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| In re: |) | Chapter 11 |
| |) | |
| MUZAK HOLDINGS LLC, <i>et al.</i> , ¹ |) | Case No. 09-10422 (KJC) |
| |) | |
| Debtors. |) | Jointly Administered |
| |) | |
| |) | Re: Docket Nos. 5, 31 |

THIS MATTER having come before the Court upon the motion (the “Motion”) of the above captioned debtors and debtors in possession (collectively the “Debtors”), pursuant to sections 105, 361, 362, 363, and 507 of title 11 of the United States Code, the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the District of Delaware, seeking entry of a final order (this “Final Order”) *inter alia*:

(i) authorizing the Debtors' use of "cash collateral" (as defined in section 363(a) of the Bankruptcy Code, "Cash Collateral") of the Prepetition Agent and Prepetition Lenders (each as hereinafter defined);

(ii) providing adequate protection to the Prepetition Agent and Prepetition Lenders for any diminution in value of their interests in the Prepetition Collateral (as hereinafter

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defined), including the Cash Collateral; and

(iii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Final Order.

The Court having considered the Motion, the Declaration of Dodd Haynes in Support of First Day Pleadings (the "Haynes Declaration"), sworn to on February 10, 2009, the exhibits attached thereto, and the evidence submitted or adduced, to the extent necessary, and the arguments of counsel made at the interim hearing held on February 12, 2009 (the "Interim Hearing") and the final hearing held and concluded on March 12, 2009 (the "Final Hearing"); and the Court having entered on February 12, 2009 the Interim Order (as hereinafter defined) authorizing use of cash collateral on an interim basis and granting adequate protection on account of the interests of the Prepetition Agent and Prepetition Lenders; and adequate notice of the Final Hearing having been given in accordance with Bankruptcy Rules 4001 and 9014 and the Interim Order; and all objections, if any, to the entry of this Final Order and the relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and is essential for the continued operation of the Debtors' businesses; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING AND FINAL HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Petition Date. On February 10, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court") commencing these chapter 11 cases (the "Cases").

B. Debtors in Possession. The Debtors are continuing in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

C. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases appears proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Statutory Committee. On February 20, 2009, the United States Trustee (the "U.S. Trustee") appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code (the "Statutory Committee").

E. Interim Order. Based upon the Motion, the Haynes Declaration, and the evidence submitted to the Court at the Interim Hearing, on February 12, 2009, the Court entered that certain Stipulated Interim Order (i) Authorizing Use of Cash Collateral, (ii) Granting Adequate Protection, (iii) Modifying the Automatic Stay, and (iv) Scheduling a Final Hearing [doc. no. 31] (the "Interim Order"). Pursuant to the Interim Order and Bankruptcy Rule 4001, the Debtors were authorized, among other things, to use Cash Collateral and to provide adequate protection to the Prepetition Agent and Prepetition Lenders. Pursuant to the Interim Order, the Final Hearing was scheduled for March 12, 2009.

F. Debtors' Stipulations. After consultation with their attorneys and financial

advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 20 herein, the Debtors (on behalf of themselves and their estates) admit, stipulate, acknowledge and agree and shall be immediately bound by the following (collectively, paragraphs F(i) through F(v) below are referred to herein as the "Debtors' Stipulations"):

(i) *Prepetition Facility.* Pursuant to that certain Credit Agreement dated as of April 15, 2005 (as amended, supplemented, restated, or otherwise modified prior to the Petition Date, the "Prepetition Credit Agreement" and together with all other loan, guaranty, security and other documents executed in connection therewith, the "Prepetition Credit Documents"), among Muzak, as Borrower, Holdings, as Parent Guarantor, Bank of New York, as Administrative Agent and Collateral Agent (as successor to Bear Stearns Corporate Lending Inc., the "Prepetition Agent"), and the lenders that are parties thereto from time to time (collectively, together with the Prepetition Agent, the "Prepetition Lenders"), the Prepetition Lenders provided term loans to Muzak in the aggregate principal amount of \$105,000,000 (the "Prepetition Facility"). The Prepetition Facility was jointly and severally, unconditionally and irrevocably guaranteed by Holdings and certain of its direct and indirect subsidiaries.

(ii) *Prepetition Obligations.* As of the Petition Date, the Debtors were indebted under the Prepetition Facility in the aggregate principal amount of not less than \$101,325,000 (together with any amounts incurred, accrued or paid prior to the Petition Date in accordance with the Prepetition Credit Documents, including principal, accrued and unpaid interest, any fees, expenses, and disbursements (including, without limitation, attorneys' fees, consultant fees, and related expenses and disbursements), indemnification obligations and other charges of whatever nature, whether or not contingent, whenever arising, due or owing in respect thereof, the "Prepetition Obligations").

(iii) *Prepetition Liens and Prepetition Collateral.* As more fully set forth in the Prepetition Credit Documents, prior to the Petition Date, the Debtors granted to the Prepetition Agent, for the benefit of itself and the Prepetition Lenders security interests in and liens on (the "Prepetition Liens"), among other things, substantially all of their existing and after-acquired assets (collectively, the "Prepetition Collateral") to secure the Prepetition Obligations.

