

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

TRAFFIC CONTROL AND SAFETY
CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 12-11287 (KJC)

(Jointly Administered)

Docket Ref. No. 10, 26, 69, 104, 121

**FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363 AND 364
OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) USE CASH
COLLATERAL, (II) OBTAIN POSTPETITION FINANCING, AND (III) PROVIDE
ADEQUATE PROTECTION TO SECURED CREDITORS**

Upon consideration of the Debtors' motion (the "Motion")² for entry of an interim order and this final order (A) authorizing the Debtors to (I) use cash collateral, pursuant to section 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), (II) obtain postpetition financing pursuant to sections 361, 362, and 364 of the Bankruptcy Code and (III) provide adequate protection to the First Lien Lenders (as defined below) and the Second Lien Lenders (as defined below) (collectively, the "Prepetition Secured Lenders") pursuant to sections 361, 362 and 363 of the Bankruptcy Code, and (B) scheduling interim and final hearings pursuant to Rule 4001(b) and (c) of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), the Debtors sought from the Court (as defined below), among other things, the following relief:

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Traffic Control and Safety Corporation, a Delaware corporation (7891); Safety Systems Hawaii, Inc., a Delaware corporation (7907); Statewide Safety & Signs, Inc., a California corporation (4460); Traffic Solutions, Inc., a California corporation (7437); American Barricade Inc., a California corporation (2617); Flash Safety Co., Inc., a California corporation (0225); and Toomey Industries, a California corporation (1551). The mailing address for each Debtor is 4000 Westerly Place, Suite 100, Newport Beach, CA 92660.

² Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

- (i) this Court's authorization, pursuant to sections 363 and 364(c)(1), (2), (3), and (d)(1) of the Bankruptcy Code, for the Debtors to enter into that certain Senior Secured Super Priority Debtor in Possession Priming Credit Agreement dated April 19, 2012, entered into by and among Debtors, the lenders from time to time party thereto (each a "**DIP Lender**" and collectively, the "**DIP Lenders**"), and Fifth Street Finance Corp., a Delaware corporation ("**FSFC**"), for itself as a lender and as administrative agent for the DIP Lenders (in such capacity, the "**DIP Administrative Agent**") (the "**DIP Loan Agreement**") and obtain senior secured superpriority postpetition financing from FSFC and the DIP Lenders in a maximum amount outstanding of not more than \$12,775,000, provided that not more than \$3,000,000 was permitted to be borrowed prior to the entry of this Final Order (as defined below);
- (ii) this Court's authorization to use advances under the Revolving Loans and availability under the Letters of Credit (each as defined in the DIP Loan Agreement) (together, the "**DIP Loans**") severally made by each DIP Lender under the DIP Loan Agreement and subject to the terms and conditions thereof in accordance with the budget (attached as Schedule 5.1(k) to the DIP Loan Agreement and attached hereto as Exhibit 1, the "**Budget**") for the period from the Closing Date (as defined in the DIP Loan Agreement) through the earliest to occur of (i) 6 months after the Closing Date, (ii) the effective date of the Borrowers' Reorganization Plan and (iii) or the closing of the Sale (as defined in the Motion) (the "**Maturity Date**"), and as otherwise provided herein;
- (iii) this Court's authorization to grant to the DIP Lenders, in respect of the DIP Obligations (as defined below), a superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code and first priority priming liens on and security interests in substantially all assets and property of the Debtors (now owned or hereafter acquired) pursuant to sections 364(c)(2), (c)(3) and (d)(1) of

the Bankruptcy Code, in each case as and to the extent set forth more fully below and subject to the payment of Case Expenses up to the Carve Out Amount (each as defined below);

- (iv) this Court's authorization to use "cash collateral," as defined in section 363 of the Bankruptcy Code in which the First Lien Lender has an interest ("**Cash Collateral**");
- (v) this Court's authorization to grant, as of the Petition Date, the Prepetition Secured Lenders Adequate Protection Superpriority Claims (as defined below) and the Adequate Protection Liens (as defined below) to the extent of and as compensation for any Diminution in Value (as defined below) as set forth more fully below and subject to the payment of Case Expenses up to the Carve Out Amount;
- (vi) modification by this Court of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Agreement the Interim Order (defined below) and this Final Order;
- (vii) the scheduling by the Court of a final hearing (the "**Final Hearing**") to consider entry of a final order granting the relief requested in the Motion on a final basis (the "**Final Order**") and approving the form of notice with respect to such Final Hearing and the transactions contemplated by the Motion; and
- (viii) this Court's waiver of any applicable stay (including under Bankruptcy Rules 4001 and 6004) and provision for the immediate effectiveness of the Interim Order and this Final Order.

The Court having considered the Motion, the First Day Affidavit (as defined in the Motion), and the evidence submitted or proffered at the hearing held before this Court to consider entry of the Interim Order (the "**Interim Hearing**") and the evidence submitted or proffered prior to this Court's entry of this Final Order in the Case; and the Court having entered

on April 24, 2012, after the Interim Hearing, that certain *Interim Order Pursuant to Sections 361, 362, 363, and 364 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedures (A) Authorizing the Debtor to (I) Use Cash Collateral, (II) Obtain Post-Petition Financing and (III) Provide Adequate Protection to Secured Creditors, and (B) Providing Notice and Scheduling Final Hearing* [Dkt. No. 44] (the “**Interim Order**”); and the Court in the Interim Order having approved the DIP Loan on an interim basis pending a Final Hearing on May 9, 2012; and in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014 and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), due and proper notice of the Motion, the Interim Hearing, and the Final Hearing having been given; and in accordance with Local Rule 9013-1(m)(iv), within forty-eight (48) hours of the entry of the Interim Order, or as soon as practicable, the Debtors served a copy of this Order on those parties referred to in Local Rule 9013-1(m)(iii); and upon the record of the Interim Hearing, the Final Hearing and the Case; and it appearing that approval of the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and is otherwise fair and reasonable and in the best interests of the Debtors, their creditors and estates, and essential for the continued operation of the Debtors’ business; and, subject to the terms hereof, the Court having determined that there is adequate protection of the Prepetition Liens (as defined below); and all objections to the entry of this Final Order having been resolved, overruled or withdrawn on or prior to the date scheduled for the Final Hearing; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM AND FINAL HEARINGS AND THE CASE, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. Petition Date. On April 20, 2012 (the "Petition Date"), the Debtors filed a voluntary petition under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors have continued in the management and operation of their business and properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

B. Jurisdiction and Venue. This Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for these Chapter 11 Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 507, and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014 and Local Rules 2002-1 and 4001-2.

C. Committee Formation. On May 1, 2012, an official committee of unsecured creditors was appointed in these Chapter 11 Cases (together with any other statutory committee, a "Creditors' Committee").

D. Interim Order. At the Interim Hearing, the Court approved the DIP Loan on an interim basis pending the Final Hearing and entry of this Final Order. Pursuant to the Interim Order, the Final Hearing (to consider final approval of the DIP Loan) was scheduled for May 9, 2012 and was held on that date.

³ The findings of fact and the conclusions of law set forth herein shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any of the following constitute findings of fact or conclusions of law, they are adopted as such. All findings of facts and conclusions of law announced by the Bankruptcy Court at the Final Hearing in relation to the Final Order are incorporated herein to the extent not inconsistent herewith. To the extent any of the prior findings of fact or conclusions of law constitute an order of this Bankruptcy Court, they are adopted as such.

E. Notice. Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors, by telecopy, email, overnight courier and/or hand delivery, to (a) the United States Trustee; (b) counsel to the administrative agent for the Debtors' prepetition lenders; (c) the creditors listed on the Debtors' consolidated list of 30 largest unsecured creditors, as filed with the chapter 11 petitions; (d) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (e) counsel for the DIP Lenders; (f) the Internal Revenue Service; (g) the Office of the United States Attorney General for the District of Delaware; and (h) other parties who have filed a request for notices with this Court as of April 23, 2012 (collectively, the "**Notice Parties**"). Under the circumstances, such notice of the Final Hearing and the relief requested in the Motion constitutes due, sufficient and appropriate notice and complies with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b) and (c) and the Local Rules.

F. Debtors' Prepetition Secured Indebtedness. Subject only to the provisions of paragraphs 9 and 10 hereof, the Debtors are indebted:

(i) First Lien Credit Agreement. Pursuant to that certain Second Amended and Restated Credit Agreement, dated as of May 23, 2011, entered into by and among the Debtors, the lenders from time to time party thereto (the "**First Lien Lenders**"), and FSFC, in its capacity as contractual representative for itself and the other First Lien Lenders (the "**First Lien Credit Agreement**").

1) *First Lien Revolving Loans*. Pursuant to the First Lien Credit Agreement, the Revolving Lenders (as defined therein) issued those certain revolving loans (the "**First Lien Revolving Loans**") in an aggregate principal amount outstanding not to exceed (a) \$15,000,000 or (b) the Borrowing Base (as defined therein),⁴ none of which remains available to

⁴ "Borrowing Base" is defined in the First Lien Credit Agreement as "(a) 80% of the Eligible Accounts, plus (b) 60% of Eligible Inventory, minus (c) the Borrowing Base Reserves; *provided, however*, that the Administrative Agent may reduce the advance rates or create reserves against the Eligible Accounts and/or the Eligible Inventory, without declaring an Event of Default, in the exercise of its Permitted Discretion.

the Debtors as of the Petition Date. The First Lien Revolving Loans are evidenced by that certain Secured Promissory Note (Revolving Loans) dated as of May 23, 2011 (the “**First Lien Revolving Loans Note**”). As of the Petition Date, approximately \$13,486,208 was outstanding under the First Lien Revolving Loans, including principal and accrued, unpaid interest. The First Lien Revolving Loans bear interest at a per annum rate of 9.00% plus ninety (90) day LIBOR as of the last business day of the month immediately preceding the month for which interest is being calculated (currently, 0.48%), which increases by 3.00% upon the occurrence and during the continuation of an Event of Default (as defined in the First Lien Credit Agreement). The First Lien Revolving Loans Note is held by FSFC.

II) *Term Loan.* Also pursuant to the First Lien Credit Agreement, the Term Loan Lenders (as defined therein) issued that certain term loan (the “**First Lien Term Loan**” and together with the First Lien Revolving Loans, the “**First Lien Loans**”) in an amount of \$5,000,000. The First Lien Term Loan is evidenced by that certain Secured Promissory Note (Term Loan) dated as of May 23, 2011 (the “**First Lien Term Loan Note**” and together with the First Lien Revolving Loans Note, the “**First Lien Notes**”). As of the Petition Date, approximately \$5,000,000 was outstanding under the First Lien Term Loan, including principal and accrued, unpaid interest. The First Lien Term Loan bears interest at a per annum rate of 9.00% plus ninety (90) day LIBOR as of the last business day of the month immediately preceding the month for which interest is being calculated (currently, 0.48%), which increases by 3.00% upon the occurrence and during the continuation of an Event of Default (as defined in the First Lien Credit Agreement). The First Lien Term Loan Note is held by FSFC.

III) *Collateral.* The First Lien Notes are secured by a first priority security interest (the “**Prepetition First Lien**”) on any and all of the Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Equipment, Instruments, Inventory, Investment Property, General Intangibles, Letter of Credit Rights, Negotiable Collateral, Supporting Obligations, Vehicles, Debtors’ Books, in each case whether now existing or hereafter acquired or created, any money or other assets of any Debtor that now or hereafter

come into the possession or custody, or control of Administrative Agent or any First Lien Lender, and any Proceeds or products of any of the foregoing or any portion thereof (each as defined in that certain Security Agreement, dated as of May 23, 2011, entered into among the Debtors and FSFC, as administrative agent for itself and the other First Lien Lenders, as amended (the "Security Agreement")).

(ii) Second Lien Credit Agreement. The Debtors also issued those certain "Notes" (as defined in that certain Amended and Restated Loan Agreement, dated as of May 23, 2011, entered into by and among the Debtors, the lenders from time to time party thereto (the "Second Lien Lenders"), and FSFC, as agent for the lenders (the "Second Lien Credit Agreement"). The Notes and the First Lien Notes are referred to together as the "Prepetition Secured Debt"). The payment and enforcement of the Notes, which are secured by a second lien (the "Prepetition Second Lien" and, together with the Prepetition First Liens, the "Prepetition Liens") on the Collateral (as defined in the Second Lien Credit Agreement), is subject to the terms of that certain Subordination and Intercreditor Agreement, dated as of June 29, 2007, as amended, by and among the Debtors, FSFC, and the Senior Lenders (as defined in the Second Lien Credit Agreement) (the "Subordination Agreement," and together with the First Lien Credit Agreement, the Second Lien Credit Agreement, and the Security Agreement, the "Prepetition Loan Documents"), and the payment of the Notes is subordinated thereby to the payment of the First Lien Notes. As of the Petition Date, approximately \$35,981,018 was outstanding under the Notes, including principal and accrued, unpaid interest. The Notes bear interest at a rate of 8.00% per annum payable in cash plus 4.00% per annum payable in kind, which increases by 2.00% upon the occurrence and during the continuation of an Event of Default (as defined in the Second Lien Credit Agreement). FSFC holds approximately 60.4% of the Notes, with the remainder held by other creditors party to the Second Lien Credit Agreement.

G. Findings Regarding Prepetition Indebtedness. Subject only to the provisions of paragraphs 9 and 10 hereof:

(i) **Good Faith.** The Prepetition Secured Lenders and the DIP Lenders have acted in good faith, and without negligence or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting or obtaining requisite approvals of the DIP Loan Agreement and the use of Cash Collateral, including in respect of the granting of the DIP Liens (as defined below) and the Adequate Protection Liens, any challenges or objections to the DIP Loan Agreement or the use of Cash Collateral, and all documents related to and all transactions contemplated by the foregoing.

(ii) **No Control.** Neither the DIP Lenders nor the Prepetition Secured Lenders are control persons or insiders of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the DIP Loan Agreement, the Prepetition Secured Debt, and/or the Prepetition Loan Documents as of the date hereof.

H. **Immediate Need for Postpetition Financing and Use of Cash Collateral.** The Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Good cause has been shown for entry of this Final Order. An immediate need exists for the Debtors to obtain funds and liquidity in order to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets and to maximize the return for all creditors requires the availability of the DIP Loans and the use of Cash Collateral. In the absence of the availability of such funds and liquidity in accordance with the terms hereof, the continued operation of the Debtors' business would not be possible, and serious and irreparable harm to the Debtors and their estates and creditors would occur. Thus, the ability of the Debtors to preserve and maintain the value of their assets and maximize the return for creditors requires the availability of working capital from the DIP Loans and the use of Cash Collateral.

I. **No Credit Available on More Favorable Terms.** The Debtors have been unable to obtain on more favorable terms and conditions than those provided in this Final Order (a) adequate unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an

administrative expense, (b) credit for money borrowed with priority over any or all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code, (c) credit for money borrowed secured by a lien on property of the estate that is not otherwise subject to a lien, or (d) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien. The Debtors are unable to obtain credit for borrowed money without granting the DIP Liens and the DIP Superpriority Claim (as defined below) to the DIP Lenders.

J. Use of Cash Collateral and Proceeds of the DIP Loans, DIP Collateral, and Prepetition Collateral.

All Cash Collateral, all proceeds of the Prepetition Collateral and the DIP Collateral (as defined below), including proceeds realized from a sale or disposition thereof, or from payment thereon, and all proceeds of the DIP Loans (net of any amounts used to pay fees, costs and expenses payable under the Interim Order or this Final Order) shall be used and/or applied in accordance with the terms and conditions of this Final Order, for the types of expenditures and in the amounts set forth in the Budget and for no other purpose; provided, that, up to \$35,000 in the aggregate of the proceeds of the DIP Loans, DIP Collateral, Prepetition Collateral, or Cash Collateral, may be used by any Creditors' Committee solely to investigate challenges to the Prepetition Secured Lenders' liens and other claims against the Prepetition Secured Lenders and DIP Lenders.

K. Adequate Protection for Secured Parties. The Prepetition Secured Lenders have negotiated and acted in good faith regarding the terms of the DIP Loan and all actions taken by the Prepetition Secured Lenders in respect thereof, including the Debtors' use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estate and continued operation of their business in accordance with the terms hereof. The Prepetition Secured Lenders have agreed to permit the Debtors to use the Prepetition Collateral, including the Cash Collateral, in accordance with the terms hereof and subject to the terms and conditions set forth herein, including the protections afforded parties acting in "good faith" under section

363(m) of the Bankruptcy Code. The Prepetition Secured Lenders are entitled to the adequate protection as and to the extent set forth herein pursuant to sections 361, 362, and 363 of the Bankruptcy Code. Based on the Motion and on the record presented to this Court at the Interim Hearing, the Final Hearing and in the Case, the terms of the proposed adequate protection arrangements and of the use of the Cash Collateral are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the Prepetition Secured Lenders' consent thereto; provided, that nothing in this Final Order shall prejudice, limit or otherwise impair the rights of the Prepetition Secured Lenders to seek new, different, or additional adequate protection.

L. Section 552. In light of, as applicable, the subordination of the Prepetition Liens and the Adequate Protection Liens (as defined below) to the DIP Liens and the payment of Case Expenses up to the Carve Out Amount, and the granting of the DIP Liens on the Prepetition Collateral, the Prepetition Secured Lenders are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply; provided, however, that the DIP Lenders shall first satisfy any claims arising from the DIP Loan from the DIP Collateral identified in paragraph 3(e)(II) and (III) hereof.

M. Extension of Financing. The DIP Lenders have indicated a willingness to provide financing to the Debtors in accordance with the terms hereof. The DIP Lenders are good faith financiers. The DIP Loan Agreement was negotiated in good faith and at arm's-length among commercially sophisticated parties. The Prepetition Secured Lenders have consented to the priming of the Prepetition Liens and the use of the Prepetition Collateral and the Cash Collateral, solely in respect of the DIP Loan provided by the DIP Lenders, and not in respect of any other postpetition financing or cash collateral facility. Nothing in this Final Order or in the Interim Order shall be deemed or construed as consent by the Prepetition Secured Lenders to any other postpetition financing or cash collateral facility, or as an admission or evidence that any adequate protection provided herein would be sufficient adequate protection in respect thereof. The DIP Lenders' claims, superpriority claims, security interests and liens and other protections granted

pursuant to the Interim Order or this Final Order and the DIP Loan (including the DIP Liens and DIP Superiority Claim) will not be affected by any subsequent reversal, modification, vacatur or amendment of the Interim Order or this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

N. Business Judgment and Good Faith Pursuant to Section 364(e).

i) The terms and conditions of the DIP Loan, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration;

ii) The DIP Loan was negotiated in good faith and at arm's-length between the Debtors and the DIP Lenders; and

iii) The DIP Loan has been extended by the DIP Lenders to the Debtors in good faith and for valid business purposes and uses and, as such, the DIP Lenders are entitled to the protection and benefits of section 364(e) of the Bankruptcy Code.

O. Relief Essential; Best Interest. The relief requested in the Motion (and provided in the Interim Order and this Final Order) is necessary, essential and appropriate for the continued operation of the Debtors' business and the management and preservation of the Debtors' assets and property. It is in the best interest of the Debtors' estate that the Debtors be allowed to borrow under the DIP Loan, incur the DIP Obligations and use the Cash Collateral as contemplated herein.

NOW, THEREFORE, on the Motion of the Debtors and the record before this Court with respect to the Motion, including the record made during the Interim Hearing, and with the consent of the Debtors, the Prepetition Secured Lenders, and the DIP Lenders, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. Motion Granted. The Motion is granted in accordance with the terms and conditions set forth in this Final Order. Any objections to the Motion with respect to entry of

this Final Order to the extent not withdrawn, waived or otherwise resolved, and all reservations of rights included therein, are hereby denied and overruled.

2. **Approval of the DIP Loan Agreement.** Both the DIP Loan Agreement and the Debtors' entry into and performance pursuant thereto are hereby approved.

3. **DIP Loan.**

(a) **DIP Obligations.** The Debtors are expressly and immediately authorized and empowered to borrow and use the proceeds of the DIP Loan and to incur and to perform the DIP Obligations in accordance with and subject to this Final Order and the Budget, and to take all actions which may be reasonably required or otherwise necessary for the performance by the Debtors hereunder, including the creation and perfection of the DIP Liens described and provided for herein. Subject to the terms of this Order, including paragraph 18(b) hereof, all principal, interest, fees and expenses, indemnities and other amounts described herein as such shall accrue and become due hereunder, including, without limitation, the reasonable fees and expenses of the attorneys and financial and other advisors and consultants of the DIP Lenders as and to the extent provided for herein (collectively, all loans, advances, extensions' of credit, financial accommodations, fees, expenses and other liabilities and obligations (including indemnities and similar obligations) in respect of the DIP Loan Agreement, the "**DIP Obligations**") shall not otherwise be subject to further approval of this Court. For avoidance of doubt and notwithstanding anything to the contrary, (i) the amounts borrowed pursuant to the DIP Loan Agreement to fund the Rollup, once borrowed, shall constitute DIP Obligations, subject to the provisions of paragraphs 9 and 10 hereof, (ii) the DIP Obligations shall not include any other obligations arising under the First Lien Credit Agreement, the Second Lien Credit Agreement, or the Unsecured Credit Agreement and (iii) all references in the DIP Loan Agreement to "Administrative Agent," "Lenders" and "L/C Arranger" shall refer to such parties solely in their capacities as such under, and as parties to, the DIP Loan Agreement. DIP Obligations shall represent, constitute and evidence, as the case may be, valid and binding obligations of the Debtors, enforceable against the Debtors, their estates and any successors

thereto in accordance with their terms. The term of the DIP Loan Agreement commenced on April 24, 2012 (the “**Commencement Date**”) and shall end on the Maturity Date (the earliest to occur of (i) 6 months after the Closing Date, (ii) the effective date of the Borrowers’ Reorganization Plan and (iii) or the closing of the Sale), subject to the terms and conditions set forth herein, including the protections afforded a party acting in good faith under section 364(e) of the Bankruptcy Code.

(b) **Authorization to Borrow.** In order to enable it to continue to operate their businesses, subject to the terms and conditions of this Final Order, the Debtors are hereby authorized under the DIP Loan to borrow up to an aggregate principal amount of \$12,775,000 (the “**DIP Loan Amount**”). The Debtors, the DIP Administrative Agent, and the DIP Lenders shall be entitled to rely in good faith upon this Final Order, notwithstanding objection thereto or appeal therefrom by any interested party so long as such order is not stayed pending appeal. The Debtors, the Agents (as defined in the DIP Loan Agreement), and the DIP Lenders, shall be permitted and required to perform their respective obligations in compliance with the DIP Loan Agreement notwithstanding any such objection or appeal unless the relevant order has been stayed by a court of competent jurisdiction

(i) **DIP Loans.** All Revolving Loans shall bear interest at LIBOR (as defined in the DIP Loan Agreement) plus twelve percent (12.0%) per annum. All computations of interest shall be calculated on the basis of a year of three hundred sixty (360) days for the actual days elapsed. Interest shall accrue from the Closing Date to the date of repayment of the Revolving Loans in accordance with the provisions of the DIP Loan Agreement; provided, however, if a Revolving Loan is repaid on the same day on which it is made, then one (1) day’s interest shall be paid on that Revolving Loan. Any and all interest not paid when due shall thereafter be deemed to be a Revolving Loan made under Section 2.1 of the DIP Loan Agreement and shall bear interest thereafter at fifteen percent (15.0%).

(c) **Maturity.** The DIP Loan shall mature and be paid in full (including all accrued and previously capitalized interest thereon) in cash on the Maturity Date (the earliest to

occur of (i) 6 months after the Closing Date, (ii) the effective date of the Borrowers' Reorganization Plan or (iii) the closing of the Sale).

(d) **DIP Collateral.** As used herein, "DIP Collateral" shall mean, (A) all presently owned and hereafter acquired assets of the Debtors and their estates, and any proceeds and products thereof, including accounts, deposit accounts, cash, as-extracted collateral, chattel paper, investment property, letter-of-credit rights, securities accounts, commercial tort claims, investments, instruments, documents, inventory, contract rights, franchise agreements, general intangibles, intellectual property, real property, fixtures, goods, equipment and other fixed assets and proceeds and products of all of the foregoing (including insurance proceeds), (B) proceeds of avoidance actions solely to the extent arising under Section 549 of the Bankruptcy Code with respect to an asset that is collateral of the Prepetition Secured Lenders, but not under any other section of chapter 5 of the Bankruptcy Code or analogous state law including, without limitation, under sections 502(d), 544, 547, or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law, (C) any rights under Section 506(c) of the Bankruptcy Code and the proceeds thereof during the period of the Budget and for so long as the DIP Administrative Agent and DIP Lenders are funding all amounts set forth in the Budget and such amounts are actually paid, (E) any unencumbered assets of the Debtors, and (F) a pledge, for the benefit of the DIP Administrative Agent and DIP Lenders, of one hundred percent (100%) of the capital stock or other equity interests of each of the Debtors; provided, however, that the DIP Lender shall first satisfy any claims arising from the DIP Loan from the DIP Collateral identified in paragraph 3(e)(II) and (III) hereof.

(e) **DIP Liens.** Subject to the payment of Case Expenses up to the Carve Out Amount, as set forth more fully in this Final Order, the DIP Lenders, effective immediately upon entry of the Interim Order, were granted on an interim basis and, upon entry of this Final Order are granted on a final basis, the following security interests and liens, which shall immediately be valid, binding, perfected, continuing, enforceable and non-avoidable (all liens and security

interests granted to the DIP Lenders pursuant to the Interim Order and this Final Order, the “**DIP Liens**”):

I) pursuant to section 364(c)(2) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable first priority liens on and security interests in all DIP Collateral that was not encumbered by valid, enforceable, perfected and non-avoidable liens as of the Petition Date;

II) pursuant to section 364(c)(3) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable liens on and security interests in (x) all DIP Collateral which is unencumbered by liens securing the Prepetition Secured Debt but on which a third party, *i.e.*, not any Prepetition Secured Lender or Prepetition Administrative Agent (as defined in the DIP Loan Agreement) (each a “**Third Party Lienholder**”), had a pre-existing lien on the Petition Date and (y) all DIP Collateral encumbered by the liens securing the Prepetition Secured Debt on which a Third Party Lienholder had a pre-existing lien on the Petition Date that was senior to the liens securing the Prepetition Secured Debt, in each case junior only to any such liens and security interests of Third Party Lienholders, but solely to the extent that such liens and security interests of Third Party Lienholders were in each case valid, enforceable, perfected and non-avoidable as of the Petition Date and were permitted by the terms of the Prepetition Credit Agreements (the “**Senior Third Party Liens**”); and

III) pursuant to section 364(d) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable liens on and security interests in all collateral securing the Prepetition Secured Debt, which liens and security interests shall be senior to and prime the liens securing the Prepetition Secured Debt and the liens of all Third Party Lienholders which are *pari passu* with or junior and subject to the liens securing the Prepetition Secured Debt.

provided, however, that the DIP Administrative Agent and DIP Lenders shall satisfy any claims arising from the DIP Loan (a) *first* from the DIP Collateral identified in paragraph 3(e)(II)(y) and 2(f)(III) hereof, (b) *second* from the DIP Collateral identified in paragraph 3(e)(II)(x) hereof, and (c) *third* from the DIP Collateral identified in paragraph 3(e)(I) hereof.

(f) **Other Provisions Relating to the DIP Liens.** The DIP Liens shall secure all of the DIP Obligations, subject to the provisions of paragraphs 9 and 10 with respect to the Rollup. The DIP Liens shall not, without the consent of the DIP Lenders, be made subject to, or *pari passu* with, any other lien or security interest, other than to the extent expressly provided herein and to the payment of Case Expenses up to the Carve Out Amount, by any court order heretofore or hereafter entered in these Chapter 11 Cases, and shall be valid and enforceable against any trustee appointed in these Chapter 11 Cases, upon the conversion of these Chapter 11 Cases to a case or cases under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (any "**Successor Case**"), and/or upon the dismissal of these Chapter 11 Cases. It is understood and agreed, and hereby ordered, that, notwithstanding the immediately preceding sentence or anything else to the contrary set forth in this Final Order or in any other order of this Court entered in these Chapter 11 Cases, any amounts advanced or expended by the Prepetition Secured Lenders or the DIP Lenders, in their sole and absolute discretion and without requiring the consent or approval of any other party, after the occurrence and during the continuation of an Event of Default (as defined below), directly or indirectly, to protect, preserve, maintain, market, sell or liquidate the Prepetition Collateral or DIP Collateral, including, without limitation, to fund the Debtors' operations during a Bankruptcy Code section 363 sale process, and any reasonable professional or advisory fees and expenses of Latham & Watkins LLP, any counsel and other advisors, appraisers and/or liquidators retained by the DIP Lenders and the Creditors' Committee (subject to the right of the Debtors, the United States Trustee, Marwit Capital Partners II, L.P. ("**Marwit Capital**") and Creditors' Committee to review and object to such amounts), shall be added to the DIP Obligations for all purposes

hereunder. The DIP Liens and the Adequate Protection Liens shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code.

(g) **Superpriority Administrative Claim Status.** Subject to the provisions of paragraphs 9 and 10 with respect to the Rollup, the DIP Obligations shall, pursuant to section 364(c)(1) of the Bankruptcy Code, at all times constitute an allowed superpriority claim (the "**DIP Superpriority Claim**") of the DIP Lenders and be payable from and have recourse to all DIP Collateral. The DIP Superpriority Claim shall be subject and subordinate only to the payment of Case Expenses up to the Carve Out Amount. Other than as expressly provided herein with respect to the payment of Case Expenses up to the Carve Out Amount, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Bankruptcy Code sections 328, 330 and 331, or otherwise, that have been or may be incurred in these proceedings or in any Successor Case, and no priority claims are, or will be, senior to, prior to or *pari passu* with the DIP Liens, the DIP Superpriority Claim or any of the DIP Obligations, or with any other claims of the DIP Lenders arising hereunder or otherwise in connection with the DIP Loan.

4. **The Budget; Budget Covenants; Events of Default.**

(a) **Budget.** Attached hereto as **Exhibit 1** is a rolling weekly cash flow budget from and including the Petition Date through and including August 24, 2012 (the "**Budget**"). Subject to payment of all Case Expenses up to the Carve Out Amount, the Budget may be amended, supplemented, extended, or otherwise modified from time to time in form and substance to which the Debtors and the DIP Administrative Agent agree in writing, with the consent of the Debtors and the DIP Administrative Agent, and any such amendment, supplement, extension or modification shall be effective without further approval by this Court or notice to any party other than notice to the United States Trustee and the Creditors' Committee. Notwithstanding anything to the contrary herein, the Budget line items for trade payables and Creditors' Committee professional fees shall not be reduced without Creditors' Committee

consent. Debtors shall also not breach or fail to comply with any of the following covenants (the "**Budget Covenants**").

(b) **Budget Covenants.**

(i) **Budget Reconciliation.** Within five (5) business days following the end of each week, the Debtors shall deliver to the DIP Administrative Agent, Marwit Capital and the Creditors' Committee (i) a reconciliation of actual expenditures and disbursements to those set forth in the Budget, on a line-by-line basis showing any variance to the proposed corresponding line item of the Budget, and (ii) a report of receipts, disbursements and cash flow projections (the "**Variance Report**"). In addition, the Debtors shall provide to the DIP Administrative Agent such other reports and information as the DIP Administrative Agent may reasonably request with respect to the Budget.

(ii) **Compliance with Budget.** The Debtors shall be in Compliance (as defined below) with the Budget. The Debtors shall be permitted to carry forward any unused amounts in each line item. "**Compliance**" with the Budget shall be measured weekly and defined as maintenance of compliance with the Budget, subject to the proviso in the prior sentence and within (i) the greater of twenty percent (20%) or \$50,000 deviation with respect to each line item in the Budget category entitled "Total Receipts/Deposits" and (ii) ten percent (10%) deviation with respect to each line item in the Budget category entitled "Total Payments." The Debtors shall not be permitted to carry forward any unused amounts to any other line items.

(iii) **Carve Out for Case Expenses and Payment Thereof.** The Debtors shall be permitted to borrow, and the DIP Lenders shall be obligated to make, any DIP Loans to Debtors necessary to fund any and all Case Expenses up to the Carve Out Amount, including amounts owing to the Clerk of the Bankruptcy Court and the Office of the United States Trustee, which shall be paid as and when due. As and when reflected in the Budget, the Debtor shall transfer sufficient cash in such amounts that would be sufficient to satisfy all fees and expenses required to be paid to Latham & Watkins LLP and Young Conway Stargatt & Taylor LLP and Potter Anderson & Corroon LLP, which shall be held in such firms' respective client trust

accounts, which amounts shall be credited towards the Carve Out Amount and shall be applied to all fees and expenses of such firms as counsel to Debtors in these Chapter 11 Cases approved for payment pursuant to one or more orders of the Bankruptcy Court.

(c) **Events of Default.** Upon the occurrence of an Event of Default, as defined in Section 9.1 of the DIP Loan Agreement⁵ (each an “**Event of Default**” and, collectively, the “**Events of Default**”) the DIP Administrative Agent upon direction of a majority of the DIP Lenders shall, provide the Debtors, the Creditors’ Committee, Marwit Capital and the United States Trustee with a written notice (via email or facsimile, which shall be deemed received when sent by DIP Lenders’ counsel): (i) specifying the Event of Default; (ii) the basis therefor; (iii) informing such parties that the DIP Administrative Agent and the DIP Lenders intend to exercise their remedies under the Interim Order, this Final Order, and the DIP Loan Agreement on the later of five (5) days after the Debtors’ receipt of such notice and the conclusion of the Remedy Hearing (as defined below) (the “**Notice Period**”); and (iv) noticing a hearing (the “**Remedy Hearing**”) at the Court’s earliest availability on no less than three (3) business days’ notice, at which any party-in-interest may contest (x) whether an Event of Default actually occurred or (y) whether the DIP Lenders should be entitled to exercise their remedies, including without limitation foreclosing on the DIP Collateral or exercising other remedies in accordance with the DIP Loan Agreement. Any objection to the Event of Default or the exercise of remedies shall be in writing, filed and served upon the DIP Lenders’ counsel no later than one (1) day prior to the Remedy Hearing. During the Notice Period, the Debtors shall have the right to use Cash Collateral and may seek to continue to use Cash Collateral after the expiration of such period; provided, however, that from and after expiration of the Notice Period, the Debtors’ right to use cash collateral and the DIP Lenders’ obligation to fund amounts set forth in the Budget shall terminate automatically without any further notice or order of the Court, subject to

⁵ Provided that any reference in Section 9.1(g)(ix) of the DIP Loan Agreement to a “Creditor party” shall be deemed to refer to a “Credit Party” as defined therein.

the Court's rulings at the Remedy Hearing. Unless the Bankruptcy Court determines at the Remedy Hearing that an Event of Default has not occurred or that the DIP Lenders should not be allowed to exercise remedies, at the conclusion of the Remedy Hearing, subject to the payment of Case Expenses up to the Carve Out Amount, (A) the DIP Administrative Agent and the Prepetition Secured Parties automatically shall have relief from the automatic stay and the DIP Administrative Agent may foreclose on all or any portion of the DIP Collateral or otherwise exercise such remedies against the DIP Collateral described in subsections (a) through (k) of the Section 9.2 of the DIP Loan Agreement, and other nonbankruptcy law, including, without limitation, the exercise of rights of setoff and all rights and remedies of a secured party under the UCC, and (B) any right of the Debtors to use cash collateral shall cease, unless otherwise ordered by the Court; provided, however, that if an Event of Default is (a) curable (as determined by the DIP Lender in its reasonable discretion) and (b) is in fact cured (as determined by the DIP Lender in its reasonable discretion) within five (5) days of the Debtor's receipt of notice of such Event of Default, then, after such Event of Default is cured (as determined by the DIP Lender in its reasonable discretion), (x) the consensual Cash Collateral use arrangement contained in this Final Order shall resume without any further notice or action (including, without limitation, further notice, motion or application to, order of or hearing before this Court) and (b) the Debtor shall again be entitled to request or use any proceeds of any DIP Loan or DIP Collateral as and to the extent permitted under the documents governing the DIP Loan. For avoidance of doubt, subject to the provisions of paragraph 10 hereof, the DIP Lender shall not be required to fund any amount and no proceeds of the DIP Collateral may be used after the Notice Period and before such Event of Default is cured. In the event this Final Order terminates pursuant to this clause (c), the DIP Collateral will first be used to fund Case Expenses up to the Carve Out Amount pursuant to paragraph 10 below and then to satisfy the DIP Loan pursuant to paragraph 3(c) before being used to satisfy any other obligation, including, without limitation, the Prepetition Secured Debt. Notwithstanding the foregoing, if the DIP Administrative Agent elects to foreclose on all or any portion of the DIP Collateral or otherwise exercise such remedies

against the DIP Collateral described in the DIP Loan Agreement whether because of an Event of Default or otherwise, the DIP Administrative Agent for itself and on behalf of the other DIP Lenders, covenants not to pursue Avoidance Actions (as defined in the DIP Loan Agreement) against any of the Debtors' unsecured trade creditors.

(d) **Payment on First Lien Revolving Loan.** Upon entry of this Final Order, the Debtors shall be authorized to pay up to \$4.9 million to the First Lien Administrative Agent (as defined in the DIP Loan Agreement), on behalf of the First Lien Lenders, consisting of \$1 million of prepetition protective advances and \$3.9 million of over-advances under the First Lien Credit Agreement (the "**Rollup**").

(e) **Enforceable Obligations.** Subject only to the provisions of paragraphs 9 and 10 below and then only with respect to the Prepetition Secured Debt and/or the Rollup, no obligation, payment, transfer or grant of security under this Final Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, 547, 548, or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity. For the avoidance of doubt, if a challenge under the provisions of paragraphs 9 and 10 hereof is successful, then the Prepetition Secured Lenders shall refund the Rollup payment to the Debtors and the Debtors shall immediately repay the entire amount of the Rollup to the DIP Lenders.

5. **Authorization and Approval to Use Cash Collateral and Proceeds of DIP Loan.** Subject to the terms and conditions of this Final Order, and to the adequate protection granted to or for the benefit of the Prepetition Secured Lenders as hereinafter set forth, the Debtors are authorized to (a) use the Cash Collateral and (b) request and use proceeds of the DIP Loan, in each case for the types of expenditures set forth in the Budget. The Budget may only be

amended, supplemented, modified, restated, replaced, or extended with the prior written consent of the DIP Lenders. The Debtors shall provide the Creditors' Committee and the United States Trustee with notice of any modification to the Budget, but the failure to do so shall not affect the validity thereof. Notwithstanding anything herein to the contrary and except as provided in Paragraph 10 hereof, the Debtors' right to request or use proceeds of the DIP Loan or to use Cash Collateral shall terminate on the Maturity Date, including upon written notice being provided by the DIP Lenders to the Debtors and the Creditors' Committee that an Event of Default has occurred and is continuing. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estate outside the ordinary course of business or other proceeds resulting therefrom, except as permitted herein (subject to any required Court approval). The Prepetition Secured Lenders consent to the use of the Prepetition Collateral, including, without limitation, the Cash Collateral, the adequate protection and the priming provided for herein; provided, however, that such consent is expressly conditioned upon the entry of this Final Order and shall not be deemed to extend to any other replacement financing or debtor-in-possession financing other than the DIP Loan or any other use of the Prepetition Collateral, including, without limitation, the Cash Collateral other than as specified herein; and provided, further, that (I) such consent shall be of no force and effect in the event this Final Order is not entered or is entered and subsequently reversed, vacated, stayed or modified (unless such reversal, vacatur, stay or modification is acceptable to the Prepetition Secured Lenders, in their sole discretion) and (II) in the event of the occurrence of the Maturity Date, nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing concerning the continued use of the Prepetition Collateral, including, without limitation, the Cash Collateral, by the Debtors.

6. **Adequate Protection for the Prepetition Secured Lenders.** As adequate protection for the interests of the Prepetition Secured Lenders in the Prepetition Collateral (including Cash Collateral), and subject to the provisions of Paragraphs 9 and 10 hereof, the Prepetition Secured Lenders shall receive adequate protection as follows:

(a) **Adequate Protection Liens.** To the extent of, and in an aggregate amount equal to, the diminution in value of such interests, from and after the Petition Date, calculated in accordance with section 506(a) of the Bankruptcy Code, resulting from, among other things, the use, sale or lease by the Debtors of the Prepetition Collateral (including the use of Cash Collateral), the granting of the DIP Liens, the subordination of the Prepetition Liens thereto and to the payment of Case Expenses up to the Carve Out Amount, or the imposition or enforcement of the automatic stay of section 362(a) (collectively, “**Diminution in Value**”), (i) the First Lien Lenders will have, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, replacement security interests in and liens (the “**First Lien Lenders Adequate Protection Liens**”) upon all of the DIP Collateral, which will be (I) junior and subject to the DIP Liens and Senior Third Party Liens and (II) senior and prior to all other liens thereon and (ii) the Second Lien Lenders will have pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, replacement security interests in and liens (the “**Second Lien Lenders Adequate Protection Liens**” and, together with the First Lien Lenders Adequate Protection Liens, the “**Adequate Protection Liens**”) upon all of the DIP Collateral, which will be (I) junior and subject to the DIP Liens, the First Lien Lenders Adequate Protection Liens, the Prepetition First Liens and Senior Third Party Liens and (II) senior and prior to all other liens thereon. The Adequate Protection Liens will in all cases be subject to the payment of Case Expenses up to the Carve Out Amount.

(b) **Adequate Protection Superpriority Claims.** To the extent of the aggregate Diminution in Value, the First Lien Lenders will have, subject to the payment of Case Expenses up to the Carve Out Amount, an allowed superpriority administrative expense claim (the “**First Lien Lenders Adequate Protection Superpriority Claim**”) as provided for in section 507(b) of the Bankruptcy Code, immediately junior and subject to the DIP Superpriority Claim, and payable from and having recourse to all DIP Collateral (and proceeds thereof) and (ii) the Second Lien Lenders will have, subject to the payment of the payment of Case Expenses up to the Carve Out Amount, an allowed superpriority administrative expense claim (the “**Second Lien Lenders Adequate Protection Superpriority Claim**” and, together with the First Lien

Lenders Adequate Protection Superpriority Claim, the “**Prepetition Secured Lenders Adequate Protection Superpriority Claims**”) as provided for in section 507(b) of the Bankruptcy Code, immediately junior and subject to the DIP Superpriority Claim and the First Lien Lenders Adequate Protection Superpriority Claim, and payable from and having recourse to all DIP Collateral (and proceeds thereof); provided, that neither the First Lien Lenders nor the Second Lien Lenders will receive or retain any payments, property, distribution or other amounts in respect of the First Lien Lenders Adequate Protection Superpriority Claim and the Second Lien Lenders Adequate Protection Superpriority Claim unless and until the DIP Obligations and (without duplication) the DIP Superpriority Claim have indefeasibly been paid in full in cash and otherwise having priority over all administrative expense claims, adequate protection and other diminution claims, unsecured claims and all other claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses or other claims of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, and 1114 or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The Adequate Protection Superpriority Claims will for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered an administrative expense allowed under section 503(b) of the Bankruptcy Code, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof.

7. **Financial Reporting.** The Debtors shall provide the DIP Lenders, the Prepetition Secured Lenders, and the Creditors’ Committee, with copies to their respective counsel, with the monthly financial reporting given to the United States Trustee.

8. **DIP Lien and Adequate Protection Lien Perfection.** Either or both of the Interim Order or this Final Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens and the Adequate Protection Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or

document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens and the Adequate Protection Liens or to entitle the DIP Liens and the Adequate Protection Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Lenders and the Prepetition Secured Lenders may, each in their sole discretion, file such financing statements, mortgages, security agreements, notices of liens and other similar documents, and are hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of these Chapter 11 Cases. The Debtors shall execute and deliver to the DIP Lenders and the Prepetition Secured Lenders all such financing statements, mortgages, security agreements, notices and other documents as the DIP Lenders and the Prepetition Secured Lenders may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens and the Adequate Protection Liens. The DIP Lenders and the Prepetition Secured Lenders, in their discretion, may file a photocopy of the Interim Order and/or this Final Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtors have real or personal property and, in such event, the subject filing or recording officer shall be authorized to file or record such copy of the Interim Order and/or this Final Order. To the extent that the Prepetition Secured Lenders are the secured party under any account control agreements, listed as loss payee under any of the Debtors' insurance policies or is the secured party under any Prepetition Loan Document, the DIP Lenders are also deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such Prepetition Loan Document, and shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of the Interim Order or this Final Order, as applicable. The Prepetition Secured Lenders shall serve

as agent for the DIP Lenders for purposes of perfecting their respective security interests and liens on all DIP Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

9. **Reservation of Rights and Bar of Challenges and Claims.** Any right to (a) object to or challenge any of the Prepetition Secured Lenders' liens or claims, including in relation to (i) the validity, extent, perfection or priority of the Prepetition Liens on the Prepetition Collateral, or (ii) the validity, allowability, enforceability, priority, status or amount of the Prepetition Secured Debt, or (b) bring suit against the Prepetition Secured Lenders and/or the DIP Lenders in connection with or related to the matters covered by any of the Prepetition Secured Lenders liens, the Prepetition Loan Documents, or the Prepetition Secured Debt must be brought by July 6, 2012. Under no circumstances and at no time may a challenge be brought against the DIP Liens granted by the Interim Order or this Order for amounts extended by the DIP Lenders to the Debtors pursuant to the DIP Loan Agreement and the terms of the Interim Order and this Order, except as to the Rollup on the basis of a successful challenge under the immediately preceding sentence.

10. **Release.** Subject to the provisions of paragraph 9 hereof, each Debtor hereby fully, finally and forever releases and discharges the DIP Lenders, together with their respective successors, assigns, directors, officers, employees, agents, representatives and affiliates, in each case, in their capacities as such (each a "**Released Party**"), from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or in equity (each a "**Released Claim**" and, collectively, the "**Released Claims**"), that such each Debtor has or in the future may have, whether known or unknown, but only with respect to those claims for which both of the following are true: (i) the claim is in respect to the DIP Loans, the DIP Loan Agreement, the Loan Documents (as defined in the DIP Loan Agreement), or the actions or omissions of the DIP Lenders in respect of the DIP Loans, the DIP Loan Agreement or the Loan Documents, and (ii) the claim arises from events occurring prior to or on the Closing Date. It is the intention of each Debtor that the above release shall be effective as a

full and final release of each and every matter specifically and generally referred to above. The foregoing to the contrary notwithstanding, none of the Debtors release or discharge any Released Party with respect to any claim that resulted from the fraud, gross negligence or willful misconduct of such Released Party. Notwithstanding anything to the contrary herein, nothing in this release or this Order shall impair the rights of any Creditors' Committee or Marwit Capital to investigate, assert or prosecute any claim, or challenge the validity, allowability, enforceability, priority, status or amount of any Lien or obligation, including but not limited to any claims under section 510(c) of the Bankruptcy Code, relating to or arising from or in connection with the prepetition credit agreements, the Liens securing the Prepetition Secured Debt, or the Rollup, on the basis of a successful challenge to prepetition debt or liens in accordance with paragraph 9, which rights and claims are expressly preserved, provided that any such challenges or claims must be asserted on or before July 6, 2012.

11. **Carve Out Amount.** The liens, claims, interests, obligations, and other rights of: (i) the DIP Lenders, the DIP Administrative Agent and any L/C Arranger as defined in the DIP Loan Agreement (a "**DIP L/C Arranger**"); (ii) the First Lien Administrative Agent, the First Lien Lenders and any L/C Arranger or other party to the First Lien Credit Agreement or Loan Documents (as defined in the First Lien Credit Agreement); and (iii) the Second Lien Administrative Agent (as defined in the DIP Loan Agreement), the Second Lien Lenders, and any L/C Arranger or other party to the Second Lien Credit Agreement or Loan Documents (as defined in the Second Lien Credit Agreement) are jointly, severally, and irrevocably subordinated to the payment of Case Expenses up to the Carve Out Amount. Subject to the terms and conditions contained in this paragraph 10, the DIP Liens, the DIP Superpriority Claim, the Prepetition Liens, the Adequate Protection Liens, and the Adequate Protection Superpriority Claim, which have the relative lien and payment priorities as set forth herein, shall, in any event, in all cases be subject and subordinate to cash in an amount not less than \$500,000 plus the aggregate amount of any and all amounts for Case Expenses set forth in the Budget through August 24, 2012 (the "**Carve Out Amount**"). "**Case Expenses**" means (i) any and all fees

required to be paid to the Clerk of the Bankruptcy Court and the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a), and (ii) any and all fees and expenses of the professionals retained by Debtors and any Creditors' Committee to the extent finally approved by the Court. For the avoidance of any doubt, (i) no success fee, transaction fee, or bonus incurred by the Debtors' investment banker(s) or financial advisors, or any financial advisor retained by the Creditors' Committee, shall be paid from the Carve Out Amount unless and until all other allowed hourly and monthly professional fees and disbursements have been paid in full in cash on a final basis, in all cases subject to the limitations set forth in the Budget and (ii) amounts set forth in the Budget for fees and expenses of estate-retained professionals may be incurred and paid in different Budget periods than reflected in the Budget so long as the aggregate amount of such fees and expenses do not exceed the aggregate amounts budgeted through August 24, 2012. Notwithstanding anything to the contrary, not more than \$35,000 in the aggregate of the Carve Out Amount, any Cash Collateral, or any proceeds of the DIP Loan or DIP Collateral may be used by any Creditors' Committee prior to July 6, 2012 to investigate challenges to the amount and perfection of the Prepetition Secured Lenders' liens. Prepetition Secured Lenders shall have been deemed to have consented to the carve out of DIP Collateral up to the Carve Out Amount.

12. **Payment of Compensation.** Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of the Debtors or any Creditors' Committee or shall limit or otherwise affect the right of the DIP Lenders and/or the Prepetition Secured Lenders to object to the allowance and payment of any such fees and expenses. So long as no Event of Default exists that has not been waived in writing, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code and in accordance with the Budget, with the variations permitted herein, as the same may be due and payable and the same shall not reduce the Carve Out Amount.

13. **Section 506(c) Claims.** As a further condition of the DIP Loan, any obligation of the DIP Lender to make advances under the DIP Loan, and the Debtors' authorization to use the

Cash Collateral, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Cases or any Successor Cases) shall be deemed to have waived during the period of the Budget and so long as DIP Administrative Agent and the DIP Lenders are funding all amounts specified therein, and such amounts are actually paid, any rights, benefits, or causes of action under section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the DIP Lender, the DIP Liens, the DIP Collateral, the Prepetition Secured Lenders, the Adequate Protection Liens, the Prepetition Loan Liens, or the Prepetition Collateral. Nothing contained in the Interim Order or in this Final Order shall be deemed a consent by the Prepetition Secured Lenders or the DIP Lenders to any charge, lien, assessment or claim against, or in respect of, the DIP Collateral or the Prepetition Collateral under section 506(c) of the Bankruptcy Code or otherwise.

14. **Cash Management.** The Debtors' cash management system shall at all times be maintained (i) in accordance with any order of this Court approving the maintenance of the Debtors' cash management system, and (ii) in a manner which in any event shall be reasonably satisfactory to the DIP Lenders. Until the occurrence of an Event of Default, all amounts collected by the Debtors may be used in accordance with this Final Order; after the occurrence and during the continuance of an Event of Default all such amounts shall be applied in accordance with paragraph 16(b).

15. **Survival of Certain Provisions.** In the event of the entry of any order converting these Chapter 11 Cases into a Successor Case, the entirety of this Final Order shall remain in full force and effect. For the avoidance of doubt, the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, and the Adequate Protection Superpriority Claim shall continue in these proceedings and in any Successor Case, and such DIP Liens, DIP Superpriority Claim, Adequate Protection Liens and Adequate Protection Superpriority Claim shall maintain their respective priorities as provided by this Final Order.

16. **Automatic Stay.** The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified as necessary to (i) permit the Debtors to grant the Adequate Protection

Liens and the DIP Liens and to incur all DIP Obligations and all liabilities and obligations to the Prepetition Secured Lenders hereunder, and (ii) authorize the DIP Lenders and the Prepetition Secured Lenders to retain and apply payments, and otherwise enforce their respective rights and remedies hereunder. Nothing included herein shall prejudice, impair, or otherwise affect the Prepetition Secured Lenders' or the DIP Lenders' rights to seek any other or supplemental relief in respect of the Debtors (including, as the case may be, other or additional adequate protection) nor, after an Event of Default and in accordance with paragraph 4(c) of this Final Order, the DIP Lenders' or the Prepetition Secured Lenders' rights to suspend or terminate the making of advances under the DIP Loan or use of Cash Collateral.

17. **Application of Proceeds of Collateral, Payments and Collections.**

(a) As a condition to the DIP Loan and the authorization to use Cash Collateral, the Debtors have agreed that proceeds of any DIP Collateral and Prepetition Collateral, any amounts held on account of the DIP Collateral or Prepetition Collateral, and all payments and collections received by the Debtors with respect to all proceeds of DIP Collateral and Prepetition Collateral, shall be used and applied in accordance with this Final Order (including repayment and reduction of the DIP Obligations).

(b) Subject to the funding of Case Expenses up to the Carve Out Amount, upon and after the occurrence of the Maturity Date all proceeds of DIP Collateral and Prepetition Collateral, whenever received, shall be paid and applied as follows: (i) *first*, to permanently and indefeasibly repay and reduce the DIP Obligations then due and owing in accordance herewith until paid and satisfied in full in cash; (ii) *second*, to permanently and indefeasibly repay and reduce the Prepetition Secured Debt then due and owing in accordance with the Prepetition Loan Documents until paid and satisfied in full in cash; (iii) *third*, to permanently and indefeasibly repay and reduce the prepetition note obligations then due and owing in accordance with the Prepetition Loan Documents until paid and satisfied in full in cash; and (iv) *fourth*, to the Debtors' estate;

(c) For the avoidance of doubt, in the event that it is determined by this Court, for whatever reason, that the Prepetition Secured Lenders did not maintain valid, perfected and enforceable liens on the Prepetition Collateral, the Court reserves the right to reallocate any postpetition payments made to the Prepetition Secured Parties on account of Prepetition Secured Debt and modify any adequate protection liens and adequate protection claims granted pursuant to this Order for the benefit of the Prepetition Secured Parties.

18. **Proofs of Claim.** Neither the DIP Lenders nor the Prepetition Secured Lenders shall be required to file proofs of claim in these Chapter 11 Cases or any Successor Case for any claim allowed herein. Notwithstanding any order entered by this Court in relation to the establishment of a claims bar date in these Chapter 11 Cases or any Successor Case to the contrary, the DIP Lenders and the Prepetition Secured Lenders are hereby authorized and entitled, in each of their sole and absolute discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in these Chapter 11 Cases or any Successor Case for any claim allowed herein. Any order entered by this Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in these Chapter 11 Cases or any Successor Case shall not apply to the DIP Lenders or the Prepetition Secured Lenders (to the extent any such claims pertain to any of the Prepetition Secured Debt).

19. **Other Rights and Obligations.**

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order.** Based on the findings set forth in the Interim Order and/or this Final Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Loan as approved by the Interim Order and/or this Final Order, in the event any or all of the provisions of the Interim Order and/or this Final Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Lenders are entitled to the protections provided in section 364(e) of the Bankruptcy Code, and no such appeal, modification, amendment or vacation shall affect the validity and enforceability of any

advances made hereunder or the liens or priority authorized or created hereby. Notwithstanding any such modification, amendment, or vacation, any claim granted to the DIP Lenders hereunder arising prior to the effective date of such modification, amendment or vacation of any DIP Liens or of the DIP Superpriority Claim granted to or for the benefit of the DIP Lenders shall be governed in all respects by the original provisions of the Interim Order and/or this Final Order, and the DIP Lenders shall be entitled to all of the rights, remedies, privileges, and benefits, including the DIP Liens and the DIP Superpriority Claim granted herein, with respect to any such claim. Because advances under the DIP Loan are made in reliance on the Interim Order and/or this Final Order, the DIP Obligations incurred by the Debtors or owed the DIP Lenders prior to the effective date of any stay, modification or vacation of the Interim Order and/or this Final Order shall not, as a result of any subsequent order in these Chapter 11 Cases or in any Successor Case, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Lenders under the Interim Order and/or this Final Order.

(b) **Expenses of DIP Lenders.** The Debtors shall pay all Expenses (as defined hereinafter), subject to the right of the Debtors, the United States Trustee and the Creditors' Committee to review and object to such Expenses). "**Expenses**" means (i) all reasonable expenses of DIP Administrative Agent, DIP L/C Arranger, and/or any DIP Lender paid or incurred in connection with their due diligence and investigation of Debtors, including appraisal, filing, recording, documentation, publication, and search fees and other such expenses, and all reasonable attorneys' fees and expenses (including reasonable attorneys' fees incurred pursuant to proceedings arising under the Bankruptcy Code) incurred in connection with the structuring, negotiation, drafting, preparation, execution and delivery of the DIP Loan Agreement, the Loan Documents, and any and all other documents, instruments and agreements entered into in connection herewith, provided that such Expenses shall not exceed \$85,000, which amounts were paid by Debtors prior to the Petition Date; (ii) all reasonable expenses of DIP Administrative Agent, DIP L/C Arranger, and/or any DIP Lender, including reasonable

attorneys' fees and expenses (including reasonable attorneys' fees incurred pursuant to proceedings arising under the Bankruptcy Code) paid or incurred in connection with the negotiation, preparation, execution and delivery of any waiver, forbearance, consent, amendment or addition to the DIP Loan Agreement or any Loan Document, or the termination hereof and thereof; (iii) all costs or reasonable expenses paid or advanced by DIP Administrative Agent, DIP L/C Arranger, and/or any DIP Lender which are required to be paid by Debtors under the DIP Loan Agreement or the Loan Documents, including taxes and insurance premiums of every nature and kind of DIP Administrative Agent, DIP L/C Arranger, and/or any DIP Lender; (iv) if an Event of Default occurs, (a) all expenses paid or incurred by DIP Administrative Agent, DIP L/C Arranger, and/or any DIP Lender, including reasonable attorneys' fees and expenses (including reasonable attorneys' fees incurred pursuant to proceedings arising under the Bankruptcy Code), costs of collection, suit, arbitration, judicial reference, and other enforcement proceedings, and any other out-of-pocket expenses incurred in connection therewith or resulting therefrom, whether or not suit is brought, (b) all reasonable expenses paid or incurred by DIP Administrative Agent, DIP L/C Arranger, and/or any DIP Lender or in connection with any refinancing or restructuring of the DIP Obligations, the DIP Loan Agreement, any of the Loan Documents, or any other document, instrument or agreement entered into in connection herewith in the nature of a workout, and (c) the reasonable costs and expenses incurred if DIP Administrative Agent, DIP L/C Arranger, and/or any DIP Lender shall hire or pay someone else to help enforce the DIP Loan Agreement and/or the Loan Documents; and (v) all court costs and such additional fees as may be directed by the Bankruptcy Court.

(c) **Binding Effect.** The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Lenders, the Prepetition Secured Lenders, the Debtors, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estate of the Debtors) whether in these Chapter 11 Cases, in any Successor Case, or upon dismissal of any such Chapter 11 or Chapter 7 case.

(d) **No Waiver.** The failure of the DIP Lenders or the Prepetition Secured Lenders to seek relief or otherwise exercise their rights and remedies under this Final Order or the Prepetition Loan Documents or otherwise, as applicable, shall not constitute a waiver of the DIP Lenders' or the Prepetition Secured Lenders' rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses or remedies of the DIP Lenders or the Prepetition Secured Lenders under the Bankruptcy Code or under non-bankruptcy law against any other person or entity in any court, including without limitation, the rights of the DIP Lenders and the Prepetition Secured Lenders (i) to request conversion of the Case to a case under Chapter 7, dismissal of the Case, or the appointment of a trustee in the Case, or (ii) to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan, or (iii) to exercise any rights, claims or privileges (whether legal, equitable, or otherwise).

(e) **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, third party, or incidental beneficiary.

(f) **Intercreditor Issues.** Nothing in this Final Order shall be construed to convey on the Prepetition Secured Lenders any consent, voting or other rights beyond those (if any) set forth in the Prepetition Loan Documents.

(g) **Impairment.** Notwithstanding anything to the contrary in this Final Order, the Adequate Protection Superpriority Claim may be impaired pursuant to a Chapter 11 plan confirmed in these Chapter 11 Cases with the vote of the Prepetition Secured Lenders so long as the Maturity Date has not occurred.

(h) **Amendment.** Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by, or on behalf of, the Debtors and the DIP Lenders and approved by this Court after notice to parties in interest.

(i) **Priority of Terms.** To the extent of any conflict between or among (a) the express terms or provisions of the Motion, any other order of this Court, or any other agreements, on the one hand, and (b) the terms and provisions of this Final Order, on the other hand, the terms and provisions of this Final Order shall govern.

(j) **Survival of Final Order.** The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any plan in these Chapter 11 Cases, (ii) converting these Chapter 11 Cases to a case or cases under Chapter 7 of the Bankruptcy Code, (iii) to the extent authorized by applicable law, dismissing these Chapter 11 Cases, (iv) withdrawing of the reference of these Chapter 11 Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of these Chapter 11 Cases in this Court. The terms and provisions of this Final Order, including the DIP Liens and DIP Superpriority Claim granted pursuant to the Interim Order and/or this Final Order, and any protections granted to or for the benefit of the Prepetition Secured Lenders (including the Adequate Protection Liens and the Adequate Protection Superpriority Claim), shall continue in full force and effect notwithstanding the entry of such order, and such DIP Liens and DIP Superpriority Claim and protections for the Prepetition Secured Lenders (including the Adequate Protection Liens and the Adequate Protection Superpriority Claim) shall maintain their priority as provided by this Final Order and the Prepetition Loan Documents (as the case may be), including any intercreditor arrangement or agreements in respect thereof, until all of the DIP Obligations and the Prepetition Secured Debt have been indefeasibly paid and satisfied in full in cash and discharged.

(k) **Enforceability.** This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

(l) **No Waivers or Modification of Final Order.** The Debtors irrevocably waive any right to seek any modification or extension of this Final Order without the prior written consent of the DIP Lenders and the Prepetition Secured Lenders, and no such consent

shall be implied by any other action, inaction or acquiescence of the DIP Lenders or the Prepetition Secured Lenders. This Final Order may not be modified to alter the relative lien priority of the DIP Liens, the Prepetition Liens and the Adequate Protection Liens.

(m) **Waiver of any Applicable Stay.** Any applicable stay (including, without limitation, under Bankruptcy Rules 4001 and 6004(h)) is hereby waived and shall not apply to this Final Order.

(n) **Retention of Jurisdiction.** This Court has and will retain jurisdiction to enforce this Final Order according to its terms.

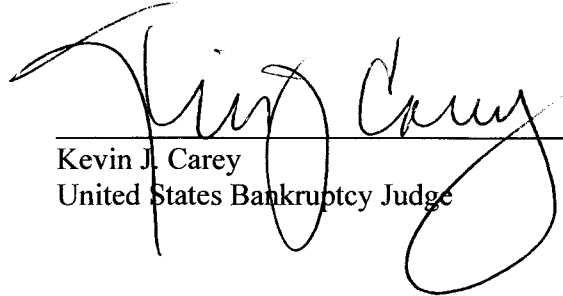
20. Notwithstanding anything contained in this Final Order to the contrary, nothing in this Final Order determines, modifies or affects the rights, claims, priorities or obligations between and among the Debtors, the Prepetition Secured Lenders and any intercreditor rights under the Prepetition Loan Documents.

21. Notwithstanding anything contained in this Final Order to the contrary, nothing in this Final Order shall prejudice the rights of the Debtors, Marwit Capital or the Creditors' Committee to dispute whether a Diminution in Value has occurred, how any such Diminution in Value may be calculated, and, to the extent of any successful challenge under paragraphs 9 and 10 hereof, the effect such challenge to the validity, allowability, enforceability, priority, status or amount of any Prepetition Lien, Prepetition Secured Debt and/or the Rollup, including but not limited to any claims under section 510(c) of the Bankruptcy Code, may have on such Diminution in Value.

22. As required by Local Rule 9013-1(m)(iv), within forty-eight (48) hours of the entry of this Order, or as soon as practicable, the Debtors will serve a copy of this Order on those parties referred to in Local Rule 9013-1(m)(iii).

23. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

Dated: May 4 2012
Wilmington, Delaware



Kevin J. Carey
United States Bankruptcy Judge