

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re:

KCST USA, INC.,¹

Debtor.

Chapter 11

Case No. 17-40501 (EDK)

**MOTION BY DEBTOR AND DEBTOR-IN-POSSESSION FOR ENTRY OF AN ORDER
(A) AUTHORIZING USE OF CASH COLLATERAL AND GRANTING ADEQUATE
PROTECTION, (B) AUTHORIZING EXTENSION OF POSTPETITION FINANCING
ON A PRIORITY SECURED BASIS, AND (C) GRANTING RELATED RELIEF**

The above captioned debtor-in-possession KCST USA, Inc. ("KCST" or "Debtor") moves this Court for entry of the attached proposed order (the "Order"): (a) authorizing the use of cash collateral in which Axia Net Media Corp. ("ANMC") asserts an interest and granting adequate protection, pursuant to Sections 105 and 363 of Title 11 of the United States Code (the "Bankruptcy Code"), and Federal Rules of Bankruptcy Procedure ("FRBP") 2002, 4001, and 9014; (b) authorizing an extension of the Debtor's existing post-petition lending financing with ANMC secured by a lien on the Debtor's assets (the "DIP Loan" or "DIP Loan Facility"); and (c) granting related relief.

BACKGROUND

1. The Debtor filed this Chapter 11 case to maintain the operation of the middle mile broadband network spanning central and western Massachusetts (the "Network") pending resolution of disputes with the licensor of the Network, Massachusetts Technology Collaborative, or "MTC". In connection therewith, on or around the petition date of March 22,

¹ f/k/a AXIA NG NETWORKS USA, INC. The last four digits of the Debtor's federal tax identification number are 4617.

2017 (the "Petition Date"), the Debtor entered into the DIP Loan Facility with ANMC to provide funding for operations for thirteen (13) weeks. The motion to approve the DIP Loan Facility ("Financing Motion") was granted on an interim basis on March 24, 2017 and on a final basis on April 13, 2017, and expired on June 19, 2017.

2. On June 14, 2017, the Debtor filed a second *Motion by Debtor and Debtor-in-Possession for Entry of an Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection, (B) Authorizing Extension of Postpetition Financing on a Priority Secured Basis, and (C) Granting Related Relief* (the "Second Financing Motion"), pursuant to which the Debtor sought authority to use cash collateral and, to the extent cash collateral was insufficient to pay the Debtor's operating expenses, to extend the DIP Loan Facility. The Second Financing Motion was approved on an interim basis on June 16, 2017 and on a final basis on July 13, 2017, extending the DIP Loan Facility and use of cash collateral to September 30, 2017.

3. On September 14, 2017, the Debtor filed a third *Motion by Debtor and Debtor-in-Possession for Entry of an Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection, (B) Authorizing Extension of Postpetition Financing on a Priority Secured Basis, and (C) Granting Related Relief* (the "Third Financing Motion"). The Third Financing Motion was approved on September 27, 2017, extending the DIP Loan Facility and use of cash collateral to January 31, 2018.

4. On December 19, 2017, the Debtor filed a fourth *Motion by Debtor and Debtor-in-Possession for Entry of an Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection, (B) Authorizing Extension of Postpetition Financing on a Priority Secured Basis, and (C) Granting Related Relief* (the "Fourth Financing Motion"). The Fourth Financing

Motion was approved on January 22, 2018, extending the DIP Loan Facility and use of cash collateral to June 30, 2018.

5. On June 12, 2018, the Debtor filed a fifth *Motion by Debtor and Debtor-in-Possession for Entry of an Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection, (B) Authorizing Extension of Postpetition Financing on a Priority Secured Basis, and (C) Granting Related Relief* (the "Fifth Financing Motion"). The Fifth Financing Motion was approved on June 18, 2018, extending the DIP Loan Facility and use of cash collateral to September 30, 2018.

6. On August 30, 2018, the Debtor filed a sixth *Motion by Debtor and Debtor-in-Possession for Entry of an Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection, (B) Authorizing Extension of Postpetition Financing on a Priority Secured Basis, and (C) Granting Related Relief* (the "Sixth Financing Motion"). The Sixth Financing Motion was approved on September 25, 2018, extending the DIP Loan Facility and use of cash collateral to October 31, 2018.

7. At or around the time of the bankruptcy filing, ANMC commenced an action against MTC in the United States District Court for the District of Massachusetts for a declaratory judgment respecting obligations under its limited guaranty to MTC, and the Debtor has since intervened in that action (the "District Court Litigation").