(iv) *Validity, Perfection and Priority of Prepetition Liens and Prepetition Obligations.* Subject to the provisions of paragraph 20 of this Order, the Debtors acknowledge and agree that: (a) as of the Petition Date, the Prepetition Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected; (b) as of the Petition Date, the Prepetition Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens otherwise expressly permitted by the Prepetition Credit Documents (to the extent any such permitted liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date, the "Permitted Encumbrances")²; (c) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors; (d) no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement,

² The lien of Wachovia Bank, N.A. ("Wachovia") on DDA# 2000040495495, which is held at Wachovia and titled "Muzak, LLC Collateral Account for the Benefit of Wachovia Bank N.A.," and which secures the obligations of Muzak, LLC to Wachovia with respect to the four (4) letters of credit issued by Wachovia on behalf of Muzak, LLC in December 2008, is deemed a Permitted Encumbrance to the extent the lien was valid, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date. Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Encumbrances are valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited, to the Debtors, the Prepetition Agent, the Prepetition Lenders, and the Statutory Committee to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Permitted Encumbrance and/or security interest.

recharacterization, or subordination (whether equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of actions, and/or choses in action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code, against the Prepetition Agent or any Prepetition Lenders or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to the Prepetition Obligations and the Prepetition Facilities; (f) as of the Petition Date, the value of the Prepetition Collateral securing the Prepetition Obligations exceeded the amount of the Prepetition Obligations, and accordingly the Prepetition Obligations are allowed secured claims within the meaning of section 506 of the Bankruptcy Code, in a principal amount of not less than \$101,325,000, together with accrued and unpaid interest, fees (including, without limitation, attorneys' fees and related expenses), and any and all other charges owing in respect of such Prepetition Obligations; and (g) any payments made on account of the Prepetition Obligations to or for the benefit of the Prepetition Agent or Prepetition Lenders prior to the Petition Date were on account of amounts in respect of which the Prepetition Agent and the Prepetition Lenders were oversecured, were payments out of the Prepetition Collateral, and such payments did not diminish any property otherwise available for distribution to unsecured creditors.

(v) *Cash Collateral.* The Debtors represent that all of the Debtors' cash, including the cash in their deposit accounts, wherever located, (other than (A) cash in deposit account number ending in 3020 at Wachovia and (B) cash in any other deposit account of a Debtor to the extent the amounts deposited therein are for services performed by, or for goods sold or leased from, any franchisee, that is itself not a Debtor, and such deposited amounts being held by such Debtor solely as agent for or in trust for said franchisee (such cash in (A) and (B)

collectively, the "Excluded Cash") whether as original collateral or proceeds of other Prepetition Collateral, constitute the Cash Collateral of the Prepetition Agent and the Prepetition Lenders.

G. Adequate Protection. The Prepetition Agent, for the benefit of itself and the Prepetition Lenders, is entitled to receive adequate protection to the extent of any diminution in value of their interests in the Prepetition Collateral (including the Cash Collateral) resulting from the use of Cash Collateral, the use, sale or lease of Prepetition Collateral, the subordination of the Prepetition Liens to the Carve Out, as described herein, and the imposition of the automatic stay (collectively the "Diminution in Value") pursuant to sections 361, 362, and 363 of the Bankruptcy Code. Pursuant to sections 361, 363, and 507(b), as adequate protection, the Prepetition Agent, for the benefit of itself and the Prepetition Lenders, will receive (i) Adequate Protection Liens, (b) Adequate Protection Superpriority Claim, (c) Adequate Protection Payments, and (d) Indemnity Account (each as hereinafter defined).

H. Sections 506(c) and 552(b). In light of the Prepetition Agent's and Prepetition Lenders' agreement to subordinate their liens and claims to the Carve Out, to permit the use of Prepetition Collateral and to permit the use of their Cash Collateral for payments made in accordance with the Budget (as hereinafter defined) and the terms of this Final Order, each of the Prepetition Agent and Prepetition Lenders are entitled to (a) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (b) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

I. Necessity of Relief Requested. The ability of the Debtors to finance their operations requires the use of Cash Collateral, absent which immediate and irreparable harm will result to the Debtors, their estates and creditors, and the possibility for a successful chapter 11 cases. In the absence of the use of Cash Collateral, the continued operation of the Debtors'

businesses would not be possible, and serious and irreparable harm to the Debtors, their estates and their creditors would occur. Absent the use of Cash Collateral, the Debtors do not have sufficient available sources of working capital and financing to operate their businesses in the ordinary course of business or to maintain their property. The relief requested in the Motion is therefore necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the management and preservation of their property. The Prepetition Agent, Prepetition Lenders and Debtors have negotiated at arms' length and in good faith regarding the Debtors' use of Cash Collateral to fund the continued operation of the Debtors' businesses during the Specified Period (as hereinafter defined). The Prepetition Agent and Prepetition Lenders have agreed to permit the Debtors to use their Cash Collateral for the Specified Period, subject to the terms and conditions set forth herein. Entry of this Final Order is in the best interests of the Debtors and their estates.

J. Notice. Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors in accordance with the Interim Order, whether by facsimile, email, first-class mail, overnight courier or hand delivery, to certain parties in interest, including: (i) the U.S. Trustee; (ii) the entities included on the Debtors' list of the thirty (30) largest unsecured creditors; (iii) counsel to the Prepetition Agent for itself and for the Prepetition Lenders; (iv) counsel to the *ad hoc* group of the Debtors' Prepetition Lenders; (v) the indenture trustee for each of the Debtors' outstanding bond issuances; (vi) counsel to the *ad hoc* group of the Debtors' 10% senior note holders; (vii) counsel to Silver Point Capital Advisors, LLC; (viii) counsel to the International Planned Music Association; (ix) the Internal Revenue Service; (x) counsel to Banc of America Capital Investors, L.P., a holder of the Debtors' preferred equity; and (xi) counsel to the Debtors' equity sponsor. The parties have made reasonable efforts to afford the best notice

possible under the circumstances, and such notice is good and sufficient to permit the relief set forth in this Final Order, and no other or further notice is or shall be required.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Motion Granted. The Motion is granted, and the use of Cash Collateral on final basis is authorized, subject to the terms and conditions set forth in this Final Order.

