

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

In re : Chapter 11
:
ALSET OWNERS, LLC, *et al.*,¹ : Case No. 09- _____ ()
:
Debtors. : (Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER:
(A) APPROVING CONTINUED USE OF EXISTING CASH
MANAGEMENT SYSTEM; (B) AUTHORIZING USE OF
PREPETITION BANK ACCOUNTS AND CHECK STOCK;
(C) WAIVING THE REQUIREMENTS OF 11 U.S.C. § 345(b)
ON AN INTERIM BASIS; AND (D) GRANTING
ADMINISTRATIVE EXPENSE STATUS TO
POSTPETITION INTERCOMPANY TRANSACTIONS**

Alset Owners, LLC, a Delaware limited liability company, and certain of its direct and indirect subsidiaries, debtors and debtors in possession herein (collectively, the “Debtors”) hereby move (the “Motion”) for entry of an order: (a) authorizing and approving the Debtors’ continued use of their existing cash management system; (b) authorizing the Debtors to continue using their prepetition bank accounts and check stock; (c) waiving the requirements of 11 U.S.C. § 345(b) on an interim basis; and (d) granting administrative expense status to any postpetition intercompany claims among the Debtors. In support of the Motion, the Debtors respectfully represent:

¹ The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016).

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105 and 345 of title 11 of the United States Code (the “Bankruptcy Code”).

BACKGROUND

3. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. On the Petition Date, the Debtors jointly filed this Motion along with other motions or applications seeking certain typical “first day” relief, including a request to have these cases jointly administered.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. No trustee or examiner has been appointed in these chapter 11 cases, and no official committee of unsecured creditors has been established to date.

6. The events leading up to the Petition Date and additional facts and circumstances supporting the relief requested herein are set forth in the Declaration of Leonard Levitsky in Support of Chapter 11 Petitions and First Day Relief (the “Levitsky Declaration”), which is fully incorporated herein by reference.²

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Levitsky Declaration.

THE DEBTORS' CASH MANAGEMENT SYSTEM

7. In the ordinary course of their businesses, the Debtors maintain and utilize a number of bank accounts (the "Bank Accounts") in connection with a centralized cash management system (the "Cash Management System"). A demonstrative chart is attached hereto as *Exhibit A*. Through the Bank Accounts and the Cash Management System, the Debtors efficiently collect, transfer and disburse funds generated from the Debtors' operations and record, on a daily basis, such collections, transfers and disbursements.

8. The Cash Management System operates primarily through Bank Accounts maintained at Capital One Bank ("Capital One"), Bank of America ("BOA"), National City Bank ("National City"), Regions Bank ("Regions"), J.P. Morgan Chase Bank ("Chase"), and Fifth Third Bank ("Fifth Third", collectively with Capital One, BOA, National City, Regions, and Chase, the "Banks").

9. In general, as to Altes and Setla, all revenue is deposited in bank drop boxes with BOA, Regions, Chase, and National City situated in Arkansas, Illinois, Ohio and Missouri. On a daily basis, all funds from the bank depository accounts at BOA, Regions, Chase, and National City are swept into master concentration accounts at Capital One Bank.

10. For Altes and Setla, funds remain in the Capital One Concentration Accounts until other accounts with Capital One, Bank of America, or National City need to be funded to honor checks or other payments in respect of operating expenses, payroll, etc., including:

- Two (2) Debtor controlled zero balance disbursement accounts (the "ZBA") at Capital One for Altes and Setla accounts payable.
- two (2) primary payroll accounts (the "Primary Payroll Accounts") at BOA (for Altes payroll) and National City (for Setla payroll).

- one certificate of deposit in the approximate amount of \$22,000 at Capital One containing deposits for Entergy of Arkansas as a backstop to a letter of credit in which Entergy of Arkansas is beneficiary.

11. As to Checkers Michigan, any deposits for sales or other revenue are deposited into a depository account at Fifth Third. Funds remain in the Fifth Third depository account until needed to fund the payroll and accounts payable accounts at Fifth Third. As of the Petition Date, the stores which were operated in Michigan by Checkers Michigan have closed. As a result, there will not be significant activity related to the bank accounts at Fifth Third. However, the bank accounts at Fifth Third must remain open for the foreseeable future to honor wage obligations of employees who were recently laid off in Michigan.

