ORIGINAL

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
COACH AM GROUP HOLDINGS CORP., *et al.*[1]	Case No. 12-10010 (KG)
Debtors.	(Joint Administration Requested)
	Re: Docket No. 20

INTERIM ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364 AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c)

Upon the motion (the "**Motion**"), dated January 3, 2012, of Coach America Holdings, Inc. (the "**Borrower**") and its affiliated debtors, each as debtor and debtor-in-

[1] Coach Am Group Holdings Corp. (4830); Coach Am Holdings Corp. (1816); Coach America Holdings, Inc. (2841); American Coach Lines, Inc. (2470); America Charters, Ltd. (8246); American Coach Lines of Atlanta, Inc. (4003); American Coach Lines of Jacksonville, Inc. (1360); American Coach Lines of Miami, Inc. (7867); American Coach Lines of Orlando, Inc. (0985); Coach America Group, Inc. (2816); B & A Charter Tours, Inc. (9392); Dillon's Bus Service, Inc. (5559); Florida Cruise Connection, Inc. (9409); Hopkins Airport Limousine Services, Inc. (1333); Lakefront Lines, Inc. (5309); The McMahon Transportation Company (0030); Midnight Sun Tours, Inc. (2791); Royal Tours of America, Inc. (2313); Southern Coach Company (6927); Tippet Travel, Inc. (8787); Trykap Airport Services, Inc. (0732); Trykap Transportation Management, Inc. (2727); KBUS Holdings, LLC (6419); ACL Leasing, LLC (2058); CAPD, LLC (4454); Coach America Transportation Solutions, LLC (6909); CUSA, LLC (3523); CUSA ASL, LLC (2030); CUSA AT, LLC (2071); CUSA AWC, LLC (2084); CUSA BCCAE, LLC (2017); CUSA BESS, LLC (3610); CUSA CC, LLC (1999); CUSA CSS, LLC (1244); CUSA EE, LLC (1982); CUSA ELKO, LLC (4648); CUSA ES, LLC (1941); CUSA FL, LLC (1920); CUSA GCBS, LLC (1891); CUSA GCT, LLC (1833); CUSA KBC, LLC (1808); CUSA K-TCS, LLC (1741); CUSA Leasing, LLC (1321); CUSA PCSTC, LLC (1701); CUSA PRTS, LLC (1591); CUSA RAZ, LLC (0640); CUSA Transit Services, LLC (8847); Get A Bus, LLC (1907); Coach BCCAE, L.P. (3488); Coach Leasing BCCAE, L.P. (6784). The Debtors' corporate offices are located at 8150 North Central Expressway, Suite M1000, Dallas, Texas 75206.

possession (collectively, the "**Debtors**")[2], in the above-captioned cases (the "**Cases**") pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"), rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**") seeking, among other things:

(1) authorization for the Borrower to obtain post-petition financing (the "**Financing**"), and for all of the other Debtors (the "**Guarantors**") to guaranty the Borrower's obligations in connection with the Financing, up to the aggregate principal amount of $30,000,000 (the actual available principal amount at any time being subject to those conditions set forth in the DIP Documents (as defined below)), from JPMorgan Chase Bank, N.A. ("**JPMCB**"), acting as Administrative Agent and Collateral Agent (in such capacities, the "**DIP Agent**"), for itself and a syndicate of financial institutions (together with JPMCB, the "**DIP Lenders**") to be arranged by J.P. Morgan Securities LLC (the "**Lead Arranger**");

[2] Debtor Coach AM Group Holdings Corp. is not a Borrower or Guarantor under the DIP Credit Agreement, the Prepetition First Lien Credit Agreement or the Prepetition Second Lien Credit Agreement (each as defined herein). All references to the "Debtors" in this Order refers to all the Debtors identified in footnote one hereof except Coach AM Group Holdings Corp.

(2) authorization for the Debtors to execute and enter into the DIP Documents and to perform such other and further acts as may be required in connection with the DIP Documents;

(3) the granting of adequate protection to the lenders (the "**Pre-Petition First Lien Lenders**") under or in connection with that certain Amended and Restated First Lien Credit Agreement dated as of April 20, 2007 and amended and restated as of February 18, 2011 (as heretofore amended, supplemented or otherwise modified, the "**Pre-Petition First Lien Credit Agreement**"), among Coach Am Holdings Corp. ("**Holdings**"), the Borrower, the lenders listed therein, the letter of credit issuing bank(s) named therein and JPMCB, as administrative agent for the Pre-Petition First Lien Lenders (the "**Pre-Petition First Lien Agent**"), and that certain First Lien Guarantee and Collateral Agreement dated as of April 20, 2007 and amended and restated as of as of February 18, 2011 among Holdings, the Borrower, each subsidiary party thereto and JPMCB as Collateral Agent (as heretofore amended, supplemented or otherwise modified, the "**First Lien Security Agreement**" and, collectively with the Pre-Petition First Lien Credit Agreement, and the mortgages and all other documentation executed in connection therewith (including, for the avoidance of doubt, any Specified Hedge Agreements (as defined in the Pre-Petition First Lien Credit Agreement), if any), the "**Existing First**

Lien Agreements"), whose liens and security interests are being primed by the Financing;

(4) the granting of adequate protection to the lenders (the "**Pre-Petition Second Lien Lenders**" and, together with the Pre-Petition First Lien Lenders, the "**Pre-Petition Lenders**") under or in connection with that certain Amended and Restated Second Lien Credit Agreement dated as of April 20, 2007 and amended and restated as of February 18, 2011 (as heretofore amended, supplemented or otherwise modified, the "**Pre-Petition Second Lien Credit Agreement**" and, together with the Pre-Petition First Lien Credit Agreement, the "**Pre-Petition Credit Agreements**"), among Holdings, the Borrower, the lenders listed therein and Bank of New York Mellon ("**BONY**"), as administrative agent for the Pre-Petition Second Lien Lenders (together with the Pre-Petition First Lien Agent, the "**Pre-Petition Agents**"), and that certain Second Lien Guarantee and Collateral Agreement dated as of April 20, 2007 and amended and restated as of as of February 18, 2011 among Holdings, the Borrower, each subsidiary party thereto and BONY, as Collateral Agent (as heretofore amended, supplemented or otherwise modified and, collectively with the Pre-Petition Second Lien Credit Agreement, and the mortgages and all other documentation executed in connection therewith, the "**Existing Second Lien Agreements**" and, together with the Existing