8. Shortly after the commencement of the District Court Litigation, MTC moved for a temporary restraining order and preliminary injunction against ANMC, seeking to compel ANMC to continue alleged performance and payment obligations arising under its guaranty pending adjudication of the dispute, including the rendition of transfer services assistance. On April 24, 2017, the District Court granted a temporary restraining order ("TRO") directing

ANMC to, among other things, continue to provide services to the Network through its affiliates and to pay certain network related expenses. On May 18, 2017, the District Court entered a preliminary injunction (“Injunction”) upon terms substantially similar to the TRO, including a requirement that ANMC continue to pay certain network operating costs pending arbitration.

9. Since the entry of the TRO and preliminary injunction, ANMC has paid MTC direct and indirect expenses associated with the operation of the Network.

10. On June 16, 2017, MTC filed a proof of claim against the Debtor, asserting a claim in the amount of \$30,544,272.

11. The Debtor, and ANMC, alleged that MTC failed to perform its obligations under the terms of the Network Operator Agreement (“NOA”) that governs the operation of the Network. On or about September 25, 2017, the Debtor commenced an adversary proceeding (Adv. Proc. No. 17-4049) objecting to MTC’s proof of claim and asserting counterclaims for breach of contract, misrepresentation, breach of the covenant of good faith and fair dealing, and turnover.

12. On October 25, 2017, MTC filed a motion to stay the adversary proceeding and to compel arbitration of the competing claims, which motion was approved by the Court on December 21, 2017.

13. The sole arbitrator conducted approximately thirty (30) days of hearings in the spring and summer of 2018. On October 2, 2018, the arbitrator issued his Partial Final Award, which fully and finally resolved all issues brought before the arbitrator other than imposition of costs against MTC, which is expected to be determined shortly. A copy of the Partial Final Award was filed with the Court on October 3, 2018 [docket entry 219].

14. The Partial Final Award, among other things: (i) directed MTC to pay approximately \$12,000,000 to KCST and Axia; (ii) reformed the NOA to incorporate certain provisions of a network operator agreement negotiated between MTC and a prospective successor operator; and (iii) resolved all claims and counterclaims among the parties, other than payment of costs.² A final arbitrator award incorporating payment of costs is anticipated in the next few weeks. KCST and its advisors are evaluating the terms of the Partial Final Award to determine its impact upon the Debtor's rights under the NOA and the value of the contract as reformed.

15. The Debtor and ANMC have negotiated a ninety (90) day extension of the financing arrangement to provide an opportunity to evaluate the results of the arbitration, determine appropriate next steps in the reorganization process, and to ensure continued operation of the Network.

REQUESTED RELIEF

16. By this motion, the Debtor requests authority to use cash on hand and receipts generated by operations, including the collection of accounts receivable ("Cash Collateral") to pay Budgeted Expenses for the period from the date of allowance of this motion through January 31, 2019, and authority to extend the DIP Loan Facility from October 31, 2018 to the earlier of January 31, 2019 or confirmation of a plan of reorganization (the "Budget Period").

17. The DIP Loan Facility shall continue on the existing terms and conditions, which are repeated here for convenience:

- Interest: Fixed interest rate of five percent (5%) per annum based upon a 360 day year, payable upon loan maturity, with a default rate of interest of seven percent (7%).

² On or about October 10, 2018, MTC filed a request with the arbitrator for certain modifications to the award.

- Security/Priority: Security for the DIP Loan Facility will consist of a security interest in all of the Debtor's assets including but not limited to accounts receivable, inventory, and other tangible and intangible personal property, all as further set forth in the motion approving the DIP Loan Facility, exhibits attached thereto, and orders approving same. The collateral expressly excludes any so-called bankruptcy avoidance actions under subchapter 5 of the Bankruptcy Code. Additionally, ANMC shall have an administrative expense priority pursuant to Section 503(b) of the Bankruptcy Code.
- Required Payments: None until Maturity Date.
- Loan Funding: Additional borrowings shall be in accordance with a Budget agreed to by the Debtor and ANMC.
- Mandatory Prepayments: None.
- Events of Default: (a) the dismissal or conversion to Chapter 7 of the Debtor's Chapter 11 bankruptcy proceeding; (b) the occurrence of the Maturity Date of the DIP Loan, unless the DIP Loan has been paid or is paid in full on the Maturity Date; (c) the appointment of a trustee or examiner of the Debtor; (d) the grant of relief from the automatic stay to any creditor to exercise secured party rights with respect to a substantial portion of the Debtor's assets; (e) reversal, vacation, or modification of the Court's order approving the DIP Loan Facility; (f) the grant of a lien upon the Debtor's assets senior to the lien granted to ANMC.

