorization to Obtain Debtor in Possession Financing. The Debtors are hereby authorized and empowered to enter into the DIP Credit Facility, which will increase the amount of credit available from \$60,000,000.00 to \$65,000,000.00, consisting of revolving loans (“**Revolving Advances**”) and a term loan in the amount of \$5,000,000.00, of which \$2,000,000.00 shall be available from the time of entry of this Interim Order and the entry of the Final Order, subject to availability and the borrowing base provided in the DIP Loan Agreement, and pursuant to the terms and conditions of this Interim Order and the Ratification and Amendment Agreement, by and among (i) HMX, LLC, HMX, DTC Co, Quartet Real Estate, LLC, Copley Corp, (each the foregoing as borrowers), (ii) HMX Acquisition Corp., HMX Poland sp. z o.o., REMALA Trading B.V. (each of the foregoing as guarantors), (iii) the DIP Lenders, and (iv) the DIP Agent, as amended or supplemented from time to time, substantially in the form attached hereto as Exhibit B (the “**DIP Loan Agreement**”). The Debtors are hereby authorized to enter into, execute, deliver, perform and comply with all of the terms, conditions and covenants of the DIP Loan Agreement and all other agreements, documents and instruments executed and/or delivered in connection with or related to the DIP Loan Agreement. All of such terms, conditions, and covenants shall be sufficient and conclusive evidence of the borrowing arrangements by and among the Debtors, the DIP Agent and the DIP Lenders and of the Debtors’ assumption and adoption of all of the terms, conditions, and covenants of the DIP Loan Agreement for all purposes, including, without limitation, the payment of all Pre-Petition

Obligations and Post-Petition Obligations (as defined herein below) arising thereunder, including, without limitation, all principal, interest, fees and expenses, including, without limitation, all of the DIP Agent's and DIP Lenders' reasonable attorneys' fees and legal expenses, as more fully set forth in the DIP Loan Agreement. Upon execution and delivery of the DIP Loan Documents, the DIP Loan Documents shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with the terms of the DIP Loan Documents, this Interim Order, and section 364(e) of the Bankruptcy Code; *provided, however,* that Section 7.19(b) of the DIP Loan Agreement and any releases set forth in the DIP Loan Agreement shall not be binding prior to the entry of a Final Order on the Motion.

3. Amendment. Subject to the terms and conditions of the DIP Loan Agreement and the other DIP Loan Documents, the DIP Agent, the DIP Lenders and the Debtors may amend, modify, supplement, or waive any provision of the DIP Loan Agreement (an "**Amendment**") without further approval or order of the Court so long as (i) such Amendment is not material (for purposes hereof, a "material" Amendment shall mean any Amendment that operates to increase the rate of interest other than as currently provided in the DIP Loan Agreement, adds specific new events of default or enlarges the nature and extent of default remedies available to the DIP Agent on behalf of the DIP Lenders following an event of default, or otherwise modifies any terms or conditions in any DIP Loan Document in a manner materially less favorable to the Debtors and in the good faith judgment of the DIP Agent, the DIP Lenders and Debtors), (ii) the Debtors provide at least three (3) business days' prior written notice of the Amendment (the "**Amendment Notice**") to the United States Trustee, the Pre-Petition Lender and counsel for the Committee, if any, and files the Amendment Notice with the Court, and (iii) no objection to the Amendment is filed with the Court within two (2) business

days after the date the Amendment Notice is filed with the Court. Any material Amendment to the DIP Loan Agreement must be approved by the Court to be effective.