12. Any cash balances remaining in the Capital One Concentration Accounts and Fifth Third depository account are maintained by the respective banks and are not invested.

RELIEF REQUESTED

13. By this Motion, the Debtors seek entry of an order: (a) authorizing the continued use of the Cash Management System; (b) authorizing the continued use of the Debtors' existing bank accounts and check stock; (c) authorizing the Debtors' deposit practices and waiving the requirements of section 345(b) on an interim basis; and (d) granting administrative expense priority status to any postpetition intercompany claims among the Debtors.

CONTINUED USE OF THE DEBTORS' CASH MANAGEMENT SYSTEM IS IN THE BEST INTERESTS OF THE DEBTORS' ESTATES AND CREDITORS AND SHOULD BE AUTHORIZED

14. This Court has the authority to grant the relief requested herein pursuant to its equitable powers under section 105(a) of the Bankruptcy Code. Section 105(a) provides, in relevant part, that "[t]he Court may issue any order, process, or judgment that is necessary or

appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The Debtors should be authorized to continue utilizing their Cash Management System on a postpetition basis.

15. The Cash Management System utilizes the Debtors’ Bank Accounts to effectively and efficiently collect, concentrate and disburse funds as needed in the Debtors’ business operations. The Cash Management System provides significant benefits to the Debtors, including the ability to: (a) closely track and control all corporate funds and any transfers thereof; (b) perform payroll funding; (c) ensure cash availability; and (d) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance information. The Cash Management System also enables the Debtors to trace funds through the system and ensure that all transactions are adequately documented and readily ascertainable. The Debtors will continue to maintain detailed records reflecting all transfers of funds.

16. It is critical that the Debtors Cash Management System remains in place. A disruption in the Cash Management System would likely cause delays in the collection and disbursement of funds, thus impeding the Debtors’ ability to carry out their normal business operations, and would impair the Debtors’ ability to preserve and enhance going concern values and otherwise maximize creditor recoveries through these chapter 11 cases.

**THE DEBTORS SHOULD BE AUTHORIZED TO
MAINTAIN EXISTING BANK ACCOUNTS**

17. The U.S. Trustee for Region 3, who administers bankruptcy cases filed in the District of Delaware, has issued certain chapter 11 operating guidelines pursuant to 28 U.S.C. § 586 (the “Guidelines”). The Guidelines require that chapter 11 debtors, among other things: (a) close all existing bank accounts upon filing of their petitions and open new “debtor-in-

possession” accounts in certain financial institutions designated as authorized depositories by the U.S. Trustee; (b) establish one debtor-in-possession account for all estate monies required for the payment of taxes; and (c) maintain a separate debtor-in-possession account for cash collateral.

18. Rule 2015-2(a) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) provides that the Debtors may, with Court approval, continue to use their existing bank accounts.³

19. The Debtors should not be required to close their Bank Accounts and open new postpetition bank accounts. If enforced in these cases, the Guidelines would cause significant disruption in the Debtors’ businesses and would impair the Debtors’ efforts to maximize creditor recoveries. To avoid delays in collecting and disbursing funds, and to ensure a smooth transition into chapter 11, the Debtors should be permitted to continue to maintain their existing Bank Accounts and, if necessary, open new accounts and close existing Bank Accounts in the normal course of business. The Bank Accounts should be deemed “debtor in possession” accounts, which may be used in the same manner and with the same account numbers, styles and document forms as those employed by the Debtors prepetition.⁴

20. The Debtors will implement appropriate safeguards to ensure that no payments will be made on any debts incurred by them prior to the Petition Date, other than those authorized by this Court. For example, concurrently with the filing of this Motion, the Debtors

³ Local Rule 2015-2(a) states:

Bank Accounts and Checks. Where the debtor uses pre-printed checks, upon motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing checks without the designation “Debtor-In-Possession” and use its existing bank accounts. However, once the debtor’s existing checks have been used, the debtor shall, when reordering checks, require the designation “Debtor-in-Possession” and the corresponding bankruptcy number on all such checks.

