UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

In re	:	**Chapter 11 Case No.**
	:	**06-10179 (B)**
OCA, INC., *et al.*,	:	
	:	**(Jointly Administered)**
Debtors.	:	

FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, AND 364 OF THE BANKRUPTCY CODE (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING AND USE CASH COLLATERAL, (II) GRANTING LIENS, SECURITY INTERESTS AND SUPERPRIORITY CLAIMS, AND (III) GRANTING ADEQUATE PROTECTION

OCA, Inc. ("OCA"), and certain of its direct and indirect subsidiaries (collectively, the "Debtors")[1], having moved on March 14, 2006 (the "Motion") for an order authorizing them to incur post-petition secured indebtedness, to grant security interests and superpriority claims pursuant to sections 105(a), 362, 363 and 364(c) and (d) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") and Rules 2002, 4001 and 9014 of the Federal

[1] Orthodontic Centers of Alabama, Inc. (06-10108); Orthodontic Centers of Arizona, Inc. (06-10181); Orthodontic Centers of Arkansas, Inc. (06-10182); Orthodontic Centers of California, Inc. (06-10183); Orthodontic Centers of Colorado, Inc. (06-10184); Orthodontic Centers of Connecticut, Inc. (06-10185); Orthodontic Centers of Florida, Inc. (06-10186); Orthodontic Centers of Georgia, Inc. (06-10187); Orthodontic Centers of Illinois, Inc. (06-10188); Orthodontic Centers of Indiana, Inc. (06-10189); Orthodontic Centers of Kansas, Inc. (06-10190); Orthodontic Centers of Kentucky, Inc. (06-10191); Orthodontic Centers of Louisiana, Inc. (06-10192); Orthodontic Centers of Maine, Inc. (06-10193); Orthodontic Centers of Maryland, Inc. (06-10194); Orthodontic Centers of Massachusetts, Inc. (06-10195); Orthodontic Centers of Michigan, Inc. (06-10196); Orthodontic Centers of Minnesota, Inc. (06-10197);Orthodontic Centers of Mississippi, Inc. (06-10198); Orthodontic Centers of Missouri, Inc. (06-10199); Orthodontic Centers of Nebraska, Inc. (06-10200);Orthodontic Centers of Nevada, Inc. (06-10201); Orthodontic Centers of New Hampshire, Inc. (06-10202); Orthodontic Centers of New Jersey, Inc. (06-10203); Orthodontic Centers of New Mexico, Inc. (06-10204); Orthodontic Centers of New York (06-10205); Orthodontic Centers of North Carolina, Inc. (06-10206); Orthodontic Centers of North Dakota, Inc. (06-10207); Orthodontic Centers of Ohio, Inc. (06-10208); Orthodontic Centers of Oklahoma, Inc. (06-10209); Orthodontic Centers of Oregon, Inc. (06-10210); Orthodontic Centers of Pennsylvania, Inc. (06-10211); Orthodontic Centers of Puerto Rico, Inc. (06-10212); Orthodontic Centers of Rhode Island, Inc. (06-10213); Orthodontic Centers of South Carolina, Inc. (06-10214); Orthodontic Centers of Tennessee, Inc. (06-10215); Orthodontic Centers of Texas, Inc. (06-10216); Orthodontic Centers of Utah, Inc. (06-10217); Orthodontic Centers of Virginia, Inc. (06-10218); Orthodontic Centers of Washington, Inc. (06-10219); Orthodontic Centers of Washington, D.C., Inc. (06-10220); Orthodontic Centers of West Virginia, Inc. (06-10221); Orthodontic Centers of Wisconsin, Inc. (06-10222); Orthodontic Centers of Wyoming, Inc. (06-10223); OrthAlliance, Inc. (06-10229); OrthAlliance New Image, Inc. (06-10230); OCA Outsource, Inc. (06-10231); PedoAlliance, Inc. (06-10232).

Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and having sought the following relief:

(a) the Court's authorization, pursuant to sections 105(a), 362, 363 and 364(c) and (d) of the Bankruptcy Code and Bankruptcy Rules 2002, 4001 and 9014, for OCA and each of the other Debtors, as Borrowers (the "Borrowers"), to enter into a financing agreement (the "Financing Agreement")[2], a copy of which is attached hereto as Exhibit A, with ~~Silver Point Finance, L.P., Bank of America, N.A. and certain other~~the lenders listed on the signature pages thereof (such lenders, together with any financial institutions that will be party to the Financing Agreement from time to time, ~~(~~each a "DIP Lender," and collectively, the "DIP Lenders"), Bank of America, N.A. (by itself or together with one or more of it affiliates, "Bank of America"), acting as collateral agent for the DIP Lenders (the "Collateral Agent") and as administrative agent for the DIP Lenders (in such capacity, and any successor in such capacity, the "Administrative Agent," and together with the Collateral Agent, each a "DIP Agent," and collectively, the "DIP Agents"), to obtain cash advances, and other extensions of credit, on term and revolving credit bases, in an aggregate principal amount of up to $~~106.70 million, including a letter of credit subfacility (the loans and letters of credit under such facilities,~~ 106,723,334 (the "DIP Loans"), on the terms of the Financing Agreement (together with all documents, agreements, and instruments to be executed or to be filed in connection therewith, the "DIP Loan Documents"), to (i) fund ongoing working capital and general corporate needs of the Debtors during their chapter 11 cases (the "Chapter 11 Cases"), (ii) pay certain of the fees, costs, expenses, and disbursements of professionals retained by the Debtors or any statutory