2. Objections Overruled. All objections to the Motion to the extent not withdrawn or resolved are hereby overruled.

3. Authorization to Use Cash Collateral.

(a) *Authorization to Use Cash Collateral*. Subject to the terms and conditions of this Final Order, and in accordance with the Budget (as hereinafter defined), the Debtors are authorized to use Cash Collateral for the period (the "Specified Period") from the Petition Date through the date which is the earliest to occur of (i) the expiration of the Remedies Notice Period (as hereinafter defined) or (ii) 11:59 p.m. (Eastern time) on August 15, 2009. Except as otherwise expressly provided herein, Cash Collateral may be used during the Specified Period solely up to the amounts, at the times, and for the purposes identified in the cash collateral budget that has been approved by the Prepetition Agent and the Required Lenders (when used herein the term "Required Lenders" shall be defined as it is in the Prepetition Credit Documents), each in its sole discretion (the "Budget"), a copy of which is attached hereto as Exhibit 1; provided, however, that (1) for any week in the Budget, the amounts for each line item may vary so long as (A) the actual amount of Net Cash Flow (as hereinafter defined) shall not fall below the amount set forth in the Budget measured on a repeating schedule of four week, four week, five week increments (with the first measurement date coming on the fourth Saturday following

the Petition Date) with an allowed variance of 10% of Total Receipts (as defined in the Budget); and (B) for any 13 week period prior to any measurement date (with the first measurement date the thirteenth Saturday following the Petition Date and subsequent measurement dates on a repeating schedule of four week, four week, five week increments) the Debtors' Net Cash Flow over such 13 week period shall not fall below negative \$4,000,000; and (2) during the Remedies Notice Period (as hereinafter defined), the Debtors may use Cash Collateral in accordance with the terms and provisions of the Budget solely to meet payroll obligations, pay professional fees (subject to the provisions of Paragraph 18 of this Final Order) and to pay expenses critical to the preservation of the Debtors and their estates as consented to by the Prepetition Agent and the Required Lenders, which consent shall not be unreasonably withheld. All Cash Collateral use must be strictly in accordance with the terms of the Budget, subject to the variance discussed above. The authorization for the Debtors to use Cash Collateral shall terminate at the expiration of the Specified Period. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Final Order or another "first day" order of the Court (in each case consistent with this Final Order and the Budget), with the prior written consent of the Prepetition Agent and the Required Lenders, and in accordance with the Budget. For purposes of this paragraph, "Net Cash Flow" shall mean, as set forth in the Budget: Total Receipts minus Total Disbursements (excluding disbursements for (x) Professional Fees (as set forth in the Budget), (y) the cash payment of any PIK Interest (as defined in the Prepetition Credit Documents) to the Prepetition Lenders, and (z) Operational Payments (as hereinafter defined).

(b) *Operational Payments.* Subject to the terms and conditions of this Final

Order, and in accordance with the Budget, the Debtors are authorized to use Cash Collateral in an aggregate amount not to exceed the sum of \$3,610,000 to make certain payments as follows: (i) \$1,360,000 to make certain deposits and other payments that have been identified to and approved by Morgan Joseph & Co., Inc. ("Morgan Joseph"), financial advisor to certain Prepetition Lenders (the "Pre-approved Payments"); provided, that such payments or deposits, other than \$250,000 that may be reserved for future deposits to parties that have yet to be identified, are made on or before May 15, 2009 ; (ii) \$450,000 which shall be used for a deposit to secure the Debtors' postpetition obligations to American Express in connection with certain credit card arrangements (the "AmEx Collateral"); and (iii) up to \$1,800,000 for payments to critical vendors, which payments shall be made pursuant to the terms of the Final Order Authorizing the Debtors to Pay or Honor Prepetition Claims and Obligations of Certain Vendors, Licensees, Licensors and Lien Claims and approving Procedures Related Thereto (the "Final CV Order"); provided, that, the Final CV Order is in form and substance acceptable to the Required Lenders.

(c) *Postpetition Letters of Credit.* Subject to the terms and conditions of this Final Order, and in accordance with the Budget, during the period covered under the Budget, the Debtors are authorized to use an aggregate of \$1,250,000 (at any one time outstanding) to collateralize new letters of credit which may be issued by Wachovia, in its sole discretion, to support ongoing operations.

4. Budget Maintenance. The Budget and any modification to, or extension, amendment or update of, the Budget shall be in form and substance acceptable to and approved in writing by the Required Lenders. The Budget may be amended or modified in writing from time to time only with the written consent of the Required Lenders.

5. Adequate Protection Liens.

(a) *Adequate Protection Liens.* Pursuant to sections 361 and 363(e) of the Bankruptcy Code, the Debtors were authorized to grant and have granted to the Prepetition Agent, for the benefit of itself and the Prepetition Lenders (and such grant is hereby ratified, confirmed and approved on a final basis), to the extent of any Diminution in Value of the interests of the Prepetition Agent and Prepetition Lenders in the Prepetition Collateral, additional and replacement continuing valid, binding, enforceable, non-avoidable, and automatically perfected postpetition security interests in and liens on (the "Adequate Protection Liens") any and all presently owned and hereafter acquired personal property, real property, cash, intangibles and all other assets, interests and rights of the Debtors, whether existing on the Petition Date or thereafter and wherever located (excluding, for the avoidance of doubt, the Excluded Cash), together with any proceeds thereof (collectively, the "Collateral") having the priority set forth in paragraph 5(b) below. For purposes of this Final Order, "Collateral" (i) shall include the AmEx Collateral and (ii) shall not include the Debtors' estates' claims and causes of action under chapter 5 of the Bankruptcy Code or any avoidance action under the Bankruptcy Code or applicable state law or the proceeds thereof (the "Avoidance Actions"), other than causes of action under section 549 of the Bankruptcy Code and the proceeds thereof.