First Lien Agreements, the "**Existing Agreements**"), whose liens and security interests are being primed by the Financing;

(5) authorization for the Debtors to use Cash Collateral (as defined below) and all other collateral in which the Pre-Petition Lenders have an interest, and the granting of adequate protection to the Pre-Petition Lenders with respect to, *inter alia*, such use of their Cash Collateral and all use and diminution in the value of the Pre-Petition Collateral (as defined below);

(6) approval of certain stipulations by the Debtors with respect to the Existing Agreements and the liens and security interests arising therefrom;

(7) the granting of superpriority claims to the DIP Lenders payable from, and having recourse to, all pre-petition and post-petition property of the Debtors' estates and all proceeds thereof (including, subject only to and effective upon entry of the Final Order (as defined below), any Avoidance Proceeds (as defined below)), subject to the Carve Out (as defined below);

(8) subject only to and effective upon entry of the Final Order, the limitation of the Debtors' right to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code;

(9) pursuant to Bankruptcy Rule 4001, that an interim hearing (the "**Interim Hearing**") on the Motion be held before this Court to

consider entry of the proposed interim order annexed to the Motion (the "**Interim Order**") (a) authorizing the Borrower, on an interim basis, to forthwith borrow up to an aggregate principal amount of up to $14,828,000 under a revolving credit facility (the "**DIP Facility**") to pay amounts set forth in the Approved Budget (as defined in the DIP Credit Agreement), (b) authorizing the Debtors' use of Cash Collateral and all other collateral and (c) granting the adequate protection described herein; and

(10) that this Court schedule a final hearing (the "**Final Hearing**") to be held within 30 days of the entry of this Order to consider entry of a final order authorizing the balance of the borrowings under the DIP Documents on a final basis, as set forth in the Motion and the DIP Documents filed with this Court (the "**Final Order**").

Due and appropriate notice of the Motion, the relief requested therein and the Interim Hearing having been served by the Debtors on the thirty largest unsecured creditors of each of the Debtors, the DIP Agent, the DIP Lenders, the Pre-Petition Agents, the Pre-Petition Lenders, the United States Trustee for the District of Delaware, the landlords under each of the Debtors' existing leasehold agreements, all known holders of liens upon the Debtors' assets, and any parties that have filed a notice of appearance in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 and the Internal Revenue Service.

The Interim Hearing having been held by this Court on January [__], 2012.

Upon the record made by the Debtors at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction.* This Court has core jurisdiction over the Cases, this Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* Notice of the Motion, the relief requested therein and the Interim Hearing was served by the Debtors on each of their thirty largest unsecured creditors, the DIP Lenders, the DIP Agent, the Pre-Petition Agents, the Pre-Petition Lenders, the Office of the United States Trustee for the District of Delaware, all known holders of liens upon the Debtors' assets, the landlords under each of the Debtors' existing leasehold agreements, any parties that have filed a notice of appearance in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002, and the Internal Revenue Service. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing. Under the circumstances, the notice given by the Debtors of the Motion and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c) and no further notice of the relief sought at the Interim Hearing is necessary or required.

3. *Debtors' Stipulations.* Without prejudice to the rights of any other party (but subject to the limitations thereon contained in paragraphs 17 and 18 below), the Debtors admit, stipulate and agree that:

(a) (i) as of the filing of the Debtors' chapter 11 petitions (the "**Petition Date**"), the Borrower was indebted and liable to the Pre-Petition First Lien Lenders, without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately $238,338,350.20 in respect of term loans made, in the aggregate principal amount of approximately $24,383,347.39 in respect of revolving loans made, in the aggregate face amount of approximately $6,000,000.00 in respect of revolving letters of credit issued and outstanding and in the aggregate face amount of approximately $50,000,000.00 in respect of funded letters of credit issued and outstanding, in each case, by the Pre-Petition First Lien Lenders pursuant to, and in accordance with the terms of, the Existing First Lien Agreements, plus, in each case, interest thereon and fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the Existing First Lien Agreements), charges and other obligations incurred in connection therewith as provided in the Existing First Lien Agreements (collectively, the "**Pre-Petition First Lien Debt**"), (ii) the Pre-Petition First Lien Debt constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (iii) no portion of the Pre-Petition First Lien Debt is subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (iv) the Debtors do not have, hereby forever release, and are forever barred from bringing, any claims, counterclaims, causes of action, defenses or setoff rights, whether arising under the Bankruptcy Code or otherwise, against the Pre-Petition First Lien

Lenders, the Pre-Petition First Lien Agent and their respective affiliates, agents, officers, directors, employees and attorneys; and

(b) the liens and security interests granted to the Pre-Petition First Lien Agent pursuant to and in connection with the Existing First Lien Agreements (including, without limitation, all security agreements, pledge agreements, mortgages, deeds of trust and other security documents executed by any of the Debtors in favor of the Pre-Petition First Lien Agent, for its benefit and for the benefit of the Pre-Petition First Lien Lenders) in connection with the Existing First Lien Agreements, (i) are valid, binding, perfected, enforceable, first-priority liens and security interests in the personal and real property described in the Existing First Lien Agreements (collectively , the "**Pre-Petition Collateral**"), (ii) are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law, and (iii) are subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve Out (as defined below) to which the DIP Liens are subject and (C) valid, perfected and unavoidable liens permitted under the Existing First Lien Agreements to the extent that such permitted liens are senior to or *pari passu* with the liens of the Pre-Petition First Lien Agent on the Pre-Petition Collateral.