---

[2] It is agreed and acknowledged that neither OCI, Inc. nor any of its directly held subsidiaries shall be a Borrower or guarantor under the Financing Agreement.

committees appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (the "Committees"), as such fees and expenses may be approved by the Court and subject to the limitations set forth herein, (iii) pay any fees, deposits and expenses (including, without limitation, reasonable attorneys' fees and expenses) owed to the DIP Lenders, the DIP Agents, the Existing Senior Agents (as defined below), the Existing Senior Lenders (as defined below), or otherwise required, and (vi) upon the Final Facility Effective Date (as defined below), refinance ~~up to the principal amount of $75 million of~~ the Existing Senior Lender Indebtedness (as defined below) as set forth below;

(b) the Court's ordering, pursuant to sections 364(c)(1), (2), (3) and 364(d) of the Bankruptcy Code, that the obligations of the Debtors under the DIP Loan Documents (collectively, the "DIP Obligations") are:

i. granted superpriority administrative claim status, having priority over any and all administrative expenses of the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 503(b), 506(c), 507, 546(c), 726 and 1114 of the Bankruptcy Code, subject only, during the occurrence and continuance of an Event of Default[3] or a default hereunder, to the payment of the Carve-Out (as defined in paragraph 11 hereof) on the terms and conditions set forth herein;

ii. secured under section 364(c)(2) by a fully perfected, first priority lien on and senior security interest in all of the property, assets or interests in property or assets of each Debtor and the "estate" (within the meaning of the Bankruptcy Code) of each Debtor of any kind or nature whatsoever, real or personal, now existing or hereafter acquired or created, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable Liens as of the

[3] This and other capitalized but not defined terms shall have the meanings ascribed to them in the Financing Agreement.

Petition Date including, without limitation, all accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights and licenses therefor, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, letter-of-credit rights, supporting obligations, machinery and equipment, real property (including all facilities), fixtures, leases, (and proceeds from the disposition thereof), all (or, in the case of a foreign subsidiary, 65%) of the issued and outstanding capital stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and all of the issued and outstanding capital stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each such subsidiary of such Debtor, all capital stock in third parties directly owned by each such Debtor, money, investment property, deposit accounts, all commercial tort claims and all causes of action arising under the Bankruptcy Code or otherwise (including, without limitation, all avoidance actions under chapter 5 of the Bankruptcy Code and the proceeds thereof and all avoided payments (except as set forth in paragraph 9.(a) below and subject to the provisions of paragraph 35 hereof), Cash Collateral as defined in paragraph G hereof, and all cash and non-cash proceeds, rents, products and profits of any of collateral described above (collectively, the "Unencumbered Collateral"), subject only to (a) any Permitted Priority Liens and (b) during the occurrence and continuance of an Event of Default or a default hereunder, the payment of the Carve-Out;

iii. secured under section 364(d)(1) of the Bankruptcy Code by a fully perfected, first priority priming lien on and senior security interest in all of the property, assets or interests in property or assets of each Debtor and all property of the "estate" (within the meaning of the Bankruptcy Code) of each Debtor, of any kind or nature whatsoever, real or personal, now existing or hereafter acquired or created, that, on or as of the Petition Date, is subject to any

valid, perfected and non-avoidable liens and security interests (all such collateral shall be collectively referred to as, the "Pre-Petition Collateral"), subject only to (a) any Permitted Priority Liens and (b) during the occurrence and continuance of an Event of Default or a default hereunder, payment of the Carve-Out;

iv. secured under section 364(c)(3) of the Bankruptcy Code by a fully perfected, junior lien on and junior security interest in all of the property, assets or interests in property or assets of each Debtor and all property of the "estate" (within the meaning of the Bankruptcy Code) of each Debtor, of any kind or nature whatsoever, real or personal, now existing or hereafter acquired or created, that is subject to any Permitted Priority Liens (collectively, the "Junior Collateral" and, together with the Unencumbered Collateral and the Pre-Petition Collateral, the "Collateral"), subject only to (a) such Permitted Priority Liens and (b) during the occurrence and continuance of an Event of Default or a default hereunder, payment of the Carve-Out; and

(c) the Court's granting junior replacement liens in the Collateral (including any Cash Collateral) to the Existing Senior Agents for the benefit of the Existing Senior Lenders, a superpriority administrative expense claim in the amount of the diminution in the value or amount of the Existing Senior Lenders' interests in the Pre-Petition Collateral to the Existing Senior Lenders, payments of interest, and payments of fees and expenses of the professionals employed by the Existing Senior Agents and Existing Senior Lenders (such payments in the amount and manner described in paragraph 10(c) below) to the Existing Senior Agents for application to the Existing Senior Lender Indebtedness, as adequate protection, on account of the Existing Senior Lenders' consent to priming, for the granting of the senior security interests described in subparagraph (b)(iii) above and the use of Cash Collateral, which liens and claims

shall be subject only to: (i) the Post-Petition Liens (as defined below), (ii) any Permitted Priority Liens, and (iii) during the occurrence and continuance of an Event of Default or a default hereunder, payment of the Carve-Out;