(b) *Priority and Enforceability of Adequate Protection Liens.* The Adequate Protection Liens shall be junior only to: (i) the Carve Out; (ii) the Prepetition Liens; (iii) the Permitted Encumbrances; and (iv) the interest of American Express with respect to the AmEx Collateral. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the Collateral. The Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto,

including without limitation, any trustee or other estate representative appointed in the Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, "Successor Cases"). Except as provided herein (or upon the prior written consent of the Required Lenders), the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases or any Successor Cases, and the Adequate Protection Liens shall be valid and enforceable against any trustee appointed in any of the Cases or any Successor Cases, or upon the dismissal of any of the Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 506(c), 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any estate pursuant to section 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the Adequate Protection Liens.

6. Adequate Protection Superpriority Claims.

(a) *Adequate Protection Superpriority Claim.* As further adequate protection against any Diminution in Value of the interests of the Prepetition Agent and Prepetition Lenders in the Prepetition Collateral, the Debtors were authorized to grant and have granted to the Prepetition Agent and Prepetition Lenders (and such grant is hereby ratified, confirmed and approved on a final basis) as and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code allowed superpriority administrative expense claims in each of the Cases and any Successor Cases (the "Adequate Protection Superpriority Claim"); *provided however*, the Adequate Protection Superpriority Claim shall not be satisfied from Avoidance Actions or the proceeds thereof, other than causes of action under section 549 of the Bankruptcy Code and the proceeds thereof.

(b) *Priority of Adequate Protection Superpriority Claims.* The Adequate Protection Superpriority Claim shall be junior only to the Carve Out and the Prepetition Obligations, and otherwise shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code.

7. Adequate Protection Payments and Protections. As further adequate protection, the Debtors were authorized and directed to provide (and such authorization and direction is hereby ratified, confirmed and approved on a final basis) adequate protection payments to the Prepetition Agent, on behalf of itself and the Prepetition Lenders (the "Adequate Protection Payments"), in the form of: (a) current cash payments of interest at the non-default rate, including but not limited to cash payments of PIK Interest (as defined in the Prepetition Credit Documents) fees and other amounts due under the Prepetition Credit Documents, at the times specified therein; and (b) current cash payment of the reasonable and documented fees, costs and expenses of (i) primary and local counsel to the Prepetition Agent, (ii) Bingham McCutchen LLP, counsel to certain of the Prepetition Lenders, (iii) Reed Smith, LLP, local counsel to certain of the Prepetition Lenders, and (iv) Morgan Joseph & Co., Inc., financial advisor to certain Prepetition Lenders, within 10-days upon delivery of invoices therefore (subject in all respects to applicable privilege or work product doctrine) to counsel for the Debtors, the Statutory Committee and the U.S. Trustee; provided that no party receiving notice shall have filed an objection to such payment of such fees within the notice period. In addition, the Debtors shall

provide continued maintenance and insurance of the Collateral in the amounts and for the risks, and by the entities, required under the Prepetition Credit Documents. The professionals entitled to receive payment of fees and expenses pursuant to this paragraph 7 shall not be required to comply with the U.S. Trustee fee guidelines except to the extent provided in this paragraph 7, and such fees and expenses shall not be subject to allowance by the Court.

8. Prepetition Indemnity Accounts.

(a) *Indemnity Account.* The Debtors shall establish an account in the control of the Prepetition Agent (the "Indemnity Account"), which Indemnity Account shall remain property of the Debtors' estates, into which at the end of the Specified Period (or on such date as all Prepetition Obligations are paid in full, whichever is earlier) \$500,000 shall be deposited as security for any reimbursement, indemnification or similar continuing obligations of the Debtors in favor of the Prepetition Agent and Prepetition Lenders under the Prepetition Credit Documents (the "Indemnity Obligations"); provided, however, that the Indemnity Account shall terminate and all remaining amounts held therein shall be released to the Debtors (and shall be applied in accordance with this Final Order) upon the later of (i) the Challenge Period Termination Date (as hereinafter defined) if, as of such date, no party has filed or asserted (or sought to file or assert) an adversary proceeding, cause of action, objection, claim, defense or other challenge as contemplated in paragraph 20 herein, (ii) the entry of a final order resolving the Challenge (as hereinafter defined), and (iii) after payment of all fees and expenses of the Prepetition Agent and Prepetition Lenders, as required under the Prepetition Credit Documents, accrued in connection with any Challenge. The Prepetition Agent and Prepetition Lenders were granted a first priority lien on the Indemnity Account to secure the Indemnity Obligations and other Prepetition Obligations (and such grant is hereby ratified, confirmed and approved on a

final basis). Nothing in this paragraph 8 shall be deemed an admission or acknowledgement by any party in interest regarding the ability of the Prepetition Lenders to receive payment (full or partial) (i) prior to the expiration of the Challenge Period (as hereinafter defined) or (ii) prior to the entry of a final order resolving any Challenge, and all rights of any such party in interest and of the Prepetition Lenders are reserved.