4. *Findings Regarding the Financing.*

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

(b) The Debtors have an immediate need to obtain the Financing and use Cash Collateral (as defined below) in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with

vendors, suppliers and customers, to make payroll, to make capital expenditures and to satisfy other working capital and operational needs. The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, incurrence of new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

(c) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents (as defined below) and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the DIP Agent and the DIP Lenders, subject to the Carve Out as provided for herein, the DIP Liens and the Superpriority Claims (each as defined below) under the terms and conditions set forth in this Order and in the DIP Documents.

(d) The terms of the Financing and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The Financing has been negotiated in good faith and at arm's length among the Debtors, the DIP Agent and the DIP Lenders, and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the

Financing and the DIP Documents, including without limitation, (i) all loans made to the Debtors pursuant to the Superpriority Debtor-in-Possession Credit Agreement substantially in the form attached as Exhibit A to the Motion (the "**DIP Credit Agreement**") and (ii) any Obligations (as defined in the DIP Credit Agreement), including, but not limited to, credit extended in respect of overdrafts and related liabilities and other depository, treasury, and cash management services and other clearing services provided by JPMCB, any DIP Lender or any of their respective affiliates, in each case owing to JPMCB, any DIP Lender or any of their respective banking affiliates, in accordance with the terms of the DIP Documents (all of the foregoing in clauses (i) and (ii) collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Agent and the DIP Lenders and their affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Agent and the DIP Lenders (and the successors and assigns of each) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) The Debtors have requested entry of this Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Rule 4001-2. Absent granting the relief set forth in this Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the Financing and the use of Cash Collateral in accordance with this Order and the DIP Documents are therefore in the best interests of the Debtors' estates.

5. *Authorization of the Financing and the DIP Documents..*

(a) The Debtors are hereby authorized to enter into the DIP Documents (as defined below). The Borrower is hereby authorized to borrow money pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized to guaranty such borrowings and the Borrower's obligations with respect to such borrowings, up to an aggregate principal amount of $14,828,000 (plus interest, fees and other expenses and amounts provided for in the DIP Documents), in accordance with the terms of this Order and the DIP Documents, which borrowings shall be used for all purposes permitted under the DIP Documents, including, without limitation, to provide working capital for the Borrower and the Guarantors and to pay interest, fees and expenses as more fully set out in the Approved Budget (as defined in the DIP Credit Agreement) and in accordance with this Order and the DIP Documents. In addition to such loans and obligations, the Debtors are authorized to incur overdrafts and related liabilities arising from treasury, depository and cash management services, including any automated clearinghouse fund transfers provided to or for the benefit of the Debtors by JPMCB, any DIP Lender or any of their affiliates; *provided, however*, that nothing herein shall require JPMCB or any other party to incur overdrafts or to provide any such services or functions to the Debtors.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all

fees, that may be reasonably required or necessary for the Debtors' performance of their obligations under the Financing, including, without limitation:

(i) the execution, delivery and performance of the Loan Documents (as defined in the DIP Credit Agreement) and any exhibits attached thereto, including, without limitation, the DIP Credit Agreement, the Guarantee and Collateral Agreement (as defined in the DIP Credit Agreement), all related documents and any mortgages contemplated thereby (collectively, and together with the letter agreements referred to in clause (iii) below, the "**DIP Documents**"),

(ii) the execution, delivery and performance of one or more amendments to the DIP Credit Agreement for, among other things, the purpose of adding additional financial institutions as DIP Lenders and reallocating the commitments for the Financing among the DIP Lenders, in each case in such form as the Debtors, the DIP Agent and the DIP Lenders (or any portion thereof as provided in the DIP Documents) may agree (it being understood that no further approval of the Court shall be required for amendments to the DIP Credit Agreement (and any fees paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder or increase the commitments thereunder). Notwithstanding any other provision hereof, without further approval of this Court, amendments to the DIP Documents may be made at any time prior to the earlier of (A) the date that each of the Commitment Parties (as defined in the commitment letter entered into in connection with the Financing) shall no longer hold commitments of certain specified amounts with respect to or loans under the DIP Facility (as set forth in the separate letter agreements entered into in connection with the

Financing) (a "**Successful Syndication**") and (B) the date that is 90 days after the date of the entry of this Order, if and to the extent the Lead Arranger reasonably determines that (i) any such change is necessary to ensure a Successful Syndication or (ii) a Successful Syndication cannot be achieved by the date that is 90 days following the Effective Date (as defined in the DIP Credit Agreement) as contemplated by the separate letter agreements entered into in connection with the Financing,

(iii) the non-refundable payment to the DIP Agent or the DIP Lenders, as the case may be, of the fees and any amounts due in respect of indemnification obligations referred to in the DIP Credit Agreement (and in any separate letter agreement entered into in connection with the Financing) and reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained as provided for in the DIP Documents, without the need to file retention motions or fee applications (provided that the Debtors shall promptly provide copies of invoices received on account of fees and expenses of the professionals retained as provided for in the DIP Documents to the counsel to the Creditors' Committee (as defined below) and the United States Trustee, and this Court shall have exclusive jurisdiction over any objections raised to the invoiced amount of the fees and expenses proposed to be paid, which objections may only be raised within ten business days after receipt thereof provided, further that payment of invoices shall not be delayed based on any such objections and the relevant professional shall only be required to disgorge amounts objected to upon being "so ordered" pursuant to a final order of this Court), and

(iv) the performance of all other acts required under or in connection with the DIP Documents.

(c) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with the terms of the DIP Documents and this Order. No obligation, payment, transfer or grant of security under the DIP Documents or this Order shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff, recoupment or counterclaim.

(d) The Pre-Prepetition Second Lien Agent and the Pre-Petition Second Lien Lenders are deemed to have consented to the use of Cash Collateral and the DIP Facility pursuant to section 6.1 of the Prepetition Intercreditor Agreement (as defined in the DIP Credit Agreement).

6. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed claims against the Debtors (without the need to file any proof of claim) with priority over any and all administrative expenses, diminution claims (including all Adequate Protection Obligations and Junior Adequate Protection Obligations (each as defined below)) and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the

Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject only to and effective upon entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 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, which allowed claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors and all proceeds thereof, subject only to the payment of the Carve Out to the extent specifically provided for herein (collectively, the "**Superpriority Claims**").

(b) For purposes hereof, the "**Carve Out**" means (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code, (ii) after the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement) and after the first business day following the delivery of notice thereof (the "**Carve Out Notice**") to (A) the United States Trustee for the District of Delaware, (B) Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, New Jersey 07068 (Attention: Sharon Levine, Esq.), attorneys for the Debtors, (C) Polsinelli Shughart LLP, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, local counsel for the Debtors (Attention: Christopher A. Ward, Esq.) and (D) counsel for the Official Committee of Unsecured Creditors (the "**Creditors' Committee**") to the extent allowed by this Court at any time, whether before or after delivery of a Carve Out Notice, the payment of accrued and unpaid fees, costs and expenses of professionals retained by the Debtors or the Creditors' Committee (but excluding fees, costs and expenses of third

party professionals employed by such Creditors' Committee's members) (collectively, "**Professional Fees**") incurred prior to the first business day following the delivery of the Carve Out Notice and (iii) Professional Fees incurred on or after the first business day following the delivery of the Carve Out Notice in an aggregate amount not exceeding $600,000 (the "**Carve Out Cap**"), which amount may be used subject to the terms of this Order. For the avoidance of doubt, the dollar limitation on Professional Fees in this clause 6(b)(iii) shall neither be reduced nor increased by the amount of any compensation or reimbursement of Professional Fees incurred, awarded or paid prior to the delivery of a Carve Out Notice, and nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (i), (ii) and (iii) above.

7. *DIP Liens.*

As security for the DIP Obligations, effective and perfected upon the date of this Order and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent of, or over, any Collateral (as defined below), the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders (all property identified in clauses (a), (b) and (c) below being collectively referred to as the "**Collateral**"), subject, only in the event of the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement), to the payment of the Carve Out (all such liens and security interests granted to the DIP Agent, for its benefit

and for the benefit of the DIP Lenders, pursuant to this Order and the DIP Documents, the "**DIP Liens**"):

(a) First Lien on Cash Balances and Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all pre- and post-petition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date or the date acquired (if acquired after the Petition Date) is not subject to valid, perfected and non-avoidable liens (collectively, "**Unencumbered Property**"), including, without limitation, all cash and cash collateral of the Debtors (whether maintained with the DIP Agent or otherwise) and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including, without limitation, post-petition intercompany claims against Debtors), contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds (*provided, however*, that subject to entry of the Final Order and solely with respect to the Debtors' non-residential real property leasehold interests, the Collateral (as defined below) shall not include the Debtors' interest in any non-residential real property leasehold to the extent such lease expressly prohibits the granting of a lien on such leasehold interest, and the Collateral shall only include the proceeds of such leasehold interest from the sale, assignment or other disposition of such leasehold interest), real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries and the proceeds, product, offspring or profits of all the

foregoing. Unencumbered Property shall exclude the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "**Avoidance Actions**"), but subject only to and effective upon entry of the Final Order, shall include any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement or otherwise ("**Avoidance Proceeds**").

(b) Liens Priming Pre-Petition Lenders' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and post-petition property of the Debtors (including, without limitation, cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries and the proceeds, product, offspring or profits of all the foregoing), whether now existing or hereafter acquired, that is subject to the existing liens presently securing the Prepetition Indebtedness (as defined in the DIP Credit Agreement) (including in respect of issued but undrawn letters of credit). Such security interests and liens shall be senior in all respects to the interests in such property of the Pre-Petition Lenders arising from current and future liens of the Pre-Petition Lenders (including, without limitation, adequate protection liens granted hereunder), but shall not be senior to any valid, perfected and unavoidable interests of

other parties arising out of liens, if any, on such property existing immediately prior to the Petition Date, or to any valid, perfected and unavoidable interests in such property arising out of liens to which the liens of the Pre-Petition First Lien Lenders become subject subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all pre- and post-petition property of the Debtors (other than the property described in clauses (a) or (b) of this paragraph 7, as to which the liens and security interests in favor of the DIP Agent will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date, or to any valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which security interests and liens in favor of the DIP Agent are junior to such valid, perfected and unavoidable liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens, the Adequate Protection Liens and the Junior Adequate Protection Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests

granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors.

8. *Protection of DIP Lenders' Rights.*

(a) So long as there are any borrowings or other amounts (other than contingent indemnity obligations as to which no claim has been asserted when all other amounts have been indefeasibly paid in full) outstanding, or the DIP Lenders have any Commitment (as defined in the DIP Credit Agreement) under the DIP Credit Agreement, the Pre-Petition Agents and the Pre-Petition Lenders shall (i) have no right to and take no action to foreclose upon or recover in connection with the liens granted thereto pursuant to the Existing Agreements or this Order, or otherwise seek to exercise or exercise any enforcement rights or remedies against any Collateral or in connection with the Adequate Protection Liens or the Junior Adequate Protection Liens except to the extent authorized by an order of this Court, (ii) be deemed to have consented to any release of Collateral authorized under the DIP Documents, (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the Collateral unless, solely as to this clause (iii), the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date and (iv) deliver or cause to be delivered, at the Debtors' cost and expense, (for which the invoices have previously been provided to the Debtors), any termination statements, releases and/or assignments in favor of the DIP Lenders or other documents

necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of the Collateral subject to any sale or disposition.