and the Court, on March 17, 2006, after notice and a hearing, having entered an Order (the "Interim Order") approving the Motion on an interim basis; and the Debtors having given notice of the Interim Order and of the hearing to consider the Motion on a final basis (the "Final Hearing") to (i) the United States Trustee for the Eastern District of Louisiana (the "U.S. Trustee"), (ii) counsel to the DIP Lenders, (iii) counsel to any known secured creditors of record, (iv) counsel to the Existing Senior Agents, (v) the twenty largest unsecured creditors of the Debtors, (vi) any known party affected by the terms of the Final Order, (vii) counsel to the Committee ~~of Unsecured Creditors in these cases (the "Committee")~~ and (viii) any other party requesting notice after the entry of the Interim Order; and such notice being sufficient and adequate and no other or further notice being required; and the Final Hearing having been held on May ~~—,~~10, 2006; and based upon all of the pleadings filed with the Court, the evidence presented at the Final Hearing and the entire record herein; and the Court having heard and resolved or overruled all objections to the relief requested in the Motion; and the Court having noted the appearances of all parties in interest; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and after due deliberation and consideration, and sufficient cause appearing therefor:

IT IS HEREBY FOUND:[4]

A. Petition Date. On March 14, 2006 (the "Petition Date"), the Debtors commenced these Chapter 11 Cases by filing voluntary petitions for relief under the Bankruptcy

[4] Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

Code. The debtors are operating their businesses and managing their affairs as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Committee was appointed by the U.S. Trustee on March 24, 2006. No trustee or examiner has been appointed in any of the Chapter 11 Cases.

B. Jurisdiction; Venue. The Court has jurisdiction over these cases, the parties and the Debtors' property pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(D). Venue of the Chapter 11 Cases and the Motion is proper under 28 U.S.C. §§ 1408 and 1409.

C. Pre-Petition Loan Documents. The Debtors are Borrowers or guarantors under that certain Credit Agreement, dated as of January 2, 2003 (as heretofore amended, supplemented or otherwise modified, the "Existing Senior Credit Agreement"), among the various financial institutions party thereto, as lenders (the "Existing Senior Lenders"), and Bank of America, or its successor, in its capacity as the administrative agent to the Existing Senior Lenders and in its capacity as collateral agent to the Existing Senior Lenders (collectively referred herein as the "Existing Senior Agents"). Pursuant to the Existing Senior Credit Agreement and all agreements, documents, notes, mortgages, security agreements, pledges, guarantees, subordination agreements, instruments and any other agreements delivered pursuant thereto or in connection therewith (collectively with Existing Senior Credit Agreement, the "Existing Senior Loan Documents"), the Existing Senior Lenders provided the Debtors with (i) original term loans in the aggregate principal amount of $25 million; and (ii) a revolving credit facility in the aggregate principal amount of $100 million.

D. Pre-Petition Indebtedness. For purposes of this Final Order, the term "Existing Senior Lender Indebtedness" shall mean all amounts owed to the Existing Senior

Agents and the Existing Senior Lenders under the Existing Senior Loan Documents as set forth in Paragraph F.(iii) below (including, without limitation, all Credit Party Obligations as defined in the Existing Senior Credit Agreement) as of the Petition Date. Interest, fees, charges and other costs may continue to accrue after the Petition Date and be allowed as part of the Existing Senior Lender Indebtedness.

E. Prepetition Liens.

Existing Senior Lender Liens. To secure the Existing Senior Lender Indebtedness under the Existing Senior Loan Documents, the Debtors granted the Existing Senior Collateral Agent, for the benefit of the Existing Senior Agents and the Existing Senior Lenders, valid senior security interests in and first priority liens on (collectively, the "Existing Senior Lender Liens") the Pre-Petition Collateral.

F. Debtors' Stipulations.[5] In requesting post-petition financing under the DIP Loan Documents, the Debtors acknowledge, represent, stipulate and agree that:

(i) all of the Debtors have obtained all authorizations, consents and approvals necessary from, and have made all filings with and given all notices to, all federal, state and local governmental agencies, authorities and instrumentalities required to be obtained, made or given by the Debtors in connection with the execution, delivery, performance, validity and enforceability of the DIP Loan Documents to which any Debtor is a party;

(ii) in entering into the DIP Loan Documents and as consideration therefor, the Debtors hereby agree that until such time as all DIP Obligations are indefeasibly paid in full in cash~~, all letters of credit are terminated or cash collateralized~~ and the commitments are

[5] The Court's findings with respect to the Existing Senior Lender Indebtedness and the Debtors' stipulations are without prejudice to, and shall not preclude, bar, estop or result in res judicata with respect to any claims the Committee may seek to prosecute in accordance with paragraphs 12 and 35 of this Final Order.

terminated in accordance with the terms of the DIP Loan Documents, the Debtors shall not in any way prime or seek to prime (*i.e.*, cause to be subordinated) the liens and security interests provided to the DIP Agents, the DIP Lenders, the Existing Senior Agents and the Existing Senior Lenders under this Final Order by offering a subsequent lender or any party-in-interest a superior or *pari passu* lien or claim pursuant to section 364(d) of the Bankruptcy Code, or otherwise, other than with respect to Permitted Priority Liens;