17. The Cash Collateral will be used to pay the Debtor's direct operating costs and to pay the cost of network services (the "Transition Services") provided by ANMC's affiliates, Axia Connect Ltd. and Axia Supernet Ltd. (the "Affiliates").

18. The terms of the DIP Loan Facility have been negotiated in good faith and reflect the Debtor's exercise of its business judgment. The DIP Loan Facility does not contain any of the provisions set forth in MLBR 4001-2(c).

19. The Debtor believes that it would be unlikely to secure alternative financing, other than through the DIP Loan Facility, unless a new lender were granted similar or better terms. The terms of the DIP Loan are believed to represent the best available financing terms for the Debtor given its present financial condition, ongoing losses, and debt structure.

20. The Debtor does not otherwise have sufficient available sources of working capital to carry on its operations, other than use of cash collateral. The Debtor's ability to pay operating expenses is essential to the continued operation of the Network.

21. Section 364 of the Bankruptcy Code allows a debtor to (a) obtain unsecured credit in the ordinary course of business, (b) obtain unsecured credit out of the ordinary course of business, (c) obtain credit with specialized priority and (d) obtain secured credit by granting a secured lien on property of the estate. If a debtor-in-possession cannot obtain post-petition credit on an unsecured basis, the Court may authorize the obtaining of credit or the incurring of debt repayment of which is secured by liens on the debtor's property.

22. Courts will generally evaluate the facts and circumstances of a debtor's case, and will grant significant weight to a debtor's business judgment regarding the necessity for obtaining the requested financing. *See In re Ames Dept. Stores, Inc.* 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990).

23. The Debtor believes that ANMC is a good faith lender and, although ANMC is an insider, the loan sought is on fair and reasonable terms, there is no improper purpose, and the terms and conditions of the loan have been fully disclosed. Given the financial condition of the Debtor, the Debtor believes that it would be unable to secure alternative financing on an unsecured basis from a third party lender or allowable only as an administrative claim. If the Debtor was somehow able to obtain a loan from a third party secured by its assets, which is highly doubtful, the loan repayment terms would likely be more onerous than the terms agreed to by ANMC. Moreover, the Debtor does not seek to borrow any additional funds under this motion but merely to extend the maturity date for the DIP Loan Facility.

24. Approval of this motion will allow the Debtor to continue uninterrupted operations pending the Debtor's evaluation of the arbitrator's rulings, including reformation of the NOA, and appropriate measures in furtherance of the reorganization. Approval of the motion is in the best interests of the Debtor and creditors.

ADEQUATE PROTECTION

25. Section 363(e) of the Bankruptcy Code provides that a party with an interest in property proposed to be used, sold or leased by the debtor must receive adequate protection of such interest before the debtor may use, sell or lease such property. 11 U.S.C. § 363(e).

26. Section 361 of the Bankruptcy Code provides that when adequate protection is required under section 363 of the Bankruptcy Code, such adequate protection may be provided by, *inter alia*, "requiring the trustee [debtor-in-possession] to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title . . . results in a decrease in the value of such entity's interest in such property," or "providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease or grant results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(1), (2).

27. In order to provide ANMC with adequate protection on account of the use and disposition of the Cash Collateral, ANMC shall have a continuing lien upon the same assets in which ANMC was granted a security interest pursuant to the DIP Financing, including the proceeds of such collateral. The Debtor will preserve the Collateral of ANMC through its continued operation of the Network.

NOTICE AND HEARING

28. Pursuant to MLBR 4001-2(b), the Debtor will serve this Motion, and will serve the notice of the hearing on this Motion, on the United States Trustee, ANMC, MTC, the Debtor's 20 largest unsecured creditors and all parties who have filed a notice of appearance in this case. The Debtor believes that such service provides sufficient notice in light of the nature of the relief requested and request that the Court approve such notice.

29. The Debtor has appended a Budget for the requested period of Cash Collateral usage and DIP financing. The Debtor may supplement or amend the Budget during the budget period with the agreement of ANMC.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order:

- (a) Approving the notice of this Motion as described above;
- (b) Authorizing the use of Cash Collateral and extension of the DIP Loan Facility upon the terms set forth herein;
- (c) Granting to the Debtor such other and further relief as is just and proper in the circumstances.