(b) The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise, (i) immediately upon the occurrence of an Event of Default (as defined in the DIP Credit Agreement), all rights and remedies under the DIP Documents other than those rights and remedies against the Collateral as provided in clause (ii) below; and (ii) upon the occurrence and during the continuance of such an Event of Default and after the giving of five days' prior written notice to the extent provided for under the DIP Credit Agreement (which shall run concurrently with any notice provided under the DIP Credit Agreement (the "**Default Notice Period**")) to the Debtors, all rights and remedies against the Collateral provided for under the DIP Documents as requiring such notice (including, without limitation, the right to setoff monies of the Debtors in accounts maintained with the DIP Agent or any DIP Lender). In any hearing regarding any exercise of rights or remedies (which hearing must take place within the Default Notice Period), the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and the Debtors, the Pre-Petition Agents and the Pre-Petition Lenders hereby waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights and remedies of the DIP Agent or the DIP Lenders set forth in this Order or the DIP Documents. In no event shall the DIP Agent, the DIP Lenders, the Pre-Petition

Agents or the Pre-Petition Lenders be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to their respective liens and security interests upon and in the Collateral.

(c) No rights, protections or remedies of the DIP Agent or the DIP Lenders granted by the provisions of this Order or the DIP Documents shall be limited, modified or impaired in any way by (i) any actual or purported withdrawal of the consent of any party to the Debtors' use of Cash Collateral, (ii) any actual or purported termination of the Debtors' authority to use Cash Collateral or (iii) the terms of this Order or any other order or stipulation related to the Debtors' use of Cash Collateral or the provision of adequate protection to any party.

9. *Limitation on Charging Expenses Against Collateral.* Subject only to and effective upon entry of the Final Order, except to the extent of the Carve Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent or the Pre-Petition First Lien Agent, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent or the Pre-Petition First Lien Lenders.

10. *The Cash Collateral.* The Pre-Petition Collateral includes cash collateral within the meaning of section 363(a) of the Bankruptcy Code. To the extent that any

funds were on deposit with any Pre-Petition First Lien Lender as of the Petition Date, including, without limitation, all funds deposited in, or credited to, an account of any Debtor with any Pre-Petition First Lien Lender immediately prior to the filing of the Debtors' bankruptcy petitions (the "**Petition Time**") (regardless of whether, as of the Petition Time, such funds had been collected or made available for withdrawal by any such Debtor), the Pre-Petition First Lien Lenders assert, and the Debtors stipulate and agree, that such funds (the "**Deposited Funds**") are subject to rights of setoff. By virtue of such setoff rights, the Deposited Funds are subject to a lien in favor of such Pre-Petition First Lien Lenders pursuant to sections 506(a) and 553 of the Bankruptcy Code. The Pre-Petition First Lien Lenders are obligated, to the extent provided in the Existing First Lien Agreements, to share the benefit of such liens and setoff rights with the other Pre-Petition First Lien Lenders party to such Existing First Lien Agreements. Any proceeds of the Pre-Petition Collateral (including the Deposited Funds or any other funds on deposit at the Pre-Petition First Lien Lenders or at any other institution as of the Petition Date) are additionally cash collateral of the Pre-Petition First Lien Lenders within the meaning of section 363(a) of the Bankruptcy Code. The Deposited Funds, together with such other cash collateral of any of the Pre-Petition First Lien Lenders within the meaning of section 363(a) of the Bankruptcy Code (including, without limitation, all cash proceeds of the Pre-Petition Collateral) are collectively referred to herein as "**Cash Collateral**."

11. *Use of Cash Collateral.* The Debtors are hereby authorized, subject to the terms and conditions of the DIP Documents and this Order, to use all Cash Collateral of

the Pre-Petition First Lien Lenders, and the Pre-Petition First Lien Lenders are directed promptly to turn over to the Debtors all Cash Collateral received or held by them (if any); *provided* that the Pre-Petition First Lien Lenders are granted adequate protection as hereinafter set forth. The Debtors' right to use Cash Collateral shall terminate automatically on the Revolving Termination Date (as defined in the DIP Credit Agreement). In addition, if the Borrower voluntarily terminates the Commitment prior to the Revolving Termination Date, the Debtors shall, for the benefit of the Pre-Petition First Lien Lenders, continue to comply with the requirements of Sections 7 and 8 of the DIP Credit Agreement and, upon any failure by the Debtors to observe any such requirement or upon the occurrence of any event that would have constituted an Event of Default prior to the termination of the Commitment, the Pre-Petition Agent, on behalf of the Pre-Petition First Lien Lenders, shall have the immediate right unilaterally to terminate the Debtors' right to use Cash Collateral upon the giving of five business days' prior written notice (which shall run concurrently with any notice provided under the DIP Documents) to the Debtors, the United States Trustee and any Committee.

12. *Adequate Protection.* The Pre-Petition First Lien Lenders are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in the Pre-Petition Collateral, including the Cash Collateral, for and equal in amount to the aggregate diminution in the value of the Pre-Petition First Lien Lenders' interest in the Pre-Petition Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and any other Pre-Petition Collateral, the priming of the Pre-

Petition First Lien Agent's security interests and liens in the Pre-Petition Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and this Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Pre-Petition First Lien Agent and the Pre-Petition First Lien Lenders, are hereby granted the following (collectively, the "**Adequate Protection Obligations**"):

(a) Adequate Protection Liens. The Pre-Petition First Lien Agent (for itself and for the benefit of the Pre-Petition First Lien Lenders) is hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution or filing by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of such diminution, (1) a replacement security interest in and lien upon all the Collateral, subject and subordinate only to (i) the security interests and liens granted to the DIP Agent for the benefit of the DIP Lenders in this Order and pursuant to the DIP Documents and any liens on the Collateral to which such liens so granted to the DIP Agent are junior and (ii) the Carve Out (such liens securing the Adequate Protection Obligations, the "**Adequate Protection Liens**").