(iii) as of the Petition Date, the aggregate principal amount of the Existing Senior Lender Indebtedness was not less than $91,723,334.00 (inclusive of letters of credit that were issued and outstanding as of the Petition Date), plus accrued and unpaid interest of at least $501,688.57, plus fees, costs, and expenses incurred in connection therewith as provided under the Existing Senior Credit Agreement, including, without limitation, the cash portion of the forbearance fee owing under that certain Seventh Amendment to Credit Agreement and Forbearance (the "Seventh Amendment") equal to $458,616.67, and, except as may be determined in accordance with paragraph 12 hereof, all of the Existing Senior Lender Indebtedness is unconditionally owing by the Debtors to the Existing Senior Agents and the Existing Senior Lenders without offset, defense or counterclaim of any kind, nature and description whatsoever;

(iv) pursuant to the Seventh Amendment, the Existing Senior Lenders are also the holders of warrants to purchase 2,300,000 shares of common stock of OCA (the "Existing Senior Lenders' Equity Interest");

(v) except as may be determined in accordance with paragraph 12 hereof, the Existing Senior Lender Liens (a) constitute valid, binding, enforceable and perfected first priority liens on the Pre-Petition Collateral that, prior to the entry of the Interim Order, were subject only

to those liens described in the Existing Senior Credit Agreement, and (b) are not subject to avoidance, reduction, defense, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law;

(vi) as of the Petition Date, the Debtors have not brought, and are not aware of the potential of, any claims or causes of action against any of the Existing Senior Lenders or Existing Senior Agents;

(vii) as of the Petition Date, there were no other liens on or security interests in the Collateral except for the Permitted Priority Liens and the Existing Senior Lender Liens.

G. Cash Collateral. For purposes of this Final Order, the term "Cash Collateral" shall mean and include all "cash collateral," as defined by section 363 of the Bankruptcy Code, in which the DIP Agents, the DIP Lenders, the Existing Senior Agents, or the Existing Senior Lenders have a lien, security interest, or other interest (including, without limitation, any adequate protection liens or security interests) whether existing on the Petition Date, arising pursuant to this Final Order, or otherwise.

H. Purpose and Necessity of Financing. The Debtors require the financing described in the Motion to fund, among other things, the Debtors' cash requirements for working capital and general corporate needs and for other purposes permitted by the DIP Loan Documents. If the Borrowers do not obtain authorization to borrow under the Financing Agreement, and the DIP Loans are not approved, the Debtors will suffer immediate and irreparable harm. The Debtors are unable to obtain adequate unsecured credit allowable as an administrative expense under section 503 of the Bankruptcy Code, or other financing under sections 364(c) or (d) of the Bankruptcy Code, on equal or more favorable terms than those set forth in the DIP Loan Documents. A loan facility in the amount provided by the DIP Loan

Documents is not available to the Debtors without granting the DIP Lenders superpriority claims, liens and security interests, pursuant to sections 364(c)(1), (2), (3) and 364(d) of the Bankruptcy Code, as provided in this Final Order and the DIP Loan Documents. After considering all alternatives, the Debtors have concluded in the exercise of their prudent business judgment that the loan facility provided under the DIP Loan Documents represents the best working capital financing available to them at this time.

I. Use of Cash Collateral. The Debtors also require the use of Cash Collateral to operate their businesses. Without the use of Cash Collateral, the Debtors will not be able to meet their cash requirements for working capital and general corporate needs. The Existing Senior Agents and the Existing Senior Lenders do not consent to the use of Cash Collateral except on the terms specified herein.

J. Good Cause. The ability of the Debtors to obtain sufficient working capital and liquidity under the DIP Loan Documents and use of Cash Collateral is vital to the Debtors' estates and creditors. The liquidity to be provided under the DIP Loan Documents and through the use of the Cash Collateral will enable the Debtors to continue to operate their businesses in the ordinary course and preserve the value of the Debtors' businesses. The Debtors' estates will be immediately and irreparably harmed if this Final Order is not entered. Good cause has, therefore, been shown for the relief sought in the Motion.

K. Good Faith. The DIP Loan Documents have been negotiated in good faith and at arm's-length by and among the Debtors, the DIP Agents and the DIP Lenders. Any DIP Loans and/or other financial accommodations made to the Debtors by the DIP Agents and the DIP Lenders pursuant to this Final Order and the DIP Loan Documents shall be deemed to have been extended by the DIP Agents and the DIP Lenders in good faith, as that term is used in

section 364(e) of the Bankruptcy Code, and the DIP Agents and the DIP Lenders shall be entitled to all protections afforded thereunder. The terms of the credit facility provided under the DIP Loan Documents are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. In connection with the terms of the DIP Loan Documents, the Debtors shall not engage or retain any professional that is a Creditor (as defined in the Bankruptcy Code) of any of the Debtors.

L. Consideration. All of the Debtors will receive and have received fair and reasonable consideration in exchange for the access to the DIP Loans, the use of Cash Collateral and all other financial accommodations provided under the DIP Loan Documents and this Final Order.

Based upon the foregoing findings, acknowledgements, and conclusions, and upon the record made before this Court at the Final Hearing, and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED:

1. Disposition. The Motion is granted on a final basis, ~~as modified~~on the terms set forth herein. Any objections to the Motion that have not previously been withdrawn or resolved are hereby overruled on their merits. This Final Order shall be valid, binding on all parties-in-interest, and fully effective immediately upon entry notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, and 9014. The terms and provisions of the DIP Loan Documents are approved on a final basis.

2. Term of DIP Loans. The term of this Final Order and the DIP Loan Documents authorized hereunder shall expire, and the DIP Loans made pursuant to the DIP Loan Documents

and this Final Order will mature and, together with all interest thereon and other DIP Obligations, become due and payable (the "Final Maturity Date") on the earliest of (a) September 14, 2006, (b) the earlier of the effective date and the date of substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of a plan of reorganization for the Debtors, and (c) such earlier date on which the DIP Loans and other DIP Obligations become due and payable pursuant to the terms of the DIP Loan Documents and this Final Order by way of acceleration or otherwise.

3. Use of Proceeds from the DIP Loan; Accounts Receivable Payments. Upon the entry of this Final Order, the Debtors are authorized to use proceeds from the DIP Loans in accordance with section 7.01(t) of the Financing Agreement and are further authorized and directed to immediately use proceeds from the DIP Loans in accordance with section 7.01(t) of the Financing Agreement to repay $75,000,000 in aggregate principal amount of the outstanding Existing Senior Lender Indebtedness. Additionally, immediately upon entry of this Final Order, the Debtors are authorized and directed to repay the remaining ~~principal amounts~~ outstanding ~~on the~~ Existing Senior Lender Indebtedness by application of all collections of all accounts receivable until such time as all Existing Senior Lender Indebtedness has been satisfied in full.

4. Authorization to Use Cash Collateral. Subject to the terms of this Final Order and the Budget, the Debtors are authorized to use Cash Collateral in which the DIP Lenders or the Existing Senior Lenders may have an interest, in accordance with the terms, conditions, and limitations set forth in this Final Order and the DIP Loan Documents. The Debtors are hereby authorized to use Cash Collateral in accordance with the Financing Agreement without further approval by the Court. Any dispute in connection with the use of Cash Collateral in accordance with the DIP Loan Documents and the Final Order shall be heard by the Court. Notwithstanding

anything in this Final Order to the contrary, the Debtors' authority to use Cash Collateral shall automatically terminate (subject to the provisions of paragraph 21(b) below) without any further action by this Court, the DIP Lenders or the Existing Senior Lenders, upon the earliest to occur of (the "Cash Collateral Termination Date"): (i) the Debtors' breach of any negative covenant or affirmative covenant under the DIP Loan Documents or if an Event of Default shall have occurred under the DIP Loan Documents, regardless of whether or not the DIP Loan Documents are effective at such time; (ii) such earlier date on which the DIP Loans shall become due and payable in accordance with the terms of this Final Order and the DIP Loan Documents; and (iii) the date on which all commitments have been terminated under this Final Order and the DIP Loan Documents.

5. Fees~~ and Deposit~~. All fees paid and payable and costs and/or expenses reimbursed or reimbursable (including with respect to the advisors to the DIP Agents, DIP Lenders, Existing Senior Agents and/or the Existing Senior Lenders), as set forth in the DIP Loan Documents, by the Debtors to the DIP Lenders or the DIP Agents, or as set forth in this Final Order and payable to the Existing Senior Agents or the Existing Senior Lenders are hereby approved. The Debtors are hereby authorized and directed to pay all such fees, costs and expenses in accordance with the terms of the DIP Loan Documents and this Final Order, without the necessity of the Debtors, the DIP Lenders, the DIP Agents, the Existing Senior Lenders or the Existing Senior Agents filing any further application with the Court for approval or payment of such fees or expenses. Notwithstanding anything to the contrary, payment of fees and expenses to advisors shall be made within two (2) business days of delivery of an invoice to the Debtors.

6. Authority to Execute and Deliver Necessary Documents.

(a) Each of the Debtors is authorized and directed to negotiate, prepare, enter into and deliver the Financing Agreement and the other DIP Loan Documents in each case including any amendments thereto, and including UCC financing statements, pledge and security agreements and mortgages or deeds of trust encumbering all of the Collateral and securing all of the Debtors' obligations under the DIP Loan Documents, including repayment of all DIP Obligations.

(b) Each of the Debtors is hereby further authorized and directed to (i) perform all of its obligations under the DIP Loan Documents and such other agreements as may be required by the DIP Loan Documents to give effect to the terms of the financing provided for therein and in this Final Order and (ii) perform all acts required under the DIP Loan Documents and this Final Order, including, without limitation, the payment of fees and the reimbursement of present and future reasonable costs and expenses (including without limitation, reasonable attorneys' fees and legal expenses) paid or incurred by the DIP Lenders or the DIP Agents as provided for in this Final Order and the DIP Loan Documents. All such unpaid fees, costs and other expenses shall be included and constitute part of the principal amount of the DIP Obligations and be secured by the Post-Petition Liens, except to the extent otherwise provided for in this Final Order and the DIP Loan Documents.

(c) Upon the request of the DIP Agents, the Existing Senior Agents and the Existing Senior Lenders are authorized to make, execute and deliver such instruments (in each case without representation or warranty of any kind) to enable the DIP Agents to further perfect, preserve and enforce the Post-Petition Liens.

(d) All obligations under the DIP Loan Documents shall constitute valid and binding obligations of each of the Debtors enforceable against each of them, and each of their successors and assigns, in accordance with their terms and the terms of this Final Order.

7. Amendments, Consents, Waivers, and Modifications. The Debtors, with the express written consent of the DIP Lenders and, to the extent it affects Cash Collateral or Pre-Petition Collateral, the requisite lenders under the Existing Senior Loan Documents, may enter into any amendments, consents, waivers or modifications to the Financing Agreement and the other DIP Loan Documents without the need for further notice and hearing or any order of this Court, provided that (a) such amendments, consents, waivers or modifications do not materially and adversely affect the rights of any creditor or other party in interest unless any such affected creditor or party in interest consents to such modification or amendment and (b) reasonable notice (taking into account the extant circumstances) is given to the Committee prior to the consummation of any such amendments, consents, waivers or modifications.

8. DIP Lenders Superpriority Claim. The DIP Lenders and the DIP Agents are hereby granted an allowed superpriority administrative expense claim (the "Superpriority Claim") pursuant to section 364(c)(1) of the Bankruptcy Code for all of the DIP Obligations, having priority over any and all administrative expenses of the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 503(b), 506(c), 507, 546(c), 726 and 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. The Superpriority Claim granted in this paragraph shall be subject and subordinate in priority of payment only to the Carve-Out (as defined in paragraph 11 hereof) and subject to the provisions of paragraph 35 hereof; provided, however, that the Superpriority Claim shall not be payable from the proceeds of the

Transferred Avoidance Actions and the Transferred Avoidance Action Proceeds (as such terms are defined in the Official Committee of Unsecured Creditors' Term Sheet (the "OCUC Term Sheet") attached to the Plan Support Agreement (the "Plan Support Agreement") filed with the Court on May 5, 2006). Except as set forth herein, no other superpriority claims shall be granted or allowed in these cases.

9. DIP Lenders' Lien Priority.

(a) To secure the DIP Obligations, the Collateral Agent is hereby granted, for the benefit of the DIP Agents and the DIP Lenders (subject to the provisions of paragraph 35 hereof):

i. a first priority, perfected security interest in, and lien, under section 364(c)(2) of the Bankruptcy Code, upon all of the Unencumbered Collateral and any and all post-petition assets of the estates, including any and all avoidance or other actions arising under chapter 5 of the Bankruptcy Code, except for the Transferred Avoidance Actions and the Transferred Avoidance Actions Proceeds;

ii. a first priority, perfected priming security interest in and lien, under section 364(d)(1) of the Bankruptcy Code, upon all Pre-Petition Collateral, in all cases, senior to any and all present and future liens, claims or encumbrances against the Pre-Petition Collateral, including, without limitation, any and all Existing Senior Lender Liens and the Existing Senior Lender Replacement Liens (as defined below); and

iii. a junior, perfected security interest in and lien, under section 364(c)(3) of the Bankruptcy Code, upon all Junior Collateral (the security interests and liens described in subsection (i), (ii), and (iii) shall collectively be referred to as the "Post-Petition Liens").

(b) The Post-Petition Liens shall only attach to the property of the Debtors' estates, as defined in section 541 of the Bankruptcy Code; provided, however, that nothing in this Final Order shall be considered as an adjudication of what constitutes "property of the estate," and all parties in interest shall preserve their rights to have this issue adjudicated by this Court upon appropriate notice and hearing.

(c) ~~(b)~~ The Post-Petition Liens shall be effective immediately upon the entry of the Interim Order and subject only to the (i) Permitted Priority Liens and (ii) during the occurrence and continuance of an Event of Default or a default hereunder, payment of the Carve-Out.

(d) ~~(c)~~ The Post-Petition Liens shall not at any time be (a) made subject or subordinated to, or made *pari passu* with any other lien, security interest existing as of the Petition Date, or claim created under sections 363 or 364(d) of the Bankruptcy Code or otherwise (except with respect to the Permitted Priority Liens), or (b) subject 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. Notwithstanding the foregoing, no provision herein or in the DIP Loan Documents shall be construed to alter, impair, or otherwise affect the process or requirements for assigning, assuming, or rejecting the Debtors' leases of real property under Section 365 of the Bankruptcy Code.

(e) ~~(d)~~ The Post-Petition Liens shall be and hereby are fully perfected liens and security interests, such that no additional steps need be taken by the DIP Lenders or the DIP Agents to perfect such interests. Any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document or other instrument or agreement that requires the consent or approval of one or more landlords, licensors or other

parties, or requires the payment of any fees or obligations to any governmental entity, non-governmental entity, or any other person, in order for any of the Debtors to pledge, grant, mortgage, sell, assign or otherwise transfer any fee or leasehold interest or the proceeds thereof or other Collateral, is and shall be deemed to be inconsistent with the provisions of the Bankruptcy Code and shall have no force or effect with respect to the transactions granting the DIP Lenders or the DIP Agents a priority security interest in such fee, leasehold or other interest or other Collateral or the proceeds of any assignment, sale or other transfer thereof by any of the Debtors in favor of the DIP Lenders and the DIP Agents in accordance with the terms of the Financing Agreement and the other DIP Loan Documents.

(f) ~~(e)~~ The Post-Petition Liens, Superpriority Claim and other rights and remedies granted to the DIP Lenders and the DIP Agents under this Final Order shall continue in this and in any superseding case or cases under the Bankruptcy Code and such liens and security interests shall maintain their first priority as provided in this Final Order until all the DIP Obligations have been indefeasibly satisfied in full in cash~~, all letters of credit issued under the Financing Agreement have been terminated or cash collateralized,~~ and the DIP Lenders' commitments have been terminated in accordance with the DIP Loan Documents.

10. Adequate Protection for Existing Senior Lenders.

(a) As adequate protection for the use of the Pre-Petition Collateral (including the Cash Collateral) by the Debtors and in accordance with sections 361, 363(e), and 364(d) of the Bankruptcy Code, the Existing Senior Collateral Agent is hereby granted (subject to the provisions of paragraph 35 hereof), for the benefit of the Existing Senior Agents and the Existing Senior Lenders, valid, perfected, second priority post-petition security interests in and liens (the "Existing Senior Lender Replacement Liens") on all of the Collateral, to secure an amount equal

to the aggregate diminution in the value or amount of the Existing Senior Agents' and the Existing Senior Lenders' interest in the Pre-Petition Collateral (including the Cash Collateral), whether by depreciation, use, sale, loss, decline in market price, the imposition of the priming liens to secure the DIP Loans, or otherwise (any such diminution in value, the "Existing Senior Lender Adequate Protection Obligations"), provided, however, that, notwithstanding anything to the contrary, the Existing Senior Lender Replacement Liens shall be and remain subject and subordinate to (i) the Post-Petition Liens and/or payment of any DIP Obligations on account thereof; (ii) the Permitted Priority Liens; and (iii) during the occurrence and continuance of an Event of Default or a default hereunder, payment of the Carve-Out.

(b) To the extent of the Existing Senior Lender Adequate Protection Obligations, the Existing Senior Lenders and Existing Senior Agents are also hereby granted (subject to the provisions of paragraph 35 hereof) superpriority administrative claim (the "Existing Senior Lender Adequate Protection Claim"), having priority over any other claims including claims made pursuant to section 507(b) of the Bankruptcy Code, and junior in priority only to the Superpriority Claim held by the DIP Lenders and the DIP Agents and subject only to the (i) payment of the DIP Obligations, (ii) the Permitted Priority Liens, and (~~ii~~iii) during the occurrence and continuance of an Event of Default or a default hereunder, payment of the Carve-Out.

(c) As further adequate protection for the use of the Pre-Petition Collateral (including Cash Collateral) by the Debtors, and in accordance with sections 361, 363(e), and 364(d) of the Bankruptcy Code, the Existing Senior Lenders shall receive (subject to the provisions of paragraph 35 hereof) from the Debtors (~~in addition to~~i) the immediate payment in cash of all accrued and unpaid interest and expenses, including fees and expenses of each advisor

to the Existing Senior Agents and any of the Existing Senior Lenders accrued through the Petition Date ~~paid~~that was authorized but not made pursuant to the Interim Order, and (ii) monthly payment in cash of all interest and expenses, including fees and expenses of each advisor to the Existing Senior Agents and any of the Existing Senior Lenders, as and when payable under the Existing Senior Loan Documents until all Existing Senior Lender Indebtedness has been paid in full in cash. All payments of interest under this paragraph 10(c) shall be calculated at the default rate provided under the Existing Senior Loan Documents immediately prior to the Petition Date. ~~Payment~~The Debtors are directed to make all payments under this paragraph 10(c) that are past due, if any, immediately upon the entry of this Final Order. Thereafter, payment of fees and expenses to advisors shall be made within two (2) business days of delivery of an invoice to the Debtors. ~~With respect to the Existing Senior Lender Indebtedness, the payments of interests and fees are subject to reclassification or recharacterization as provided by applicable bankruptcy law.~~

(d) As additional adequate protection for the use of the Pre-Petition Collateral (including Cash Collateral) by the Debtors, the Debtors shall remain in compliance with each negative covenant and affirmative covenant under the DIP Loan Documents and an Event of Default shall not have occurred under the DIP Loan Documents. In the event of a Cash Collateral Termination Date, unless ordered otherwise by this Court, the foregoing adequate protection set forth in this paragraph 10 shall be deemed insufficient for the Debtors' continued use of the Pre-Petition Collateral (including Cash Collateral).

(e) Nothing in this Final Order waives any rights of the Existing Senior Agent or the Existing Senior Lenders to request that the Court provide additional or further protection

of their interests in the Pre-Petition Collateral (including Cash Collateral); provided, that nothing in this order waives any rights of the Debtors or the Committee to oppose any such request.

11. Priority Professional Expenses & UST/Clerk Fees Carve-Out.

(a) Upon the occurrence and continuation of an Event of Default or a default in the performance or observance of any of the Debtors' obligations hereunder, payment of any amounts on account of the Existing Senior Lender Indebtedness, the Post-Petition Liens, the Superpriority Claim, the Existing Senior Lender Liens, the Existing Senior Lender Replacement Liens and the Existing Senior Lender Adequate Protection Claim ~~granted herein~~ shall be subject and subordinate only to payment of the "Carve-Out" which means, collectively:

i. amounts payable pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the Clerk of the Court (collectively, the "UST/Clerk Fees");

ii. fees and expenses of attorneys, accountants, and other professionals retained in these Chapter 11 Cases pursuant to sections 327, 328, 330, 331 and 1103 of the Bankruptcy Code by the Debtors and the Committees appointed in these cases inclusive of any holdbacks required by the Court to the extent that such fees and expenses are allowed by the Bankruptcy Court (the "Priority Professional Expenses") incurred but unpaid prior to the Carve-Out Trigger (as defined below); and

iii. Priority Professional Expenses incurred after the Carve-Out Trigger, but only to the extent they do not exceed an aggregate amount (the "Priority Professional Expense Cap") of $500,000 (or the lower amount set forth in a written notice executed and delivered by the Debtors (and agreed to in writing by each of the affected professionals) to each of the DIP Agents notifying the DIP Agents of the reduction of the amount set forth in this clause to the amount set forth in such written notice, in which event the amount

of the Priority Professional Expense Cap for purposes of this clause shall be reduced to the amount set forth in such written notice from and after the date of such written notice), of which amount up to $450,000 shall be allocated to the fees and expenses of professionals retained or employed by the Debtors, and provided, further, that of such $450,000, not less than $250,000 shall be allocated for the fees and expenses of Heller Draper Hayden Patrick & Horn, L.L.C.

(b) After (i) the occurrence and during the continuation of any Event of Default or a default by any of the Debtors in the performance or observance of any of their obligations under this Final Order and (ii) delivery of a written notice (the "Carve-Out Notice") by the DIP Agents to the applicable professional(s) (the "Carve-Out Trigger"), any payments actually made of fees and expenses to such professionals (but not including payments made out of pre-Petition Date retainers) pursuant to sections 327, 328, 330, 331 and 1103 of the Bankruptcy Code or otherwise, shall reduce the Priority Professional Expense Cap on a dollar-for-dollar basis, except for amounts that (i) are on account of services performed prior to the date of the Carve-Out Trigger, (ii) are allowed by the Court, and (iii) do not exceed the amounts set forth in the entire Budget for the applicable period prior to the Carve-Out Trigger. So long as (X) no Event of Default or default by any of the Debtors in the performance or observance of any of their obligations under this Final Order has occurred and is continuing and (Y) the Carve-Out Notice has not been delivered in accordance with this paragraph, the Debtors shall ~~be permitted to~~ pay the Priority Professional Expenses, as the same may be due and payable in accordance with any applicable order of the Court, and such payments, provided that they do not exceed the Budget, shall not be applied against the Priority Professional Expense Cap.

(c) Priority Professional Expenses shall include any payments which are authorized to be made pursuant to any Court-approved procedure for monthly or other payment

of administrative expenses; provided, that nothing contained herein shall (i) be construed to exempt the Debtors' or Committees' professionals receiving interim compensation payments or reimbursement of expenses pursuant to any such Court-approved procedure for interim payments of administrative expenses from the applicable provisions of bankruptcy law, including the requirements that such compensation or reimbursement be allowed on a final basis after the filing of appropriate fee applications, and, when applicable, any subsequent order of this Court requiring that such payments be disgorged, and (ii) be construed as consent to the allowance of any fees and expenses referred to above and shall not affect any right of the DIP Lenders, the DIP Agents, the Existing Senior Lenders, or the Existing Senior Agents to object to the reasonableness of such amounts; provided, further, that Priority Professional Expenses shall not include, and Cash Collateral and proceeds of the DIP Loans shall not be used for the payment or reimbursement of, any fees or disbursements of the Debtors or any Committees or trustee appointed in these Chapter 11 Cases incurred in connection with the investigation (except as set forth in paragraph 12 below), assertion and prosecution of, or joinder in, any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief: (A) commencing or prosecuting any action asserting claims pursuant to sections 510, 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code or other cause of action (whether arising under state law, the Bankruptcy Code or other federal law) of the Debtors' against, in any capacity, the DIP Lenders, the DIP Agents, the Existing Senior Lenders, or the Existing Senior Agents with respect to any transaction, occurrence, omission, or action, including without limitation the validity and extent of the DIP Obligations, the Existing Senior Lender Indebtedness, or the validity, extent and priority of the Post-Petition Liens or the Existing

Senior Lender Liens; (B) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Post-Petition Liens or the Existing Senior Lender Liens; or (C) preventing, hindering or delaying (whether directly or indirectly) the DIP Lenders, the DIP Agents, the Existing Senior Lenders, or the Existing Senior Agents, in respect of their liens and security interests in the Collateral.

(d) No liens, claims, interests or priority status, other than Permitted Priority Liens~~, Priority Professional Expenses (up to the Priority Professional Expense Cap after an Event of Default or a default hereunder) and the UST/Clerk Fees~~ and the Carve-Out, having a lien or administrative priority superior to or *pari passu* with that of the Post-Petition Liens and the Superpriority Claim granted by this Final Order, shall be granted while any portion of the DIP Obligations remains outstanding or any Commitment under the Financing Agreement remains in effect without the written consent of the requisite DIP Lenders under the Financing Agreement.

(e) Effective upon entry of the Interim Order, no party shall be entitled, directly or indirectly, to (i) charge the Collateral, whether by operation of sections 105, 506(c) or 552(b) of the Bankruptcy Code or otherwise or (ii) except in accordance with paragraph 35 hereof, direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of Collateral after an Event of Default, termination or breach under the DIP Loan Documents.

12. Committee Investigation Period. Notwithstanding anything herein or in the DIP Loan Documents to the contrary, from the Petition Date through ~~the seventy fifth day thereafter~~June 7, 2006 (the "Investigation Termination Date"), the Committee shall be entitled to investigate the validity, perfection, enforceability and extent of the Existing Senior Lender Liens and any potential claims of the Debtors or their estates against the Existing Senior Lenders or