⁴ On information and belief, Capital One Bank, Bank of America, National City Bank, Regions Bank, Chase Bank, and Fifth Third Bank are presently authorized depositories with the U.S. Trustee for Region 3.

are filing motions requesting authority to pay certain prepetition obligations to employees, taxing authorities, critical vendors, and other key constituencies in the ordinary course of business. To prevent the possible inadvertent payment of prepetition claims, except those otherwise authorized by the Court, the Debtors will work closely with the Banks to ensure appropriate procedures are in place to prevent checks issued prepetition from being honored absent this Court's approval.

**THE DEBTORS SHOULD BE AUTHORIZED TO
USE EXISTING CHECK STOCK**

21. The Guidelines also require chapter 11 debtors to obtain checks bearing the designation "debtor-in-possession". Local Rule 2015-2(a) provides that the Debtors may, with Court approval, continue to use their existing checks without the designation "Debtor-in-Possession" until such forms are depleted.

22. The Debtors should be authorized to continue to use all check stock existing before the Petition Date, without reference to the Debtors' status as debtors in possession. The Debtors believe that it would be costly and unduly burdensome to cease using all existing check forms, particularly in light of the fact that most if not all parties doing business with the Debtors postpetition will be aware of the Debtors' status as debtors in possession given the publicity surrounding these chapter 11 cases.

**THE DEPOSIT REQUIREMENTS OF 11 U.S.C. § 345(b)
SHOULD BE WAIVED ON AN INTERIM BASIS**

23. Section 345(a) of the Bankruptcy Code authorizes deposits or investments of money that will "yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department agent or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of

the Bankruptcy Code provides that the estate must require from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety. 11 U.S.C. § 345(b). A court may, however, relieve a debtor in possession of the restrictions imposed by section 345(b) for “cause.” 11 U.S.C. § 345(b).

24. In addition, Local Rule 2015-2(b) provides that no waiver of “section 345 shall be granted by the Court, without notice and an opportunity for hearing, in accordance with these Local Rules.” Local Rule 2015-2(b) further provides that “if a motion for such waiver is filed on the first day of a chapter 11 case in which there are more than 200 creditors, the Court may grant an interim waiver until a hearing on the debtor’s motion can be held.”

25. To the extent necessary, the Debtors will establish “cause” for the requested waiver. The Debtors engage in relatively simple banking activities whereby as explained above, deposits from Bank of America, Regions Bank, National City Bank, and J.P. Morgan Chase are swept daily into Capital One Concentration Accounts. Fifth Third Bank deposits are maintained in the Fifth Third Bank Depository Account. None of the monies in any of the bank accounts of the Debtors are invested.

26. The requested waiver also is appropriate on an interim basis under Local Rule 2015-2(b) because this Motion is being filed on the first day of the Debtors’ chapter 11 cases, and because the Debtors have in excess of 200 creditors.

27. For these reasons, the Debtors request that the Court enter an order waiving, on an interim basis, the requirements of section 345(b) for sixty (60) days, without prejudice to the Debtors’ ability to seek a further interim or final waiver, if necessary.

**POSTPETITION INTERCOMPANY TRANSACTIONS SHOULD BE AFFORDED
ADMINISTRATIVE EXPENSE PRIORITY**

28. In the normal course of their businesses, the Debtors among themselves may engage in various intercompany transactions. As of any given date, there are numerous intercompany claims (the “Intercompany Claims”) that reflect intercompany receivables and payables made in the ordinary course between and among the Debtors (the “Intercompany Transactions”). These Intercompany Claims and Intercompany Transactions relate primarily to the following types of transactions and activities:

- Accounts Receivables, Accounts Payables and Payroll. In the ordinary course of business, the Debtors contribute cash and process disbursements through the Cash Management System. Also, in the ordinary course of business, the Debtors may collect cash and disburse funds on behalf of other Debtors. The Debtors account for this intercompany movement of cash in their intercompany books and records.
- Centrally Billed Expenses. In the ordinary course of business, the Debtors incur centrally billed expenses, such as employee medical costs, insurance premiums, certain taxes (including real estate, franchise, sales, etc.) and leased equipment or property. These charges are allocated among the Debtors and are reflected on the Debtors’ intercompany accounts.

29. To ensure that each individual Debtor will not fund at the expense of its creditors the operations of another entity, or be unjustly enriched, all Intercompany Claims against a Debtor by another Debtor arising after the Petition Date as a result of an Intercompany Transaction should be accorded administrative priority expense status pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code.

30. Similar relief has been granted in other comparable chapter 11 cases in this District. *See, e.g., Tropicana Entm’t, LLC*, Case No. 08-10856 (Bankr. D. Del. May 6, 2008) (KJC); *In re Pope & Talbot, Inc.*, Case No. 07-11738 (Bankr. D. Del. Nov. 21, 2007)

(CSS); *In re J.L. French Automotive Castings, Inc.*, Case No. 06-10119 (Bankr. D. Del. Mar. 9, 2006) (MFW).

NOTICE

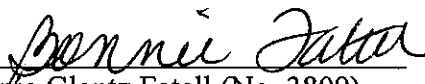
31. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) the United States Securities and Exchange Commission; (c) the Office of the United States Attorney for the District of Delaware; (d) the Internal Revenue Service; (e) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (f) Textron Financial Corporation; (g) counsel to Checkers Drive-In Restaurants, Inc.; and (h) the Banks. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary or required.

WHEREFORE, the Debtors respectfully request that the Court enter an order in substantially the form attached hereto: (a) authorizing and approving the Debtors' continued use of their existing Cash Management System; (b) authorizing the Debtors to continue using prepetition Bank Accounts and check stock; (c) waiving the requirements of section 345(b) on an

interim basis; (d) granting administrative expense status to any postpetition Intercompany Claims by and between the Debtors; and (e) granting such other and further relief as the Court may deem just and proper.

Dated: June ____, 2009

BLANK ROME LLP

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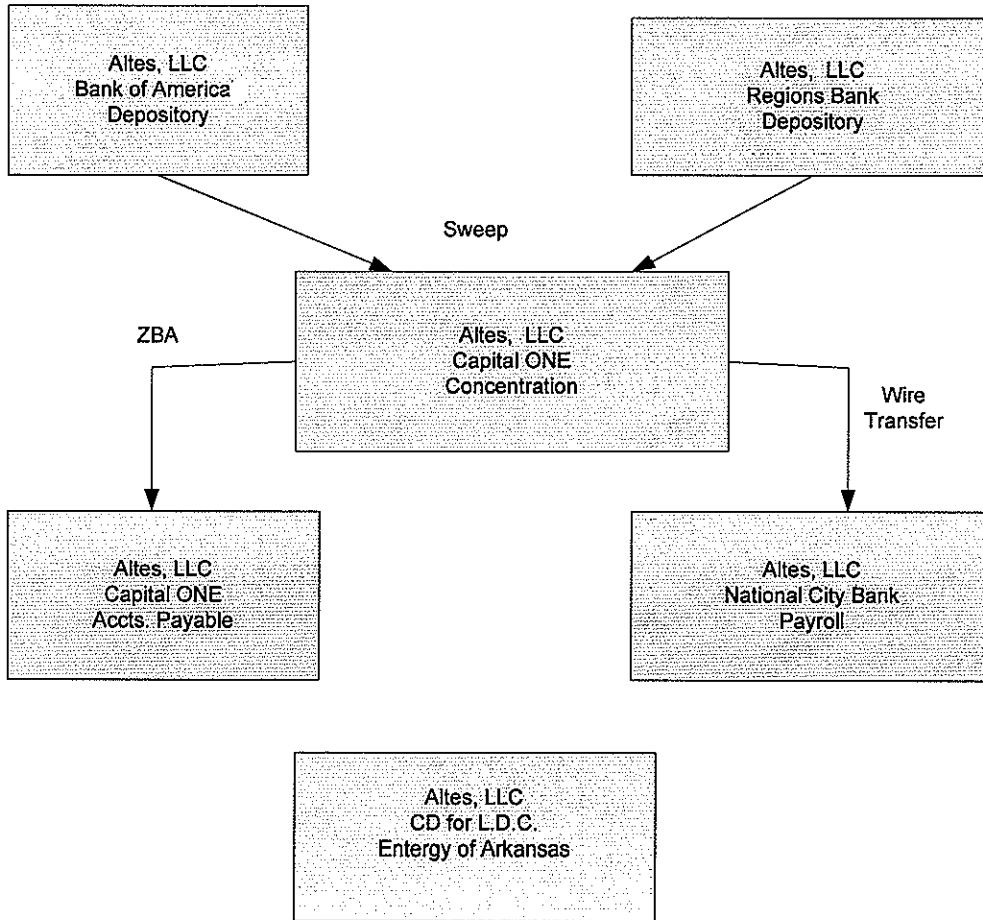
-and-

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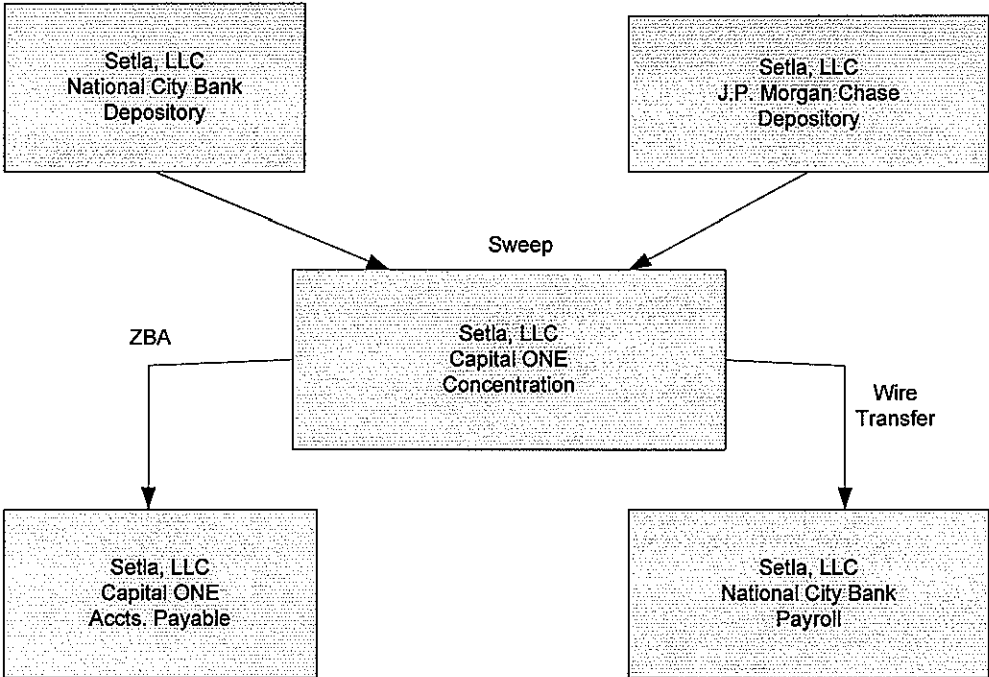
**PROPOSED ATTORNEYS FOR
DEBTORS AND DEBTORS IN
POSSESSION**

EXHIBIT A

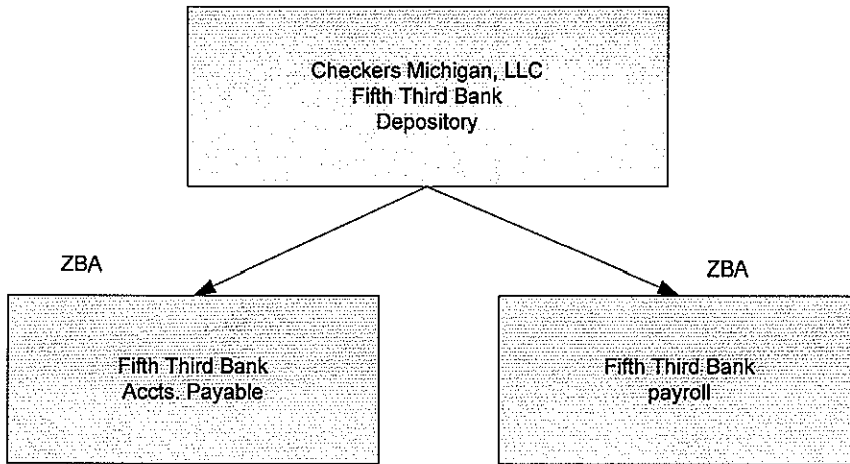
ALTES, LLC



SETLA, LLC



Checkers Michigan, LLC



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

In re : Chapter 11
:
ALSET OWNERS, LLC, *et al.*,¹ : Case No. 09-10465 (KG)
: (Joint Administration Requested)
Debtors. :

ORDER (A) APPROVING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, (B) AUTHORIZING USE OF PREPETITION BANK ACCOUNTS AND CHECK STOCK, (C) WAIVING THE REQUIREMENTS OF 11 U.S.C. § 345(b) ON AN INTERIM BASIS AND (D) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POSTPETITION INTERCOMPANY TRANSACTIONS

Upon the motion of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order: (a) authorizing and approving the Debtors’ continued use of their existing cash management system, (b) authorizing the Debtors to continue using prepetition bank accounts and check stock, (c) waiving the requirements of section 345(b) on an interim basis; and (d) granting administrative expense status to any postpetition intercompany claims between and among the Debtors and between and among the Debtors and their non-Debtor foreign affiliates (the “Motion”)²; and upon consideration of the Motion and all pleadings related thereto, including the Levitsky Declaration; and the Court finding that (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and (c) proper and adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and the Court finding that the relief requested in the Motion is in the best interests of the Debtors, their

¹ The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016).

² Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Motion.

estates and creditors; and after due deliberation, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. The Debtors are authorized, in the reasonable exercise of their business judgment, to: (a) continue using the Debtors' existing Cash Management System; (b) designate, maintain and continue to (i) use, with the same account numbers, all of their Bank Accounts in existence on the Petition Date, which Bank Accounts shall be deemed accounts of the Debtors as debtors in possession, and (ii) if necessary, open new accounts and close existing Bank Accounts in the normal course of business; and (c) use, in their present form, existing check stock related to their Bank Accounts.
3. The Debtors' banks are hereby authorized to continue to service and administer all Bank Accounts without interruption and in the usual and ordinary course, and to receive, process, honor and pay any and all checks and drafts drawn on, or electronic transfer requests made on, the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; provided, however, that any check drawn or issued by the Debtors before the Petition Date may be honored by any bank only if specifically authorized by order of this Court.
4. Each Debtor is authorized to continue to use its existing check stock without alteration and without the designation "Debtor in Possession" imprinted upon them; provided, however, that the Debtors shall replace their existing check stock with new checks identifying their status as debtors in possession as existing check forms are depleted; provided, further, however, that with respect to checks that the Debtors print themselves, the Debtors shall begin

printing such checks with a “Debtor in Possession” designation as soon as practicable after the date this Order is entered.

5. With respect to banks at which the Debtors hold investment accounts that are party to a Uniform Depository Agreement (“UDA”) with the Office of the United States Trustee for the District of Delaware (the “OUST”), the Debtors shall within twenty (20) days of the date of entry of this Order: (a) contact each bank; (b) provide to each bank the Debtors’ employer identification numbers; and (c) identify each of their accounts held at such banks as being held by a debtor in possession in a bankruptcy case.

6. If a Bank Account is closed or if the Debtors open a new bank account, the Debtors shall provide prompt notice of the same to the OUST and any official committee appointed by the OUST.

7. The Debtors are otherwise authorized to deposit funds in accordance with their established deposit practices in effect as of the commencement of these cases and, to the extent such deposit practices are not consistent with the requirements of section 345(b) of the Bankruptcy Code or the OUST’s Guidelines, such requirements are waived for sixty (60) days, on an interim basis only, without prejudice to the Debtors’ right to seek a further interim waiver.

8. The Debtors are authorized to continue to pay intercompany payables, if any, to extend intercompany credit, if necessary, and to continue all other Intercompany Transactions between and among the Debtors in a manner consistent with the Debtors’ prepetition practices.

9. Intercompany Claims created subsequent to the Petition Date through Intercompany Transactions generated between and among the Debtors are hereby granted

administrative expense priority status pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code.

10. The Debtors shall continue to maintain detailed records in the ordinary course of business reflecting transfers of cash, if any, including Intercompany Transfers, so as to permit all such transactions to be readily ascertained.

11. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: June __, 2009

United States Bankruptcy Judge