(b) Section 507(b) Claim. The Pre-Petition First Lien Agent and the Pre-Petition First Lien Lenders are hereby granted, subject to the Carve Out, a superpriority claim as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the claims under section 364(c)(1) of the Bankruptcy Code held by the DIP Agent and the DIP Lenders to the extent of any diminution of value of the Pre-

Petition Collateral; *provided, however*, that the Pre-Petition First Lien Agent and the Pre-Petition First Lien Lenders shall not receive or retain any payments, property or other amounts in respect of the superpriority claims under section 507(b) of the Bankruptcy Code granted hereunder or under the Existing First Lien Agreements unless and until the DIP Obligations have indefeasibly been paid in cash in full.

(c) Fees and Expenses. The Pre-Petition First Lien Agent shall receive from the Debtors current cash payments of all fees and expenses payable to the Pre-Petition First Lien Agent under the Existing First Lien Agreements, including, but not limited to, the reasonable fees and disbursements of counsel, financial and other consultants for the Pre-Petition First Lien Agent promptly upon receipt of invoices therefor, but excluding commitment fees, L/C fees (including Funded Letter of Credit Fees (as defined in the Pre-Petition First Lien Credit Agreement)) and fronting fees. The Debtors shall promptly provide copies of such invoices to the counsel to the Creditors' Committee and the U.S. Trustee, and this Court shall have exclusive jurisdiction over any objections raised to the invoiced amount of the fees and expenses proposed to be paid, which objections may only be raised within ten business days after receipt thereof. Payment of invoices shall not be delayed based on any such objections and the relevant professional shall only be required to disgorge amounts objected to upon being "so ordered" pursuant to a final order of this Court.

(d) Monitoring of Collateral. The Pre-Petition First Lien Lenders shall be permitted to retain one financial advisory firm at the expense of the Debtors, which

advisory firm shall be given reasonable access for purposes of monitoring the business of the Debtors and the value of the Collateral.

(e) Information. The Debtors shall provide the Pre-Petition First Lien Agent with any written financial information or periodic reporting that is provided to, or required to be provided to, the DIP Agent or the DIP Lenders.

13. *Junior Adequate Protection.* The Pre-Petition Second Lien Lenders are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in the Pre Petition Collateral, for and equal in amount to the aggregate diminution in value of the Pre-Petition Second Lien Lenders' interests in the Pre Petition Collateral (if any), including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of the Pre Petition Collateral, the priming of the Pre-Petition Second Lien Lenders' security interests and liens in the Pre Petition Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and this Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, the "**Junior Adequate Protection Obligations**").

(a) Junior Adequate Protection Liens. The Pre-Petition Second Lien Agent (for itself and for the benefit of the Pre-Petition Second Lien Lenders) is hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution or filing by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of such diminution, (1) a replacement junior security interest in and lien upon all the Collateral, subject and

subordinate to (i) the security interests and liens granted to the DIP Agent for the benefit of the DIP Lenders in this Order and pursuant to the DIP Documents and any liens on the Collateral to which such liens so granted to the DIP Agent are junior (ii) the Adequate Protection Liens and (iii) the Carve Out (such liens securing the Junior Adequate Protection Obligations, collectively, the "**Junior Adequate Protection Liens**").

(b) Section 507(b) Claim. The Pre-Petition Second Lien Agent and the Pre-Petition Second Lien Lenders are hereby granted, subject to the Carve Out, a superpriority claim as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the claims under section 364(c)(1) of the Bankruptcy Code held by the DIP Agent and the DIP Lenders and the 507(b) superpriority claim granted hereunder to the Pre-Petition First Lien Agent and the Pre-Petition First Lien Lenders; *provided, however*, that the Pre-Petition Second Lien Agent and the Pre-Petition Second Lien Lenders shall not receive or retain any payments, property or other amounts in respect of the superpriority claims under section 507(b) of the Bankruptcy Code granted hereunder or under the Existing Second Lien Agreements unless and until the DIP Obligations have indefeasibly been paid in cash in full.

14. *Reservation of Rights of Pre-Petition First Lien Lenders.* Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Pre-Petition First Lien Lenders. However, the Pre-Petition First Lien Agent and the Pre-Petition First Lien Lenders may request further or different adequate protection, and the

Debtors or any other party may contest any such request. Except as expressly provided herein, nothing contained in this Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to the Pre-Petition First Lien Agent, any Pre-Petition First Lien Lender, the DIP Agent or any DIP Lender including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law.

15. *Perfection of DIP Liens, Adequate Protection Liens and Junior Adequate Protection Liens.*

(a) Subject to the provisions of paragraph 8(a) above, the DIP Agent, the DIP Lenders, the Pre-Petition Agents and the Pre-Petition Lenders are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over assets, or take any other action, in each case, in order to validate and perfect the liens and security interests granted to it hereunder. Whether or not the DIP Agent on behalf of the DIP Lenders or the Pre-Petition Agents on behalf of the Pre-Petition Lenders shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to it hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to

challenge dispute or subordination, at the time and on the date of entry of this Order. Upon the request of the DIP Agent, each of the Pre-Petition First Lien Agent and the Pre-Petition First Lien Lenders, without any further consent of any party, are authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve and enforce the DIP Liens; provided that copies of such instruments shall be provided simultaneously to the Debtors.

(b) A certified copy of this Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Order for filing and recording.

(c) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other post-petition collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting post-petition liens, in such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Agent, DIP Lenders, the Pre-Petition Agents or the Pre-Petition Lenders in accordance with the terms of the DIP Documents or

this Order; *provided, however*, that nothing herein shall prevent or impair any Debtor's ability to reject, assume or assign any lease, contract, license or other agreement; and provided, further, that until entry of the Final Order, and solely with respect to the Debtors' non-residential real property leasehold interests, (i) the DIP Agent and the DIP Lenders shall not be granted liens pursuant to this Order on such leasehold interests, to the extent expressly prohibited by any such lease, but instead the DIP Agent and the DIP Lenders shall be granted fully perfected liens on any and all proceeds of such leasehold interests from the sale, assignment or other disposition of such leasehold interest (without the need for the DIP Agent or the DIP Lenders to take any further actions in connection therewith).