4. Payment of Pre-Petition Obligations. The Debtors are authorized to make all payments to the Pre-Petition Agent on behalf of the Pre-Petition Lender, which payments shall not be avoidable or recoverable from the Pre-Petition Lender or give rise to any other claim, charge, assessment, or other liability, whether by application of the Bankruptcy Code, other law, or otherwise, unless such payments or transfers are on account of Pre-Petition Obligations and successfully challenged in accordance with paragraph 14 below; *provided, however*, that the repayment of the Pre-Petition Obligations as authorized under this Interim Order shall not, in and of itself, create a basis upon which a claim, cause of action or objection may be made under paragraph 13 hereof or otherwise. The Lenders shall apply the proceeds of the Collateral (as defined herein below) or any other amounts or payments received by the Lenders in respect of the Obligations (as defined herein below) in accordance with the DIP Loan Documents, including, without limitation, applying all payments, proceeds and other amounts first to the Pre-Petition Obligations, until such Pre-Petition Obligations are indefeasibly paid in full in cash and completely satisfied, and then to the Post-Petition Obligations (as defined herein below); *provided, however*, that if it subsequently is determined that the HMX Petition Date value of the Collateral is less than the amount of the prepetition indebtedness outstanding as of the HMX Petition Date, then any and all payments of post-petition interest, fees, costs, and charges shall be deemed applied in reduction of the amount of the prepetition indebtedness outstanding as of the HMX Petition Date. Without limiting the generality of the foregoing, the Debtors are authorized, without further order of this Court, to pay or reimburse the Lenders for all present and future costs and expenses, including, without limitation, all reasonable professional fees and reasonable legal expenses, paid or incurred by the Lenders in connection with the financing

transactions as provided in this Interim Order and the DIP Loan Documents, all of which shall be and are included as part of the Obligations, and shall be secured by the Collateral.

5. Authorization to Use Cash Collateral. The Debtors are hereby authorized to use the Pre-Petition Lender's Cash Collateral, in accordance with the terms and conditions of this Interim Order, until the earlier of (a) the "**Maturity Date**" (defined as the Forbearance Termination Date in the DIP Loan Agreement) or (b) the occurrence of a Termination Event (as defined herein below). No Cash Collateral, Carve-Out funds, or proceeds of the Post-Petition Financing shall be utilized for the payment of professional fees, disbursements, costs, or expenses incurred in connection with (i) asserting any claims or causes of action against the Pre-Petition Lender, or the Pre-Petition Agent on behalf of the Pre-Petition Lender, or the DIP Lenders, or the DIP Agent on behalf of the DIP Lenders, (ii) challenging or raising any defenses to the Post-Petition Obligations (as defined herein below), the Adequate Protection Claims (as defined below), the Pre-Petition Obligations, or the advances or other obligations under the DIP Credit Facility, or (iii) taking, preparing for, or encouraging any other party to take any action reasonably construed as adverse to the DIP Lenders, the DIP Agent on behalf of the DIP Lenders or the Pre-Petition Lender or the Pre-Petition Agent on behalf of the Pre-Petition Lender.

The Pre-Petition Lender is permitting the use of their Cash Collateral and the other Pre-Petition Collateral in good faith and in express reliance upon the protections afforded to the Pre-Petition Lender pursuant to section 364(e) of the Bankruptcy Code and, accordingly, shall be entitled to the full protections of section 364(e) of the Bankruptcy Code in the event this Interim Order or any provision hereof is vacated, reversed, or modified (including pursuant to a Final Order on the Motion entered after a Final Hearing on the Motion).

6. Budget and Other Limitations on Revolving Advances and Cash Collateral Usage. Budget and Other Limitations on Revolving Advances and Cash Collateral Usage. Revolving

Advances and Cash Collateral shall be used only to pay those expenditures in the Budget and the Debtors shall at all times comply with the Budget on a line-item by line-item basis; *provided, however,* that the Debtors shall be afforded an aggregate ten percent (10%) Budget variance on (i) total cash receipts, (ii) bankruptcy related expenses, and (iii) net operating cash flow. Any critical vendor payments are subject to the approval of the Bankruptcy Court and of Lenders and Agents in their sole and absolute discretion. The Budget may be modified or supplemented from time to time by additional budgets (covering any time period covered by a prior budget or covering additional time periods) acceptable to the Lenders or Agents on behalf of Lenders, in each case, in their sole and absolute discretion. The Debtors shall prepare and remit to Agents a Budget compliance report weekly pursuant to Section 6.4 of the DIP Loan Agreement. All borrowings under the DIP Credit Facility will be subject to a borrowing base, which shall be consistent with the borrowing base under the Loan Agreement (subject to an adjustment of the “availability block” as provided in the DIP Loan Agreement).

7. DIP Agent’s Superpriority Claim. Except as provided in any Final Order, DIP Agent on behalf of the DIP Lenders under and pursuant to the DIP Credit Facility in connection with the obligations under the DIP Loan Documents (as more particularly defined in the DIP Loan Agreement, the “**Post-Petition Obligations**” and collectively with the Pre-Petition Obligations, the “**Obligations**”), and in addition to the rights granted below, subject only to payment of the Carve-Out and the Pre-Petition Lender’s allowed superpriority administrative claim, the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted an allowed superpriority administrative claim in accordance with section 364(c)(1) of the Bankruptcy Code, having priority over any and all administrative expenses of the kinds specified in or arising or ordered under the Bankruptcy Code, including under sections 105(a), 326, 328, 330, 331, 503(b), 506(c),

507, 546(c), 726, 1113 and 1114 of the Bankruptcy Code, whether arising in the Case or in any superseding chapter 7 case concerning the Debtors (“**Successor Case**”).

8. Post-Petition Lien. Pursuant to Bankruptcy Code sections 362, 363(e), and 364(c), as security for the prompt payment and performance of any and all Post-Petition Obligations incurred by the Debtors in connection with the DIP Loan Documents, of whatever nature or description, the Debtors are hereby authorized to grant to the DIP Agent on behalf of itself and the DIP Lenders, and upon the entry of this Interim Order shall be deemed hereby to have granted to the DIP Agent on behalf of itself and the DIP Lenders, effective as of the Petition Date, valid, binding, enforceable and perfected first priority liens, mortgages and security interests on property owned or leased by the Debtors, in and upon all of the Pre-Petition Collateral and in all assets and property of the Debtors and their estates including without limitation, all present and future accounts, capital stock in subsidiaries, chattel paper, commercial tort claims, contracts, deposit accounts, documents, equipment, fixtures, general intangibles, goods, instruments, inventory, investment property, leasehold interests, letter-of-credit rights, supporting obligations, real property, interests in real property, books and records, intellectual property (including but not limited to patents, copyrights, and trademarks) and all causes of action arising under chapter 5 of the Bankruptcy Code, and all products and proceeds thereof, and all additions and accessions thereto, and all other Collateral described in the DIP Loan Agreement, *provided, however*, that such causes of action arising under chapter 5 of the Bankruptcy Code shall only be considered “Collateral” upon entry of the Final Order (collectively, the “**Post-Petition Collateral**”), subject only to the payment of the Carve-Out, the Replacement Liens, and any validly existing and perfected liens as of the Petition Date (including the Pre-Petition Liens) (the “**Post-Petition Liens**”). For the avoidance of doubt, the

Pre-Petition Liens are senior in priority to the Post-Petition Liens. The Pre-Petition Collateral and the Post-Petition Collateral are collectively referred to herein as the “**Collateral**”.

The liens and security interest in the Collateral granted to the DIP Agent herein and in the DIP Loan Agreement shall (a) be deemed effective and perfected as of the Petition Date and without the necessity of the Debtors or the DIP Agent incurring the expense for the execution, recordation or filing of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or possession or control of applicable assets and (b) extend and attach to all Collateral and any proceeds of Collateral which is presently in existence or is hereafter acquired (whether acquired prior to or subsequent to the Petition Date) and which is owned by the Debtors or in which the Debtors has any interest, whether held by the Debtors or by others for any of the Debtors’ accounts, wherever located.

9. Adequate Protection of Pre-Petition Lender’s Interests. As adequate protection for any post-petition diminution in value of the Pre-Petition Lender’s interests in the Pre-Petition Collateral, including without limitation for any diminution in value resulting from the use of Cash Collateral, the use, sale or lease of any other Pre-Petition Collateral, subordination to the Carve-Out, or the imposition of the automatic stay, the Pre-Petition Agent on behalf of the Pre-Petition Lender is hereby granted post-petition claims (the “**Adequate Protection Claim**”) against the Debtors’ estate. In order to secure the Adequate Protection Claim, the Pre-Petition Agent on behalf of the Pre-Petition Lender is hereby granted a lien and security interest (the “**Replacement Liens**”) in and upon the Collateral and all proceeds thereof, subject only to (i) payment of the Carve-Out and (ii) validly existing and perfected liens existing on the Petition Date (including the Pre-Petition Liens). To further provide adequate protection for the Adequate Protection Claim, the Pre-Petition Agent on behalf of the Pre-Petition Lender is granted an allowed superpriority administrative claim in accordance with section 507(b) of the Bankruptcy

Code having a priority in right of payment over any and all administrative expenses or priority claims of any kind including as specified in, or ordered pursuant to, sections 105(a), 326, 328, 330, 331, 503(b), 506(c), 507, 546(c), 726, 1113 and 1114 of the Bankruptcy Code, including the superpriority administrative claim granted to the DIP Agent on behalf of the DIP Lenders, whether arising in the Case or any Successor Case, but subject to the Carve-Out.

The Replacement Liens granted to the Pre-Petition Agent on behalf of the Pre-Petition Lender herein shall (a) be deemed effective and perfected as of the Petition Date and without the necessity of the Debtors or the Pre-Petition Agent incurring the expense for the execution, recordation or filing of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or possession or control of applicable assets and (b) extend and attach to all Collateral and any proceeds of Collateral which is presently in existence or is hereafter acquired (whether acquired prior to or subsequent to the Petition Date) and which is owned by the Debtors or in which the Debtors has any interest, whether held by the Debtors or by others for the Debtors' accounts, wherever located.

10. Carve-Out. Notwithstanding any contrary provision of this Interim Order, the liens and security interests and superpriority claims granted to the Agents, including the Replacement Liens, shall be subject and subordinate to a carve-out consisting of the claims of the following parties for the following amounts (collectively, the "**Carve-Out**"): (i) any fees or expenses incurred by Debtors' professionals or the Committee's professionals (if any) for services rendered and expenses incurred (x) on or before the Termination Date to the extent such fees and expenses are in accordance with the Budget and have been or subsequently are approved by a final order of the Bankruptcy Court pursuant to sections 326, 328, 330, or 331 of the Bankruptcy Code, and (y) subsequent to an Event of Default, the payment of approved fees of professionals in an amount not to exceed \$490,000 (and \$10,000 available for any subsequently appointed



Chapter 7 trustee); *provided, however*, that nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described above; *provided, further*, that the foregoing amounts described hereinabove shall not include any fees or expenses incurred in the prosecution of any litigation or the assertion of any claims raised against or with respect to the Agent, the Lenders or the Collateral, *plus* (ii) quarterly fees required to be paid to the Office of the United States Trustee pursuant to 28 U.S.C. Section 1930(a)(6), any statutory interest accrued thereon, and any fees payable to the Clerk of the Court.

11. No Surcharge or Marshalling. Subject to entry of the Final Order and except for the Carve-Out, no surcharges or costs or expenses of administration which have been or may be incurred in the Case or any future proceedings or cases related hereto, at any time, shall be charged against the Agents or Lenders, their claims, or the Collateral, pursuant to sections 105, 506(c) or 522 of the Bankruptcy Code or otherwise, without the prior written consent of the Agents on behalf of the Lenders, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any party, including but not limited to the funding of the Debtors' ongoing operations by the Agents on behalf of the Lenders; *provided, however*, that the section 506(c) waiver shall not be binding upon any subsequently appointed Chapter 7 trustee. In no event shall the Agents or Lenders be subject to the equitable doctrine of marshalling or any similar doctrine, as the case may be, with respect to the Post-Petition Obligations or any of the property comprising the Collateral.

12. Limits on the Lenders' Liability. Nothing in this Interim Order or in any of the DIP Loan Documents or any other documents related to the financing transactions authorized hereby or the Pre-Petition Obligations shall in any way be construed or interpreted to impose or allow the imposition upon the Agents and/or Lenders of any liability for any claims arising from

the prepetition activities by the Debtors' in the operation of its business or in connection with its restructuring efforts. To the extent that any of the following matters occurred prior to the HMX Petition Date, the Agents and/or Lenders shall not, in any way or manner, be liable, or responsible for (a) the safekeeping of the Collateral, (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (c) any diminution in the value thereof, or (d) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person, and all risk of loss, damage, or destruction of the Collateral shall be borne by the Debtors.

13. Challenges and Claims. Nothing in this Interim Order shall prejudice the rights of a Committee, if any, ~~or only if no Committee is appointed, any party in interest who is granted standing after notice and hearing,~~ to object to or challenge the Debtors' Stipulations, including, without limitation, any claim against the Pre-Petition Agent and/or Pre-Petition Lender in the nature of a setoff, counterclaim or defense to the Pre-Petition Obligations (including, but not limited to, those under sections 506, 544, 547, 548, 550 and/or 552 of the Bankruptcy Code or by way of suit against the Pre-Petition Lender) within sixty (60) days after the entry of a Final Order on the Motion (the "**Challenge Period**"). *In the event that a Committee is not appointed, any party in interest can challenge the Debtors' stipulations in the same manner, provided that the party in interest moved for standing before the expiration of the Challenge Period (and any extensions).* ~~and the date that is the next calendar day after the termination of the Challenge Period,~~ *In* the event that no contested matter or adversary proceeding is commenced during the Challenge Period, ~~shall be referred to as the "**Challenge Period Termination Date**"~~, then, upon the ~~Challenge Period Termination Date,~~ (a) any and all such challenges and objections by any party (including, without limitation, any chapter 11 or chapter 7 trustee appointed in the Case or in any Successor Case) shall be deemed to be forever waived, barred and discharged, ~~and~~ (b) the Debtors' Stipulations shall be binding on all persons, entities,

creditors, interest holders and parties in interest in the Case or any Successor Case, and ~~upon the Challenge Termination Period (c)~~ the Pre-Petition Obligations shall be deemed to be fully and finally allowed under the Bankruptcy Code for all purposes in connection with the Case and any Successor Case; *provided, however*, that after notice and hearing the Challenge Period may be extended for cause. This Order hereby grants the Committee standing to bring any and all such claims, challenges, objections and causes of action during the Challenge Period. ~~Only if such Committee or party in interest has properly and with requisite standing initiated an adversary proceeding or contested matter challenging the Debtors' Stipulations after providing written notice prior to the Challenge Period Termination Date shall it be permitted to prosecute such adversary proceeding or contested matter.~~ The adequate protection provided to the Pre-Petition Lender by the terms of this order shall remain in full force and effect until (i) if no challenges or objections as described in this paragraph have been raised with respect to the Pre-Petition Agent or the Pre-Petition Lender, the expiration of the Challenge Period ~~Termination Date~~, or (ii) in the event that such challenges or objections as described in this paragraph have been raised with respect to the Pre-Petition Agent or the Pre-Petition Lender, the date that such challenges or objections are resolved pursuant to a Final Order.

14. Insurance; Governmental Charges. The Debtors, at their expense, shall (a) continue to at all times keep the Collateral fully insured against all loss, peril and hazard and make the Agents co-insured and loss payee as their interests appear under such policies, and (b) pay any and all post-petition taxes, assessments and governmental charges with respect to the Collateral, whether or not the Debtors are obligated to do so under the Pre-Petition Loan Documents, and will provide the Agents with proof thereof upon written demand and will give the Agents access to its records in this regard.

15. Modification of Automatic Stay. The automatic stay provisions of Bankruptcy Code section 362 are hereby modified to permit (a) the Debtors to implement the terms of the DIP Credit Facility, (b) the Debtors to grant the Replacement Liens as adequate protection to the Pre-Petition Agent on behalf of the Pre-Petition Lender and (c) the Debtors to create, and the Agents to perfect, any and all liens and security interests granted to them hereunder; *provided, however,* that neither of the Agents shall be required to file UCC financing statements or other instruments with any other filing authority to perfect any lien, mortgage or security interest granted by this Interim Order or take any other action to perfect such liens, mortgages and security interests, and such liens, mortgages and security interests are hereby deemed perfected; *provided, however,* that if the Agents or Lenders shall, in their sole discretion, elect for any reason to file, record or serve any such financing statements or other documents with respect to such liens and security interests, the Debtors shall execute the same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time and on the date required to implement the priority of such liens and security interests as provided in this Interim Order.

A certified copy of this Interim Order may, in the discretion of the Pre-Petition Lender or the DIP Lender, be filed with or recorded in filing or recording offices in addition to or in lieu of any financing statements, mortgages, leasehold mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Order for filing and recording.

16. Termination Events. The occurrence of any one or more of the following events shall constitute a “**Termination Event**” under this Interim Order:

- (a) The filing of a motion by the Debtors to challenge the Lenders’ liens or otherwise commencing any cause of action against the Agents or Lenders; and

- (b) occurrence of an Event of Default under the DIP Loan Agreement.

17. Remedies Upon Maturity, an Event of Default, and a Termination Event.

(a) Upon the occurrence of the Maturity Date or an Event of Default as provided for in the DIP Loan Agreement, all stays and injunctions in the Case, including, but not limited, to, the automatic stay arising under section 362(a) of the Bankruptcy Code will be terminated automatically and irrevocably to permit the DIP Agent on behalf of itself and the DIP Lenders to exercise any of the following rights and remedies, without further order of the Bankruptcy Court and without the need for filing any motion for relief from the automatic stay or any other pleading, *provided, however*, that seven (7) days' notice shall be provided to (i) the Debtors, (ii) the U.S. Trustee, and (iii) the Committee, or if no Committee has been appointed then the creditors holding the twenty (20) largest unsecured claims against the Debtors' estates, before the automatic stay is effectively terminated or any rights or remedies are exercised:

- (i) declare the DIP Loan Agreement to be terminated including, without limitation, any obligation of the DIP Lender to make Revolving Advances or other financial accommodations under the DIP Credit Facility, whereupon the same shall forthwith terminate;
- (ii) declare any and all Post-Petition Obligations to be immediately due and payable, whereupon all Post-Petition Obligations shall become and be forthwith due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which the Debtors hereby expressly waive; and/or
- (iii) charge the default rate of interest on all Post-Petition Obligations.
- (iv) apply any and all money owing by the DIP Lenders to the Debtors to the payment of the Post-Petition Obligations, in the DIP Lenders' reasonable discretion, subject to and in accordance with the DIP Loan Agreement;
- (v) exercise and enforce any and all rights and remedies available upon default to a secured party under the UCC, including the right to take possession of Collateral, or any evidence thereof, proceeding without judicial process or by judicial process, and the right to sell, lease or otherwise dispose of any or all of the Collateral (with or without giving any warranties as to the

Collateral, title to the Collateral or similar warranties), and, in connection therewith, the Debtors will on demand assemble the Collateral and make it available to the DIP Lenders at a place to be designated by the DIP Agent on behalf of the DIP Lenders;

- (vi) exercise and enforce their rights and remedies under the DIP Loan Documents;
- (vii) seek the appointment of a Chapter 11 trustee and have an expedited hearing with respect to such request, on not more than five (5) business days notice, subject to the Bankruptcy Court's calendar;
- (viii) exercise any other rights and remedies available by law or agreement; and/or
- (ix) sell any of the Collateral on credit, the Post-Petition Obligations will be reduced only to the extent of payments actually received. If the purchaser fails to pay for the Collateral, the DIP Agent on behalf of the DIP Lenders may resell the Collateral and shall apply any proceeds actually received to the Post-Petition Obligations;

*provided, however,* that the rights and remedies set forth in paragraphs 17(a)(iv), (v), (vi), (vii), (viii), and (ix) may only be exercised if the Pre-Petition Obligations have been indefeasibly satisfied in full.

(b) Upon the occurrence of a Termination Event, all stays and injunctions in the Case, including, but not limited, to, the automatic stay arising under section 362(a) of the Bankruptcy Code will be terminated automatically and irrevocably to permit the Pre-Petition Agent on behalf of itself and the Pre-Petition Lender or any of the Pre-Petition Lender to exercise any of the following rights and remedies, without further order of the Bankruptcy Court and without the need for filing any motion for relief from the automatic stay or any other pleading, *provided, however,* that seven (7) days' notice shall be provided to (i) the Debtors, (ii) the U.S. Trustee, and (iii) the Committee, or if no Committee has been appointed then the creditors holding the twenty (20) largest unsecured claims against the Debtors' estates, before the Debtors' right to use Cash Collateral ceases:

- (i) declare the Debtors' right to use Cash Collateral to be terminated, whereupon the same shall forthwith terminate unless an order of the Court upon emergency motion is obtained.

(c) Notwithstanding the foregoing, in the event the DIP Agent on behalf of the DIP Lenders elects to exercise its rights and remedies following the occurrence of an Event of Default of the DIP Loan Agreement, and the Debtors believe in good faith that any such Event of Default is curable within a reasonable period of time and will not have a Material Adverse Effect (as such term is defined in the DIP Loan Agreement), the Debtors may request the Bankruptcy Court to hold a hearing on an expedited basis on not more than five (5) business days' notice, subject to the Bankruptcy Court's calendar, to determine whether or not the automatic stay provided under section 362 of the Bankruptcy Code shall be deemed lifted or modified to the extent necessary to allow the DIP Agent on behalf of the DIP Lenders to take the actions described in paragraphs 17(a)(i), 17(a)(ii), 17(a)(v), 17(a)(vi), 17(a)(vii), 17(a)(viii) and/or 17(a)(ix) hereof or under the DIP Loan Agreement. Pending such hearing, the DIP Agent on behalf of the DIP Lenders acknowledges that it will forbear from exercising the rights and remedies described in paragraph 17(a) above as a result of any such Event of Default.

(d) The automatic stay imposed by section 362 of the Bankruptcy Code is hereby modified to the extent necessary to permit or effectuate the terms of this Interim Order and the documents evidencing the Post-Petition Obligations, including, without limitation, to permit the execution and recordation of documents in the Agents' discretion to evidence the creation and perfection of the Agents' liens on the Collateral, subject to the provisions of this paragraph 17.

(e) Nothing herein shall be interpreted in a manner inconsistent with the rights provided to the Lenders under the DIP Loan Agreement.

18. Right to Credit Bid. During the period covered by this Interim Order and unless otherwise modified by the Final Order, the Agents on behalf of themselves and the Lenders and the Lenders shall have the right to credit bid with respect to any sale of assets or equity under either section 363 of the Bankruptcy Code or a plan of reorganization, the amount, (i) with respect to the DIP Lenders, such Lenders advanced under the Post-Petition Financing, and (ii) with respect to the Pre-Petition Lender, such Lender's portion of the Pre-Petition Obligations, which credit bid rights under section 363(k) of the Bankruptcy Code or otherwise shall not be impaired in any manner. For the avoidance of ambiguity, (i) no future order or plan may impair the credit bid rights of the Agents on behalf of themselves and the Lenders and (ii) the credit bid rights of the DIP Agent on behalf of itself and the DIP Lenders may not be exercised until the Pre-Petition Obligations have been satisfied in full without the consent of the Pre-Petition Lender.

19. No Limitation on Further Relief. Nothing in this Interim Order shall limit the rights of the Agents and/or Lenders to seek further relief (including additional adequate protection), or modification or termination of the automatic stay in accordance with Bankruptcy Code section 362(d).

20. [Intentionally Omitted].

21. Allowed Secured Claims. Subject to paragraph 13, above, without the requirement or need to file any proof of claim with respect thereto, (i) the Pre-Petition Obligations shall constitute allowed secured claims for all purposes in the Case and any Successor Case, (ii) the Pre-Petition Liens shall be deemed legal, valid, binding, enforceable, perfected liens not subject to recharacterization, subordination (except as expressly specified in this Interim Order as to the Carve-Out) or avoidance for all purposes in the Case and any Successor Case, and (iii) the Pre-



Petition Obligations, the Pre-Petition Liens, and prior payments on account of or with respect to the Pre-Petition Obligations shall not be subject to any other or further claims, cause of action, recharacterization, objection, contest, setoff, defense, or challenge by any party in interest for any reason, including, without limitation, by any successor to or estate representative of the Debtors.

22. No Limitation on Assignment of Rights. Nothing in this Interim Order shall limit the rights of the Agents or Lenders to assign any or all of their rights, claims and obligations under the DIP Loan Documents or the Pre-Petition Loan Documents (as applicable) subject to the conditions provided in such documents.

23. Books and Records. The Debtors are directed to keep its books and records of original entry current and updated, so that all business activity is posted to it in the ordinary course of the Debtors' businesses.

24. Good Faith. Pursuant to Bankruptcy Code section 364(e), the validity of the Post-Petition Obligations and the validity or priority of the liens, mortgages and security interests authorized or granted by this Interim Order shall be binding on the Debtors, their estates and their successors and assigns even if this Interim Order is reversed or modified on appeal.

25. Additional Documents. The Debtors are hereby authorized to do and perform all acts and to make, execute and deliver all instruments and documents which may be required or necessary for the performance of its obligations hereunder and under the DIP Credit Facility.

26. Conditions to Lending. Without limiting the availability of the Post-Petition Financing and use of Cash Collateral authorized on an interim basis pursuant to this Interim Order, the DIP Agents' and DIP Lenders' obligation to fund the DIP Credit Facility is conditioned upon and subject to execution of final, definitive DIP Loan Documents, including

the DIP Loan Agreement as well as the satisfaction (or due waiver) of the conditions precedent set forth in Section 10 of the DIP Loan Agreement.

27. Immediate Effect. As permitted by Bankruptcy Rule 6004(h), the Court hereby orders that this Interim Order shall become effective immediately.

28. Survival After Confirmation, Conversion or Dismissal. The provisions of this Interim Order and any actions taken pursuant thereto shall survive entry of any orders which may be entered confirming any plan of reorganization or which may be entered converting the Case from chapter 11 to chapter 7 of the Bankruptcy Code; *provided, further*, that the terms and provisions of this Interim Order, as well as the liens and security interests granted thereunder, shall continue in the Case or any Successor Case and such liens, mortgages and security interests and the Adequate Protection Claim shall maintain their priority as provided by this Interim Order.

29. No Limitation of Modification of Order. Nothing in this Interim Order shall limit the Agents' or Lenders' rights to seek modification of this Interim Order.

30. No Prejudice of Rights Against Third Parties. Nothing in this Interim Order shall in any way prejudice or compromise any rights that the Agents and/or Lenders may have against parties other than the Debtors.

31. Consent of Pre-Petition Lender. Where the consent of the Pre-Petition Lender is required in connection with terms of this Interim Order, such consent shall mean the consent of the Required Lenders (as defined in the Pre-Petition Loan Agreement).

32. Satisfaction of Pre-Petition Obligations. Notwithstanding the terms of this Interim Order or the DIP Loan Documents, under no circumstances shall payment be made on the principal amount due with respect to the Post-Petition Obligations until the Pre-Petition Obligations have been satisfied in full.

33. Limitations under Section 552(b) of the Bankruptcy Code: Subject to entry of a Final Order, the limitation permitted by Bankruptcy Code section 552(b), based on the equities of the case, shall not apply to the Pre-Petition Agent or the Pre-Petition Lender with respect to the proceeds, products, offspring or profits of any of the Collateral.

34. Service of this Order. Within three (3) business days after the entry of this Interim Order, the Debtors shall serve a copy on all Interim Noticed Parties.

35. Objection. Any objection to the relief requested in the Motion on a permanent basis must file written objections with the United States Bankruptcy Court Clerk for the Southern District of New York no later than **November 1, 2012**, which objections shall be served so that they are received by no later than **5:00 p.m. prevailing Eastern Time**, on such date by: (i) Proskauer Rose LLP, Mark K. Thomas and Peter J. Young, Three First National Plaza, 70 West Madison, Suite 3800, Chicago, Illinois 60602, proposed counsel for the Debtors; (ii) Greenberg Traurig, LLP, Jeffrey M. Wolf, One International Place, Boston, Massachusetts, 02110, e-mail: wolfje@gtlaw.com, and Paul J. Keenan, 333 S.E. 2<sup>nd</sup> Avenue, Miami, Florida, 33131, e-mail: keenanp@gtlaw.com, attorneys for the DIP Agent; (iii) counsel for the Committee, if one is appointed; and (iv) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, NY 10004, Attention: Nazar Khodorovsky, Esq., Facsimile: 212-668-2255. The Court will conduct the Final Hearing on November 5, 2012, at 2:30 p.m. Prevailing Eastern Time, at One Bowling Green, New York, New York; which hearing may be adjourned from time to time without further notice other than an announcement of the adjourned date or dates in open court or at the Final Hearing.

36. Binding Effect. The provisions of this Interim Order shall be binding upon and inure to the benefit of the Agents, the Lenders, the Debtors, the Debtors' estate, and all creditors and

parties in interest, and their respective successors and assigns (including any trustee appointed as a representative of the Debtors' estates or in any Successor Case).

37. Controlling Effect. To the extent that any provision of this Interim Order expressly conflicts with any provision of any of the Pre-Petition Loan Documents or any of the DIP Loan Documents, this Interim Order is deemed to control and shall supersede the conflicting provision(s).

Dated: October 23, 2012  
New York, New York

**s/Stuart M. Bernstein**

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

[Budget]

**Exhibit B**

[DIP Loan Agreement]