KCST USA, INC.,
By counsel:

/s/ Andrew G. Lizotte
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Dated: October 12, 2018
749138

EXHIBIT A

KCST
 Cash Budget
 November 2018-January 2019
 Prepared 10/11/2018

	<u>Nov-18</u>	<u>Dec-18</u>	<u>Jan-19</u>
Revenue	300,000	300,000	300,000
Direct Costs - Nonrecurring	-	-	-
Direct Costs - Recurring	(14,000)	(14,000)	(14,000)
Network operator costs			
Maintenance costs	(56,500)	(56,500)	(56,500)
Marketing costs			
Travel & entertainment	(500)	(500)	(500)
Personnel costs	(71,586)	(71,586)	(71,586)
Office Expense	(3,000)	(3,000)	(3,000)
Management expense	(10,000)	(10,000)	(10,000)
Insurance	(8,000)	(78,000)	(8,000)
Pole Surety Bonds	-	-	-
Transition Service (US \$)	(53,316)	(53,316)	(53,316)
US Trustee Fees	(20,000)	-	(20,000)
Other	(10,000)	(10,000)	(10,000)
Total expenses	<u>(246,902)</u>	<u>(296,902)</u>	<u>(246,902)</u>
Net Cash Flow (Deficit)	<u>53,098</u>	<u>3,098</u>	<u>53,098</u>

Cash Analysis	Nov-18	Dec-18	Jan-19
Balance, Beginning of Month	165,000	218,098	221,196
Cash Flow, per above	53,098	3,098	53,098
Balance, end of Month	<u>218,098</u>	<u>221,196</u>	<u>274,294</u>

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re:)	
KCST USA, INC., ¹)	Chapter 11
Debtor.)	Case No. 17-40501 (EDK)

ORDER (A) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF BANKRUPTCY CODE AND GRANTING ADEQUATE PROTECTION TO SECURED PARTY, (B) AUTHORIZING EXTENSION OF POSTPETITION FINANCING ON PRIORITY SECURED BASIS; AND (C) GRANTING RELATED RELIEF

Upon the *Motion by Debtor for Entry of an Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection; (B) Authorizing Extension of Postpetition Financing on Priority Secured Basis; and (C) Granting Related Relief* (the "Motion"), filed on October __, 2018 by KCST USA, Inc. ("KCST" or "Debtor"), as debtor and debtor-in-possession, seeking entry of an Order (the "Order") (a) authorizing the Debtor to use Cash Collateral (as hereinafter defined) pursuant to § 363 of Title 11 of the United States Code (the "Code") substantially in accordance with the attached Budget and granting adequate protection to Axia Net Media Corp. (the "Lender" or "ANMC"), (b) authorizing an extension of the Debtor's existing post-petition lending facility with ANMC (the "DIP Loan" or "DIP Loan Facility") secured by a lien on the Debtor's assets (the "Collateral"); and (c) granting related relief; and the Court having considered the Motion, including, without limitation, the Budget; and a hearing to consider approval of the Motion having been held on _____ (the "Hearing"); and

¹ f/k/a AXIA NG NETWORKS USA, INC. The last four digits of the Debtor's federal tax identification number are 4617.

upon all of the pleadings filed with the Court and all of the proceedings held before the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor,

THE COURT HEREBY FINDS:

A. On March 22, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Code (the "Chapter 11 Case").

B. Jurisdiction. Consideration of this Motion constitutes a "core proceeding" as defined in 28 U.S.C. § 157(b)(2)(D), (M). This Court has jurisdiction over the Chapter 11 Case 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. Notice of the relief sought by the Motion and the hearing with respect thereto was delivered on or about October __, 2018 to: (a) the United States Trustee for the District of Massachusetts (the "U.S. Trustee"); (b) those parties listed on the List of Creditors Holding the 20 Largest Unsecured Claims Against the Debtor, as identified in the Debtor's Chapter 11 petition; (c) counsel to the Lender; and (d) any party asserting a Lien (as hereafter defined) against any of the Debtor's assets or having filed a notice of appearance. Given the nature of the relief sought in the Motion, such notice constitutes sufficient and adequate notice of the Motion, the relief requested therein and this Order pursuant to Rules 2002, 4001(b), (c), and (d), and 9014, and MLBR 4001, and no further notice of the Motion or this Order is necessary or required.

D. Debtor's Acknowledgement of Postpetition Indebtedness. The Debtor acknowledges that it is indebted to the Lender pursuant to the DIP Loan Facility approved pursuant to the (i) Interim Order dated March 24, 2017 granting the *Motion by Debtor and Debtor-in-Possession for Entry of an Order (A) Authorizing Postpetition Financing on a Priority*

Secured Basis; (B) Scheduling Interim and Final Hearing on Financing; and (C) Granting Related Relief (the “DIP Financing Motion”), and the Final Order dated April 13, 2017 approving the DIP Financing Motion; (ii) the interim order dated June 16, 2017 granting the Motion by Debtor and Debtor-in-Possession for Entry of an Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection, (B) Authorizing Extension of Postpetition Financing on a Priority Secured Basis, and (C) Granting Related Relief (the “Second Financing Motion”), and the final order dated July 13, 2017 approving the Second Financing Motion, (iii) the order dated September 27, 2017 granting the Motion by Debtor and Debtor-in-Possession for Entry of an Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection, (B) Authorizing Extension of Postpetition Financing on a Priority Secured Basis, and (C) Granting Related Relief (the “Third Financing Motion”); (iv) the order dated January 22, 2018 granting the Motion by Debtor and Debtor-in-Possession for Entry of an Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection, (B) Authorizing Extension of Postpetition Financing on a Priority Secured Basis, and (C) Granting Related Relief; (v) the order dated June 18, 2018 granting the Motion by Debtor and Debtor-in-Possession for Entry of an Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection, (B) Authorizing Extension of Postpetition Financing on a Priority Secured Basis, and (C) Granting Related Relief (the “Fifth Financing Motion”); and (vi) the order dated September 25, 2018 granting the Motion by Debtor and Debtor-in-Possession for Entry of an Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection, (B) Authorizing Extension of Postpetition Financing on a Priority Secured Basis, and (C) Granting Related Relief (the “Sixth Financing Motion”)(collectively, the “DIP Financing Orders”) and that the Lender was granted Liens on certain assets pursuant to the DIP Financing Orders.

E. Cash Collateral. For purposes of this Order, "Cash Collateral" of the Lender has the meaning set forth in § 363(a) of the Code and includes (a) all funds of the Debtor (including any funds on deposit or maintained in any account), and any proceeds of the Collateral.

F. Good Faith. Based on the record before the Court, the terms of the use of the Cash Collateral as provided in this Order have been negotiated at arms' length and in "good faith," as that term is used in § 363(m) of the Code, and are in the best interests of the Debtor, its estate and creditors. The Lender is permitting the use of its Cash Collateral in good faith and the Lender is entitled to the benefits of the provisions of § 363(m) of the Code.

G. Findings Regarding the Use of Cash Collateral.

(a) Good cause has been shown for the entry of this Order.

(b) Entry of this Order is in the best interests of the Debtor's estate and all parties in interest in this Chapter 11 Case.

H. The Debtor is in need of continued financing to preserve its assets and operations.

I. Based on the record before this Court: (i) it appears that the DIP Loan Facility extension has been negotiated in good faith between the Debtor and ANMC, and (ii) it appears that the terms of the DIP Loan Facility extension are fair and reasonable and reflect the exercise of the Debtor's prudent business judgment.

J. Based on the record before this Court, this Court finds that, under the circumstances of the Hearings and the relief requested in the Motion, sufficient notice has been given pursuant Bankruptcy Rules 2002, 4001, and 6004(a), and MLBR 4001.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is approved as provided herein.

2. The Debtor is authorized to use Cash Collateral substantially in accordance with the Budget during the period from November 1, 2018 through January 31, 2019 (the "Budget Period").

3. The Lender is entitled, under § 363(e) of the Code, to adequate protection of its interest in the Collateral, and all Cash Collateral. The Lender has consented to Debtor's use of Cash Collateral during the Budget Period subject to and conditioned upon the granting of the following protections (the "Adequate Protection Obligations") for which the Debtor shall be obligated:

- (a) Adequate Protection Liens. The Lender shall continue to have, pursuant to the DIP Financing Orders, and without the necessity of the execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements or other agreements, a valid and perfected security interest in, and lien on the Collateral, including the Cash Collateral and the proceeds thereof, as approved and provided for in the DIP Financing Orders (the "Adequate Protection Liens"). The Lender shall expressly have no lien on causes of action brought pursuant to §§ 506(c), 544, 547, 548 and 549 of the Code (the "Avoidance Actions") and recoveries upon such causes of action.
- (b) The failure or delay by the Lender to exercise its rights and remedies under this Order shall not constitute a waiver of any of the rights of the Lender hereunder or otherwise, and any single or partial exercise of such rights and remedies against the Debtor or the Collateral shall not be construed to limit any further exercise of such rights and remedies against the Debtor and/or the Collateral.

(c) The provisions of this Order shall be binding upon and inure to the benefit of each of the Lender and the Debtor and their respective successors and assigns (including any estate representative, Chapter 7 trustee, or other trustee or fiduciary hereafter appointed as a legal representative of the Debtor or with respect to the property of the Debtor's estate).

4. Pursuant to this Order, the Adequate Protection Liens are, and are deemed to be, valid, enforceable and perfected liens, effective as of the date hereof, and (notwithstanding any provisions of any agreement, instrument, document, the Uniform Commercial Code or any other relevant law or regulation of any jurisdiction) no further notice, filing, possession, control or other act shall be required to effect such perfection.

5. The DIP Loan Facility is hereby extended on the same terms and conditions, subject to the following: (i) the maturity date is extended to January 31, 2019.

6. ANMC shall continue to have a senior security interest in and lien upon the Debtor's assets, provided that, such liens shall not attach to nor be satisfied from the proceeds of the Debtor's claims and causes of action arising under Chapter 5 of the Bankruptcy Code.

7. Each of the security interests and other liens granted to ANMC pursuant to this order shall be deemed to be valid, perfected and enforceable (except as otherwise set forth herein), without any necessity of ANMC complying with any perfection or other requirements under any otherwise applicable state, federal or other non-bankruptcy law.

8. Nothing in this Order or the DIP Financing Orders (the "Orders") shall in any way prime or affect the rights, if any, of Westchester Fire Insurance Company (the "Surety") as to: (a) any funds it is holding and/or being held for it presently or in the future whether in trust, as security, or otherwise, (b) any substitutions or replacements of

said funds including accretions to and interest earned on said funds, and (c) any letter of credit related to any indemnity, collateral trust, or related agreements between Surety and the Debtor (collectively (a) to (c), the "Surety Assets"). Nothing in the Orders shall affect the rights of the Surety under any indemnity, collateral trust, or related agreements between the Surety and the Debtor, and/or ANMC, as to the Surety Assets. In addition, nothing in the Orders shall prime the setoff and/or recoupment rights, if any, or the lien rights of the Surety, if any, or of any party to whose rights the Surety, has or may become subrogated therein, if any, and/or any subrogation or other common law rights of the Surety, if any. To the extent that any Surety Assets are being held by the Debtor and are used by the Debtor as part of cash collateral, a concomitant replacement trust claim or replacement lien shall be granted to the Surety equal to the amount of the use of those funds with any replacement trust fund claim to be equal to the amount of trust funds used, and any replacement lien to have the same priority, amount, extent and validity as existed as of the Petition Date. In addition, notwithstanding anything in the Orders to the contrary, the rights, claims and defenses of the Debtor and of the Surety, including, but not limited to, the Surety's rights under any properly perfected liens and claims and/or claim for equitable rights of subrogation, and rights of the Debtor and of any successors in interest to the Debtor, and any creditors, to object to any such liens, claims and/or equitable subordination and other rights, are fully preserved. Nothing herein is an admission by the Surety or the Debtor, or a determination by the Bankruptcy Court, regarding any claims under the bonds, and the Surety and the Debtor reserve any and all rights and defenses in connection therewith.

9. The provisions of this order shall be binding upon and inure to the benefit of ANMC, the Debtor, and their respective successors and assigns.

10. The Court shall retain jurisdiction to enforce this order and to determine any disputes arising from or related to this order.

11. In the event of an alleged default, ANMC shall be required to obtain an order of the Court granting relief from the automatic stay provisions of 11 U.S.C. §362 prior to taking any actions to exercise its remedies.

12. The provisions of this Order, including the grant of claims and Liens to or for the benefit of the Lender, and any actions taken pursuant hereto shall survive the entry of any order converting the Chapter 11 Case to a case under Chapter 7 of the Code.

13. The provisions of this Order, the Adequate Protection Obligations and any and all rights, remedies, privileges and benefits in favor of the Lender provided or acknowledged in this Order, and any actions taken pursuant thereto, shall be effective immediately upon entry of this Order, and the stay provided for in Rule 6004(h) is hereby waived.

So Ordered:

Elizabeth D. Katz, United States Bankruptcy Judge

Dated: _____
749151