16. *Preservation of Rights Granted Under this Order.*

(a) No claim or lien having a priority superior to or *pari passu* with those granted by this Order to the DIP Agent and the DIP Lenders or to the Pre-Petition First Lien Agent and the Pre-Petition First Lien Lenders, respectively, shall be granted or allowed while any portion of the Financing (or any refinancing thereof) or the Commitments thereunder or the DIP Obligations or the Adequate Protection Obligations remain outstanding, and the DIP Liens and the Adequate Protection Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise, as to each, other than the Carve Out.

(b) Unless all DIP Obligations shall have been indefeasibly paid in full and the Adequate Protection Obligations shall have been paid in full, the Debtors shall not seek, and it shall constitute an Event of Default and terminate the right of the Debtors to use Cash Collateral if any of the Debtors seek, or if there is entered, (i) any modifications or extensions of this Order without the prior written consent of the DIP Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Agent, (ii) an order converting or dismissing any of the Cases; (iii) an order appointing a chapter 11 trustee in any of the Cases; or (iv) an order appointing an examiner with enlarged powers in any of the Cases. If an order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (x) the superpriority claims, priming liens, security interests and replacement security interests granted to the DIP Agent and the DIP Lenders and, as applicable, the Pre-Petition Agents and the Pre-Petition Lenders pursuant to this Order shall continue in full force and effect and shall maintain their priorities as provided in this Order until all DIP Obligations, Adequate Protection Obligations and Junior Adequate Protection Obligations shall have been paid and satisfied in full (and that such Superpriority Claims, priming liens and replacement security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest) and (y) to the extent permissible under applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

(c) If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity of any DIP Obligations, Adequate Protection Obligations or Junior Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent or the Pre-Petition Agents, as applicable, of the effective date of such reversal, modification, vacation or stay or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Credit Agreement with respect to any DIP Obligations. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral or DIP Obligations, Adequate Protection Obligations or Junior Adequate Protection Obligations incurred by the Debtors to the DIP Agent, the DIP Lenders, the Pre-Petition Agents or the Pre-Petition Lenders prior to the actual receipt of written notice by the DIP Agent and the Pre-Petition Agents, as applicable, of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Order, and the DIP Agent, the DIP Lenders, the Pre-Petition Agents and the Pre-Petition Lenders shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Order and pursuant to the DIP Documents with respect to all uses of Cash Collateral and proceeds of the Financing, DIP Obligations, Adequate Protection Obligations and Junior Adequate Protection Obligations.

(d) Except as expressly provided in this Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, and all other rights and remedies of the DIP Agent and the DIP Lenders granted by the provisions of this Order and the DIP

Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission, (ii) the entry of an order approving the sale of any Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the Loan Documents (as defined in the DIP Credit Agreement)) or (iii) the entry of an order confirming a plan of reorganization in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Order and the DIP Documents shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims and all other rights and remedies of the DIP Agent and the DIP Lenders granted by the provisions of this Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full.

17. *Effect of Stipulations on Third Parties.* The stipulations and admissions contained in this Order, including, without limitation, in paragraph 3 of this Order, shall be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) in all circumstances. The stipulations and admissions contained in this Order, including, without limitation, in paragraph 3 of this Order, shall be binding upon all other parties in interest, including, without limitation, any official committee appointed in these cases

(including the Creditors' Committee, a "**Committee**") and any other person or entity acting on behalf of the Debtors' estates, unless (a) a party in interest has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in paragraph 18) by no later than (x) with respect to the Creditors' Committee, the date that is 60 days after the date of its formation, and, with respect to any other party, the date that is 75 days from the entry of this Order or (y) such later date (A) as has been agreed to, in writing, by the Pre-Petition First Lien Agent in its sole discretion or (B) as has been ordered by the Court (the "**Challenge Period**"), (i) challenging the validity, enforceability, priority or extent of the Pre-Petition First Lien Debt or the Pre-Petition First Lien Agents' or the Pre-Petition First Lien Lenders' liens on the Pre-Petition Collateral or (ii) otherwise asserting or prosecuting any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, "**Claims and Defenses**") against the Pre-Petition First Lien Agent or any of the Pre-Petition First Lien Lenders or their affiliates, representatives, attorneys or advisors in connection with matters related to the Existing First Lien Agreements, the Pre-Petition First Lien Debt or the Pre-Petition Collateral, and (b) there is a final order in favor of the plaintiff sustaining any such challenge or claim in any such timely filed adversary proceeding or contested matter; *provided* that, as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date. If no such adversary proceeding or contested matter is timely filed, (w) the Pre-Petition First Lien Debt and all related obligations of the Debtors (the "**Pre-Petition First Lien Obligations**") shall

constitute allowed claims, not subject to counterclaim, setoff, recoupment, subordination, recharacterization, defense or avoidance, for all purposes in the Cases and any subsequent chapter 7 cases, (x) the Pre-Petition First Lien Agent's liens and the Pre-Petition First Lien Lenders' liens on the Pre-Petition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected, not subject to recharacterization, subordination or avoidance and (y) the Pre-Petition First Lien Agent, the Pre-Petition Lenders and the Pre-Petition First Lien Obligations and the Pre-Petition First Lien Agent's liens and the Pre-Petition First Lien Lenders' liens on the Pre-Petition Collateral shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 or 11 trustee appointed or elected for any of the Debtors). In the event the Cases are converted to cases under chapter 7 of the Bankruptcy Code prior to the passage of the Challenge Deadline, the Challenge Deadline shall be extended solely for the chapter 7 trustee appointed in such converted cases to the date that is 45 days from the date of appointment of such chapter 7 trustee. If any such adversary proceeding or contested matter is timely filed, the stipulations and admissions contained in paragraph 3 of this Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any Committee and on any other person or entity, except to the extent that such findings and admissions were expressly challenged in such adversary proceeding or contested matter. Nothing in this Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Committee, standing or authority to pursue any cause of action belonging to the Debtors

or their estates, including, without limitation, Claims and Defenses with respect to the Existing First Lien Agreements or the Pre-Petition First Lien Obligations.