9. Modification of Automatic Stay. The automatic stay under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the Prepetition Agent or Required Lenders each may request in its or their sole discretion to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the Prepetition Agent and Prepetition Lenders under this Final Order; and (d) authorize the Debtors to pay, and the Prepetition Agent and Prepetition Lenders to retain and apply, payments made in accordance with the terms of this Final Order.

10. Perfection of Adequate Protection Liens. This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Adequate Protection Liens and the lien on the Indemnity Account without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Adequate Protection Liens and the lien on the Indemnity Account, or to entitle the Prepetition Agent and Prepetition Lenders to the priorities

granted herein. Notwithstanding the foregoing, the Prepetition Agent is authorized to file, as it deems necessary in its sole discretion, such financing statements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the applicable Adequate Protection Liens and lien on the Indemnity Account, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the Adequate Protection Liens or the lien on the Indemnity Account. The Prepetition Agent, in its sole discretion or at the direction of the Required Lenders in their sole discretion, may file a photocopy of this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument. The Debtors are authorized and directed to execute and deliver promptly upon demand to the Prepetition Agent and the Prepetition Lenders all such financing statements, mortgages, notices and other documents as any of the Prepetition Agent or Required Lenders may reasonably request.

11. Debtors' Obligations. The Debtors shall:

(a) Apply Cash Collateral and other sources of cash available to the Debtors hereunder to the expenses of the operation of their businesses as provided in the Budget and this Final Order;

(b) Deliver to the Prepetition Agent, the Prepetition Lenders and counsel to the Statutory Committee (i) on or before 12:00 p.m. (Eastern Time) on Tuesday of each week (and if such day is not a business day, then the next succeeding business day) (A) a comparison for the prior week of actual results of all items contained in the Budget to the amounts originally

contained in the Budget, (B) cumulative comparison for the period from the Petition Date through the end of the prior week of the actual results of all items contained in the Budget to the amounts originally contained in the Budget; and (C) the previous Friday's weekly accounts payable aging report; and (ii) within ten (10) business days after the conclusion of each month, (A) monthly accounts receivable aging reports, and (B) monthly reports, in the format typically prepared by the Debtors, showing net gain or loss in customers, in each case along with such supporting information as the Prepetition Agent or any Prepetition Lender may request;

(c) Provide the Prepetition Agent, the Prepetition Lenders and the Statutory Committee with such other financial reports as may be reasonably requested by the Prepetition Agent or any Prepetition Lender;

(d) Comply with the Prepetition Credit Documents, in all material respects, other than (i) as modified herein or as prohibited by the Bankruptcy Code, and (ii) Section 6.1(a), 6.2(a)-(c) and (g), 6.3, 6.5(a) (to the extent that compliance would not be permitted by the Budget or would not be commercially prudent) and 7.1 of the Credit Agreement and Sections 5.2, 5.9 and 5.10 of the Guarantee and Collateral Agreement;

(e) Use commercially reasonable efforts to find the necessary capital on reasonable terms, through exit financing or otherwise, to pay the Prepetition Obligations in full in cash on the effective date of any plan; and, until the filing of the plan or such later date, from time to time and when reasonably requested advise the Prepetition Lenders of such efforts and provide their professionals with a detailed description of such efforts, including all term sheets furnished by and written agreements with potential providers of capital in connection with such efforts; provided, however, that (i) neither the Debtors' foregoing efforts to find necessary capital nor any other provision of this Final Order shall obligate the Debtors to pay the

Prepetition Obligations in full in cash on the effective date of any plan and (ii) all rights of the Prepetition Agent and Prepetition Lenders to seek payment in full in cash on the effective date of any plan are reserved.

12. Cash Management. The Debtors shall maintain the cash management system which is provided in the cash management order approved by the Prepetition Agent and Prepetition Lenders and entered by the Court on February 12, 2009 [doc. no. 33]. The Debtors shall not seek approval of any modification of the cash management system without the prior approval of the Prepetition Agent and the Required Lenders, and any order approving such modification to the cash management system shall be acceptable to the Prepetition Agent and the Required Lenders in form and substance. Until the indefeasible payment in full of all Prepetition Obligations, the Debtors shall remit all Cash Collateral pursuant to the cash management system that is approved by the order entered by the Court on February 12, 2009 [doc. no. 33].

13. Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Collateral, including the settlement or resolution of any accounts receivable, outside the ordinary course of business in excess of \$100,000 without the prior written consent of the Prepetition Agent and the Required Lenders.

14. Potential Debtor-in Possession Financing. The Debtors shall not obtain debtor-in-possession financing from any party without first giving the Prepetition Lenders the opportunity to provide financing to the Debtors on equal or better terms.

15. Events of Default. The occurrence of any of the following events, unless waived by the Prepetition Agent as directed by the Required Lenders in writing, shall constitute an event of default (collectively, the "Events of Default"):

- (a) the failure by the Debtors to perform, in any material respect, any of the

terms, provisions, conditions, covenants, or obligations under this Final Order;

(b) the obtaining of credit or the incurrence of indebtedness that is (i) secured by a security interest, mortgage or other lien on all or any portion of the Collateral which is equal or senior to any security interest, mortgage or other lien of the Prepetition Agent and the Prepetition Lenders, or (ii) entitled to priority administrative status which is equal or senior to that granted to the Prepetition Agent and Prepetition Lenders herein;

(c) any lien or security interest purported to be created under the Prepetition Credit Documents shall cease to be, or shall be asserted by any Debtor not to be, a valid and perfected lien on or security interest in any Collateral, with the priority required by the Prepetition Credit Documents or herein;

(d) the entry of an order by the Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a lien on or security interest in any Collateral, in excess of \$250,000, or (ii) with respect to any lien of or the granting of any lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a material adverse effect on the business, operations, property, assets, or condition, financial or otherwise, of the Debtors;

(e) any of the Debtors' return of goods constituting Collateral having a value in excess of \$50,000 pursuant to section 546(h) of the Bankruptcy Code, absent the prior written consent of the Prepetition Agent and the Required Lenders;

(f) reversal, vacatur, or modification (without the express prior written consent of the Required Lenders, each in its sole discretion) of this Final Order, whether by reconsideration, appeal or otherwise;

(g) dismissal of the Cases or conversion of the Cases to chapter 7 cases, or

appointment of a chapter 11 trustee or examiner with enlarged powers;

(h) any material misrepresentation of fact made in writing and with the intent to deceive by any of the Debtors, their agents or professionals to the Prepetition Agent or any of the Prepetition Lenders about the financial condition of the Debtors, or any of them, the nature, extent, location or quality of any Collateral, or the disposition or use of any Collateral, including Cash Collateral;

(i) a default by any of the Debtors in reporting financial information as and when required under this Final Order, provided, that, the Debtors shall have five (5) business days to cure any default under this section;

(j) the sale of any portion of any of the Debtors' assets outside the ordinary course of business in excess of \$100,000 in amount without the prior written consent of the Prepetition Agent and the Required Lenders, each in its or their sole discretion;

(k) the failure to comply with paragraph 11(d) of this Final Order;

(l) the granting of any motion providing for reconsideration of the Interim Order or this Final Order;

(m) the failure to comply with paragraph 3 of this Final Order, including the Net Cash Flow and receivables tests contained therein;

(n) the failure to make Adequate Protection Payments or other payments to the Prepetition Agent and the Prepetition Lenders as set forth in the Budget, the Interim Order, and/or this Final Order;

(o) the failure of this Final Order from becoming a final order that is not subject to reversal, vacatur, stay (unless such stay has been vacated), or appeal (unless such appeal has been dismissed or otherwise finally resolved) on or before 40 days after the Petition

Date;

(p) the failure to file a plan and disclosure statement (each in form and substance acceptable to the Prepetition Agent and the Required Lenders) on or before May 5, 2009; provided, however, that it shall not be an event of default for the Debtors to file on or before May 5, 2009, a plan and disclosure statement that is not in form and substance acceptable to the Prepetition Agent and the Required Lenders so long as the Debtors have complied with paragraph 11(e);

(q) the failure to obtain approval of a disclosure statement on or before June 15, 2009; and

(r) the failure to obtain a final order (which order has not been reversed, vacated, stayed, unless such stay has been vacated, or appealed, unless such appeal has been dismissed or otherwise finally resolved) confirming a plan on or before August 10, 2009.

16. Commitment Extension Right. Upon ten (10) calendar days written notice from the Statutory Committee to counsel for the Debtors (Kirkland & Ellis LLP) and counsel to certain of the Prepetition Lenders (Bingham McCutchen LLP), the expiration of the Specified Period and each of the deadlines set forth in paragraph 15(p)-(r) of this Final Order, to the extent each of such dates have not already expired at the time of the Statutory Committee's notice, may each be extended by thirty five (35) calendar days; provided that, (a) the Debtors shall deliver a budget for the period that is thirty five (35) days from the end of the current Budget (the "Extended Budget") on or before 30 days prior to the expiration of the current Budget; (b) the Extended Budget shall be subject to the approval of the Prepetition Agent and the Required Lenders, which approval shall not be unreasonably withheld; (c) use of Cash Collateral beyond the current Budget will be subject to the Extended Budget and all of the terms of this Final

Order; and (d) in no event shall the Specified Period be extended beyond September 19, 2009.

17. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, the Prepetition Agent may and, at the direction of the Required Lenders shall, declare a termination, reduction or restriction of the ability of the Debtors to use any Cash Collateral, except for the limited use of Cash Collateral during the Remedies Notice Period provided in paragraph 3(a)(2) above (any such declaration shall be referred to herein as a "Termination Declaration"). The Termination Declaration shall be given by email (or electronic means) to counsel to the Debtors (attn: Edward Sassower and Joshua Sussberg), counsel to the Statutory Committee (attn: James Savin and David Dunn), and the U.S. Trustee (the earliest date any such Termination Declaration is made shall be referred to herein as the "Termination Declaration Date"). On the Termination Declaration Date, the Debtors' right to use Cash Collateral shall automatically cease, except as provided in paragraph 3(a)(2) during the Remedies Notice Period. Within five (5) business days after the Termination Declaration Date (the "Remedies Notice Period"), and prior to the expiration of the Remedies Notice Period, the Debtors and/or the Statutory Committee shall be entitled to seek an emergency hearing with the Court solely to determine whether an Event of Default has occurred. Unless the Court determines during the Remedies Notice Period that an Event of Default has not occurred, the Debtors shall no longer have the right to use Cash Collateral pursuant to the terms of this Final Order. The Prepetition Agent and/or the Prepetition Lenders shall be permitted to seek expedited relief from the Bankruptcy Court, including, without limitation, relief from the automatic stay, on not less than five (5) business days notice.

18. Carve Out.

(a) Carve Out. As used in this Final Order, the "Carve Out" means:

Professionals of the Statutory Committee (the “Default Case Professionals Cap”). Any postpetition payment or reimbursement made in respect of any Allowed Professional Fees incurred before the Termination Declaration Date, excluding the application of any retainers received by Case Professionals prior to the Petition Date, shall reduce the Case Professionals Cap on a dollar-for-dollar basis. Any postpetition payment or reimbursement made in respect of any Allowed Professional Fees incurred after the Termination Declaration Date, excluding the application of any retainers received by Case Professionals prior to the Petition Date, shall reduce the Default Case Professionals Cap on a dollar-for-dollar basis.

(b) No Direct Obligation to Pay Professional Fees. So long as the total Allowed Professional Fees paid are less than the Case Professionals Cap or Default Case Professionals Cap, as applicable, the Debtors shall be permitted to pay Allowed Professional Fees as the same may be due and payable in accordance with the terms of any compensation order entered in the Cases. The Prepetition Agent and the Prepetition Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Case Professionals incurred in connection with the Cases or any Successor Cases under any chapter of the Bankruptcy Code. Any funding of the Carve Out shall be added to and made a part of the Adequate Protection Superpriority Claims and secured by the Adequate Protection Liens and otherwise entitled to the protections granted under the Interim Order, this Final Order, the Bankruptcy Code and applicable law. Nothing in this Final Order or otherwise shall be construed: (i) to obligate the Prepetition Agent or any of the Prepetition Lenders in any way to pay compensation to or to reimburse expenses of any Case Professional; (ii) to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement, (iii) to increase the Carve Out if actual Allowed Professional Fees are higher in fact than the Case Professionals Cap

or Default Case Professionals Cap, as applicable, (iv) as consent by the Prepetition Agent or any of the Prepetition Lenders to the allowance of any professional fees or expenses of any Case Professionals; or (v) to affect the right of the Prepetition Agent or any of the Prepetition Lenders to object to the allowance and payment of any fees or expenses of any Case Professional.

19. Limitations on the Cash Collateral and the Case Professionals Carve Out. The Cash Collateral and the Case Professionals Carve Out may not be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) invalidating, setting aside, avoiding or subordinating, in whole or in part, any of the Prepetition Obligations or, (ii) for monetary, injunctive or other affirmative relief against the Prepetition Agent or any Prepetition Lender or their respective collateral, or (iii) preventing, hindering or otherwise delaying the exercise by the Prepetition Agent or any of the Prepetition Lenders of any rights and/or remedies under this Final Order, the Prepetition Credit Documents, or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Court or otherwise) by the Prepetition Agent or any of the Prepetition Lenders upon any of the Collateral; (b) to make any distribution under a plan of reorganization in any of the Cases; (c) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body absent consent of the Prepetition Agent and the Required Lenders, unless otherwise ordered by the Court; (d) subject to the limited use of Cash Collateral during the Remedies Notice Period set forth in paragraph 3(a)(2) above, to object to, contest, or interfere with in any way the enforcement or realization upon any of the Collateral by the Prepetition Agent or any of the Prepetition Lenders once the Termination Declaration Date has occurred; (e) to use or seek to use Cash Collateral or selling or otherwise disposing of Collateral in excess of \$100,000 without the prior consent of

the Prepetition Agent and the Required Lenders; (f) to use or seek to use any insurance proceeds constituting Collateral in a manner not permitted by the Prepetition Credit Agreement without the prior written consent of the Prepetition Agent and the Required Lenders; (g) to incur Indebtedness (as defined in the Prepetition Credit Agreement and including a loan or financial accommodation pursuant to section 364(c) or (d) of the Bankruptcy Code) outside the ordinary course of business without the prior consent of the Prepetition Agent and the Required Lenders; (h) to object to or to challenge in any way the claims, liens, or interests (including interests in the Collateral) held by or on behalf of any Prepetition Agent or Prepetition Lender; (i) to assert, commence or prosecute any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the Prepetition Agent or any Prepetition Lender; or (j) to prosecute an objection to, contest in any manner, or raise any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Obligations, Prepetition Liens, or any other rights or interests of the Prepetition Agent or any Prepetition Lender. Notwithstanding the foregoing, Cash Collateral and the Case Professionals Carve Out may be used in an amount not to exceed \$150,000 in the aggregate for Allowed Professional Fees incurred by the Statutory Committee (which aggregate amount may be increased with the consent of the Required Lenders or by order of the Court upon a showing of cause) to investigate the validity, enforceability, perfection, priority or extent of the Prepetition Liens or claims or any other claims against the Prepetition Agent or the Prepetition Lenders within one hundred and five (105) calendar days following the formation of the Statutory Committee.

20. Reservation of Certain Third Party Rights and Bar of Challenges and Claims.

Nothing in this Final Order shall prejudice the rights of the Statutory Committee to seek to object

to or to challenge the Debtors' Stipulations, including, but not limited to those in relation to:

(a) the validity, extent, priority, or perfection of the security interests and liens of the Prepetition Agent or any Prepetition Lender; or (b) the validity, allowability, priority, fully secured status or amount of the Prepetition Obligations; provided, however, that the Debtors' Stipulation in paragraph F(iv)(f) with respect to the value of the Prepetition Collateral securing the Prepetition Obligations exceeding the amount of the Prepetition Obligations shall not be binding on the Statutory Committee. The Statutory Committee must file with the Court a motion seeking standing to commence, as appropriate, a contested matter or adversary proceeding raising such objection or challenge, including, without limitation, any claim against the Prepetition Agent or any Prepetition Lender in the nature of a setoff, counterclaim or defense to the applicable Prepetition Liens or Prepetition Obligations (a "Challenge") within one hundred and five (105) calendar days from the formation of the Statutory Committee by the U.S. Trustee (the "Challenge Period"). Furthermore, the Challenge Period shall expire if the Committee fails to commence, as appropriate, a contested matter or adversary proceeding raising a Challenge within ten (10) calendar days after entry of an order by the Court granting the Statutory Committee standing to pursue such Challenge. The Challenge Period may only be extended with the written consent of the Required Lenders, or by order of the Court upon a showing of cause. Upon the expiration of the Challenge Period (the "Challenge Period Termination Date"), without the filing of a motion seeking standing to commence a Challenge (or if any such motion seeking standing to commence a Challenge is filed and denied by final order): (A) any and all such Challenges by any party (including, without limitation, the Statutory Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any

Successor Case), shall be deemed to be forever waived and barred, and (B) all of the Debtor's Stipulations, waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to the Prepetition Agent's and each Prepetition Lender's, claims, liens, and interests shall be of full force and effect and forever binding upon all creditors, interest holders, and other parties in interest; provided, however, that the Debtors' Stipulation in paragraph F(iv)(f) with respect to the value of the Prepetition Collateral securing the Prepetition Obligations exceeding the amount of the Prepetition Obligations shall not be binding on the Statutory Committee. To the extent that a Challenge is timely filed but does not expressly challenge all of the Debtor's Stipulations, or to the extent any creditor, interest holder and other party interest does not file any timely-Challenge, all such unchallenged Debtors' Stipulations shall be of full force and effect and forever binding upon all creditors, interest holders, and other parties in interest, notwithstanding any timely-filed Challenge.

21. No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

22. Section 506(c) Claims. No costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the Prepetition Agent or any Prepetition Lender, or any of their respective claims or the Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the Prepetition Agent or applicable Prepetition Lender, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agent or lenders.

23. No Marshaling/Applications of Proceeds. The Prepetition Agent and the Prepetition Lenders shall not be subject to the equitable doctrine of "marshaling" or any other

similar doctrine with respect to any of the Collateral.

24. Section 552(b). The Prepetition Agent and the Prepetition Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Agent or any Prepetition Lenders with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

25. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the Prepetition Agent’s or any Prepetition Lender’s right to seek any other or supplemental relief in respect of any Debtor, including the right to seek additional adequate protection (without prejudice to any other person’s right to object to or otherwise oppose such additional adequate protection); (b) any of the rights of the Prepetition Agent or any Prepetition Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases or Successor Cases, conversion of any of the Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans.

26. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Agent or any Prepetition Lender hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Cases or any Successor Cases. Nothing contained herein shall be deemed a finding by

the Court, or an acknowledgment by the Prepetition Agent or Prepetition Lenders that the adequate protection granted herein does in fact adequately protect the Prepetition Agent and Prepetition Lenders against any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral).

27. No Waiver by Failure to Seek Relief. The failure of the Prepetition Agent or any Prepetition Lender to seek relief or otherwise exercise its rights and remedies under this Final Order, the Prepetition Credit Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the Prepetition Agent or any of the Prepetition Lenders.

28. Proofs of Claim. The Prepetition Agent and the Prepetition Lenders will not be required to file proofs of claim in any of the Cases or Successor Cases, and the Debtors' Stipulations in paragraph F herein shall be deemed to constitute a timely filed proof of claim. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Cases or Successor Cases shall not apply to the Prepetition Agent and Prepetition Lenders.

29. Good Faith. The Prepetition Agent and Prepetition Lenders each have acted in good faith in connection with this Final Order and their reliance on this Final Order is in good faith.

30. Binding Effect of Final Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtors, the Prepetition Agent, the Prepetition Lenders, all other creditors of any of the Debtors, the Statutory Committee, and all other parties in interest and their respective successors and assigns, including

any trustee or other fiduciary hereafter appointed in any of the Cases, any Successor Cases, or upon dismissal of any Case or Successor Case. The Interim Order is incorporated herein by reference. In the event of any inconsistency between the provisions of the Interim Order, this Final Order and any other order (including any "first day" order), the provisions of this Final Order shall govern and control. Any payments to be made under any order (including any "first day" order) shall be made in accordance with this Final Order and the Budget.

31. No Modification of Final Order. The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Final Order without the prior written consent of the Prepetition Agent and the Required Lenders, and no such consent shall be implied by any other action, inaction or acquiescence of the Prepetition Agent or Prepetition Lenders. In the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, such modification, amendment or vacatur shall not affect the validity, perfection, priority, allowability, enforceability or non-avoidability of any advances, payments or use of cash whether previously or hereunder, or lien, claim or priority authorized or created hereby. Any liens or claims granted to the Prepetition Agent or any of the Prepetition Lenders hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Final Order shall be governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

32. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Cases; (b) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor Cases; or (d) pursuant to

which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Final Order, including the claims, liens, security interests and other protections granted to the Prepetition Agent and the Prepetition Lenders pursuant to this Final Order, notwithstanding the entry of any such order, shall continue in the Cases, in any Successor Cases, or following dismissal of the Cases or any Successor Cases, and shall maintain their priority as provided by this Final Order until all Prepetition Obligations have been indefeasibly paid in full, notwithstanding the expiration of the Specified Period or any earlier termination of the Debtors' authorization to use Cash Collateral.

33. Effect of this Final Order. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution thereof.

34. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

SO ORDERED by the Court this 12th day of March, 2009.

Wilmington, Delaware


Kevin J. Carey
Chief United States Bankruptcy Judge