18. *Limitation on Use of Financing Proceeds and Collateral.* Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings, letters of credit, Cash Collateral, Collateral or the Carve Out may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Existing Agreements, or the liens or claims granted under this Order, the DIP Documents or the Existing Agreements, (b) investigate (subject to the following proviso), prosecute or assert any Claims and Defenses or causes of action against the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent or the Pre-Petition First Lien Lenders or their respective agents, affiliates, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Agent's or the Pre-Petition First Lien Agent's assertion, enforcement or realization on the Cash Collateral or the Collateral in accordance with the DIP Documents, the Existing Agreements or this Order, (d) seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent or the Pre-Petition First Lien Lenders hereunder or under the DIP Documents or the Existing First Lien Agreements, in each of the foregoing cases without such applicable parties' prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an order of this Court and (ii) in accordance with the DIP Credit Agreement and the Approved Budget (as defined in the DIP Credit Agreement) as approved by the DIP Agent in its sole discretion *provided, however*, that,

advisors to the Creditors' Committee may investigate the liens granted pursuant to the Existing First Lien Agreements at an aggregate expense for such investigation not to exceed $25,000.

19. *Priorities Among Pre-Petition Lenders.* Notwithstanding anything to the contrary herein or in any other order of this Court, in determining the relative priorities and rights of the Pre-Petition Lenders (including, without limitation, the relative priorities and rights of the Pre-Petition Lenders with respect to the Adequate Protection Obligations and the Junior Adequate Protections granted hereunder), such priorities and rights shall continue to be governed by the Existing Agreements, including, without limitation, the Prepetition Intercreditor Agreement (as defined in the DIP Credit Agreement).

20. *Preservation of the Pre-Petition First Lien Agent's Right to Credit Bid.* Subject only to and effective upon entry of the Final Order, the Pre-Petition First Lien Agent shall have the right to credit bid the Pre-Petition First Lien Debt (upon the direction of the Required Lenders (as defined in the Existing First Lien Agreements)) in connection with a sale of any Pre-Petition Collateral conducted pursuant to (i) a plan of reorganization in any of the Cases that is subject to confirmation under section 1129(b)(2)(A) of the Bankruptcy Code (including under clause (iii) thereof), *provided* that all DIP Obligations due and owing as of the effective date of such plan are to be paid in cash in full on such date or (ii) section 363 of the Bankruptcy Code to the extent permitted by the DIP Credit Agreement and section 363(k) of the Bankruptcy Code. No sale of any Pre-Petition Collateral shall constitute a waiver by the Pre-Petition First Lien Agent or any Pre-Petition First Lien Lender of any deficiency claim under any applicable

law, regardless of whether such party consents to or opposes such sale and regardless of whether the Pre-Petition First Lien Debt is credit bid in connection with such sale (unless the entire amount of the Pre-Petition First Lien Obligations is included in such credit bid).

21. *JPMCB as Collateral Agent.* To the extent that JPMCB, in its role as Collateral Agent under the Existing First Lien Agreements, is the secured party under any Control Agreements (as defined in the First Lien Security Agreement), listed as loss payee under the Debtors' insurance policies as required under the First Lien Security Agreement or is the secured party or mortgagee under any other Existing First Lien Agreement, JPMCB, in its role as Collateral Agent under the DIP Credit Agreement, is also deemed to be the secured party under such Control Agreements, loss payee under the Debtors' insurance policies and the secured party or mortgagee under any other Existing First Lien Agreement and shall act in that capacity and shall turn over and distribute any proceeds recovered or received first, for the benefit of the DIP Lenders in accordance with the DIP Credit Agreement and second, subsequent to indefeasible payment in full of all DIP Obligations, for the benefit of the Pre-Petition First Lien Lenders under the Existing First Lien Agreements.

22. *Order Governs.* In the event of any inconsistency between the provisions of this Order and the DIP Documents, the provisions of this Order shall govern.

23. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Agent, the DIP Lenders, the

Pre-Petition Agents, the Pre-Petition Lenders, any Committee and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Pre-Petition Agents, the Pre-Petition Lenders and the Debtors and their respective successors and assigns; *provided, however*, that the DIP Agent and the DIP Lenders shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors and the Pre-Petition First Lien Agent shall have no obligation to consent to the use of its Cash Collateral in connection with any chapter 7 case. In determining to make any loan under the DIP Credit Agreement or in exercising any rights or remedies as and when permitted pursuant to this Order or the DIP Documents, the DIP Agent and the DIP Lenders shall not be deemed to be in control of the operations of or participating in the management of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

24. *Final Hearing*. The Final Hearing is scheduled for Jan. 27, 2012 at 9:30 a.m. before this Court.

25. *Notice*. The Debtors shall promptly mail copies of this Order (which shall constitute adequate notice of the Final Hearing, including without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under section

506(c) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or such Committee's counsel, if the same shall have been appointed. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections, which objections shall be served upon (a) Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, New Jersey 07068 (Attention: Sharon Levine, Esq.), attorneys for the Debtors, (b) Polsinelli Shughart LLP, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, local counsel for the Debtors (Attention: Christopher A. Ward, Esq.), (c) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attention: Brian M. Resnick, Esq.), attorneys for JPMCB as Pre-Petition First Lien Agent and DIP Agent, (d) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, local counsel for JPMCB as Pre-Petition First Lien Agent and DIP Agent (Attention: Mark D. Collins, Esq.) and (e) the Office of the United States Trustee for the District of Delaware, and shall be filed with the Clerk of the United States Bankruptcy Court, District of Delaware, in each case to allow actual receipt by the foregoing no later than January 20 2012 at 4:00 p.m., prevailing Eastern time.

Dated: January 5, 2012
Wilmington, Delaware

HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE