Why We Want What We Want: A Practical View of Cash Collateral and DIP Financing Orders

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Introduction

Chapter 11 is and has always been much more a process of negotiation than litigation. Litigation is part of the practice, but lack of money and lack of time usually drive parties to reach negotiated resolutions. One of the most important strategies is to drive consensus by putting together alliances; organize your friends and then take the fight to your enemies. Cash collateral and DIP financing orders are a typical example of this process of negotiated resolutions and important alliances.

Since the late 1990's, however, the Chapter 11 landscape has changed dramatically. If the reader started practicing since then, many nuances in the practice are different from the first 20 years of Chapter 11. While it is still a process of negotiation and a game of alliances, a number of events have shifted the leverage over the last decade and a half:

- The 1999 *LaSalle*[1] decision by the Supreme Court made confirmation more difficult and expensive by putting every company in Chapter 11 in play, bringing about the predominance of the sale case and the rise of the "carve-out";

- Revised Article 9, enacted across the country in 2001, means that lenders' liens are much harder to avoid, so all that is left for the Committee is often litigation claims;

- In 2005, BAPCPA shortened deadlines (exclusivity, landlords), increased the likelihood of a trustee ("shall" language), and increased the costs of Chapter 11 (503b9 claims, healthcare cases, consumer privacy ombudsman, etc.);

- The Pre-2007 financing environment resulted in dramatic over-leveraging of many companies, so that few distressed companies entering Chapter 11 have equity in their assets; and

- The Post-2007 financing environment has meant the best source of financing is often the existing lender (and the same is true for sales – often the best financing source for buyers is the seller's existing lender).

Each of these changes has altered the Chapter 11 process, resulting in the recent creation of the Commission to consider the reform of Chapter 11.

What does all of this mean for cash collateral and DIP financing? One thing – in the current environment- debtors have limited ability to negotiate financing and cash collateral terms. Lenders control many of the cases, especially in the mid-market, and most debtors have fewer options and less margin for error. Reorganization therefore is much more rare than it used to be.

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[1] *Bank of America National Trust and Savings Association v. 203 North LaSalle Street Partnership*, 526 U.S. 434 (1999).

With that understanding, what are the most important terms in cash collateral and DIP financing orders and what are the most controversial issues? In this paper, the author will outline the most important provisions – and the reasons for them – in cash collateral and financing orders. In the presentation that accompanies it at the SBLI, the author will walk the audience through his "favorite mistakes" in cash collateral and DIP financing (most of which, of course, arise from personal experience).

Cash Collateral Orders in General

A cash collateral order is essentially a contract between the debtor and lender, which is negotiated in the form of an order to ensure court approval. *See* 11 U.S.C. Section 363(b) (requiring court approval for non-ordinary course actions). There are a number of important sections in cash collateral orders, many of which are drafted to deal with specific rights and risks created by the Bankruptcy Code. Note that the sections which follow are the important sections in a FINAL cash collateral order. Interim orders, by contrast, are usually short and skip many of these sections; the paramount sections in an interim cash collateral order are usually the termination provisions (usually 30 days), the requirement of replacement liens protecting against any diminution in cash collateral, segregation, and reporting requirements.

As a starting point, it is important to understand the context in which cash collateral orders are negotiated. The standard for the use of cash collateral is set out in 11 U.S.C. Section 36(c)(2), which provides that a debtor can use cash collateral only by permission of the lender or by court order; the standard for the use of cash collateral is that the lender must receive "adequate protection" for the use of its cash. On a non-exclusive basis, Section 361 defines adequate protection as (1) cash payments, (2) additional liens, (3) replacement liens, or (4) other relief that results in the creditor receiving the indubitable equivalent of its claim. The procedure for obtaining use of cash collateral is set out in F.R.C.P. 4001.

Courts virtually always give the debtor the use of cash collateral on a first day, interim basis (the alternative is to shut down the debtor's business as the case is just beginning), and lenders recognize this; in addition, lenders understand that continuing the debtor's business is usually important in preserving the value of their collateral (it is much harder to get top dollar for a dark factory full of equipment than for an operating company with customers and income). Based on these two factors, contested first day cash collateral hearings with testimony are the exception to the norm; usually the parties are able to reach agreement on at least a short form cash collateral order which is then entered by the bankruptcy court.

Financing Orders in General

DIP financing orders have much in common with cash collateral orders. They are a contract between the debtor and the post-petition lender, they contain many of the same provisions, and they are drafted in the form of an order to ensure court approval. 11 U.S.C. Section 364 (requiring court approval for post-petition financing). Unlike cash collateral orders, however, they are usually also accompanied by a lengthy financing agreement, similar to non-bankruptcy credit agreements, but with the terms often incorporated by reference (or restated in part) in the order.

Also unlike cash collateral, entry of financing orders on a first day basis is far from being *pro forma*. While first day cash collateral orders are often short and intended to preserve the status quo, financing orders are usually lengthy and by their very nature change the status quo – they create post-petition obligations. Therefore, the first day process for financing orders generally requires testimony (or, at the least, a proffer), and first day financing motions are more often the subject of contest and controversy. Judges often view first day financing orders – accompanied by loan agreements that may run more than 100 pages – as overreaching pressure tactics that require special scrutiny in order to protect other parties in interest from prejudice.

The context for post-petition financing is set out in Section 364, which provides for financing on an unsecured basis, on a superpriority unsecured basis, on a secured basis against unencumbered assets, on a junior secured basis for previously encumbered assets, and on a senior or equal basis with an existing lien on previously encumbered assets. Suffice it to say that the last item, known as a priming lien, is generally the hardest to obtain because it effectively subordinates a pre-petition senior creditor (who usually will not take this sitting down). For a priming lien, the key is for the debtor to show that credit is unavailable otherwise, and the existing lender who is being primed will receive adequate protection for its interest in its collateral. The procedure for obtaining DIP financing is set out in F.R.C.P. 4001.

The Provisions in Effective Cash Collateral and Financing Orders: Understanding What AND Why

With many forms and lengthy provisions, it is often easy for the lawyer to draft from boilerplate. In negotiations involving cash collateral and financing orders, though, it is essential to understand the background against which provisions are drafted and the reasons "why."

The ideal cash collateral order is often one that has as many of the provisions of a good financing order as possible. A lender allowing the use of cash collateral, however, has much less leverage than a lender putting out new funds as part of a DIP financing (a reason which often leads pre-petition lenders to decide to become post-petition lenders).

In appendix A are examples of a cash collateral order and a financing order, each of which contain many of the provisions to be discussed.

Stipulations and Admissions:

Cash Collateral

Cash collateral orders often contain stipulations and admissions between the debtor and lender. Debtors generally want to avoid admissions because they favor the lender; lenders generally want stipulations in order to lock the debtor down on important issues. Why is a debtor willing to give admissions and stipulations to the lender? In the give-and-take of cash collateral negotiations, a debtor may be able to negotiate things like additional runway, favorable budget terms, or carve-outs in exchange for admissions favoring the lender.

What are typical stipulations and admissions?

- Describe parties and positions (and define terms including "cash collateral")
- Lender favorable:
    - Loans not subject to defenses; first priority; unavoidable; no claims against lenders; releases against lenders, etc.
    - Debtors owe an amount not less than $_____
    - Debtors cannot operate without the use of cash collateral
    - Liens on all or substantially all property of debtor, including but not limited to (including all collateral under the Loan Documents, the "Collateral")
    - Usually give committee 90 days to challenge debtor's stipulations (what if no committee?)
    - Stipulation to value of collateral? Double-edged sword:
        - Oversecured = no stay relief, potentially primed, get interest and fees, adequate protection, no preference liability, no unsecured claim for absolute priority rule
        - Undersecured = more likely stay relief, clear right to enforce absolute priority rule (unless 1111(b) election), no priming, deficiency claim, debtor able to cram down in plan, no adequate protection payments (unless value declining), no interest and fees, potential preference liability

Financing

Like cash collateral, financing orders often contain a number of stipulations and admissions. The leverage of the lender in the financing context is greater because it is offering new money.

Many of the typical stipulations and admissions become irrelevant if the parties do not have a pre-existing relationship and the DIP lender is new to the situation – for example, there is no need to give the committee time to challenge pre-petition liens, and there is no need for a stipulation as to the value of the collateral. At the same time, the lender will still likely want stipulations as to the absence of claims, the release of any claims, and the like based on the negotiation of the DIP facility (and these terms are standard in credit agreements and DIP credit agreements).

Typical admissions/stipulations in a new party DIP agreement would include the following:

- Use of cash alone not sufficient; need credit in a DIP for debtor to survive; if a priming DIP, no other source available;
- Terms are fair and reasonable and prudent for debtor to enter into;
- Arms length and the lender is acting in good faith (Section 364(e) compliance so not reversible on appeal).

In the current market, it is important to recognize that many DIP lending facilities are made by existing lenders, rather than new lenders. Post-petition lenders have been the debtor's prepetition secured lenders in many of the major chapter 11 cases filed over the past three to four

years, a process commonly called "defensive DIP lending." *See* Jacqueline Palank, "Bankruptcy Milestones Put Companies on Short Leash," Dow Jones Daily Bankruptcy Review (Jan. 7, 2013) (DIP lenders in 44 out of 50 surveyed recent cases were the pre-petition lenders); Marcia L. Goldstein, *Debtor in Possession Financing: Balancing Lifeblood and Lender Controls,* Am. Bankr. Inst. 37th Annual New York University Bankruptcy and Reorganization Workshop at 118 (September 2011) (listing numerous cases, including *In re Borders Group, Inc.*, Ch. 11 Case No. 11-10614 (Bankr. S.D.N.Y.); *In re TerreStar Networks Inc.*, Ch. 11 Case No. 10-15446 (Bankr. S.D.N.Y.); *In re Blockbuster Inc.*, Ch. 11 Case No. 10-14997 (Bankr. S.D.N.Y.); *In re Foamex Int'l, Inc*., Ch. 11 Case No. 09-10560 (Bankr. D. Del.); *In re Aleris Int'l, Inc*., Ch. 11 Case No. 09-10478 (Bankr. D. Del.); *In re TronoxInc.*, Ch. 11 Case No. 09-10156 (Bankr. S.D.N.Y.); *In re Apex Silver Mines Ltd*., Ch. 11 Case No. 09-10182 (Bankr. S.D.N.Y.); *In re SemCrude, Ltd. P'ship*, Ch. 11 Case No. 08-11525 (Bankr. D. Del.); *In re Circuit City Stores, Inc.*, Ch. 11 Case No. 08-35653 (Bankr. E.D. Va.)).

Where the existing lender is becoming the DIP lender, the DIP order will also contain the same stipulations as a strong cash collateral order, subject to the right of the committee to bring an adversary proceeding within a certain period of time. The DIP lender, as the pre-petition lender, will want a statement that there are no defenses to pre-petition claims, that pre-petition liens are unavoidable, that there are no claims against the pre-petition lender, and the like.

Segregation Requirement for Funds:

Cash Collateral and Financing Orders

Lenders generally want to require that cash collateral and DIP proceeds be segregated in separate accounts from any other collateral. Why? Because if there are funds that are not cash collateral, or if there are multiple lenders with liens on different assets, tracing is extremely important. In the confusion between the Lowest Intermediate Balance Rule, FIFO, LIFO, FILO, and LILO (yep – first in first out, last in first out, first in last out, and last in last out), tracing can become a complex issue in trying to identify cash collateral. *See* Rev. Art. 9-315(b). In addition, Article 9 provides specific rules regarding cash proceeds and the loss of perfection against cash proceeds after a certain time, so identification and perfection (in this instance, via court order rather than via Article 9) is essential. *See* Rev. Art. 9-315(d). Finally, if cash collateral or DIP proceeds are not segregated from other non-collateral, what happens if the case is dismissed? The lender becomes embroiled in both a battle for tracing and a race to perfection in proceeds.

Often, lenders will also request that different proceeds be deposited into separate accounts – such as an operating account, a tax escrow account, payroll account, etc. – and will obtain liens on each via court order. Having the proceeds in each separate account makes for simple escrowing of upcoming obligations such as taxes and payroll.

Limited Use of Funds:

Cash Collateral

One of the benefits that a lender can often negotiate in a cash collateral order is the requirement that a debtor use cash collateral only for limited, approved purposes. Typically, the parameters will be something like the following:

- Only allowed for ordinary and reasonable expenses
- Agreed Cash Collateral Budget (rolling 13 week? Through termination? Monthly?)
- Use must be in line with budget – ___ % line item variation
- Variances must be approved in advance by lender or court on minimum notice
- Priming attempt must have minimum notice
- Provide explicitly for payment of UST fees
- Prohibitions on use of cash collateral for certain purposes – insiders, intercompany, prepetition debts, professionals (except for carve-out discussed below), etc.

Financing

In the financing context, a lender will have similar requirements on uses of cash, many of which may be set out in the DIP financing agreement and simply incorporated into the order.

One of the major issues which comes up with regard to DIP financing extended by the existing lender is the ability to use DIP proceeds to pay down the same lender's pre-petition obligations (essentially, trading pre-petition dollars into post-petition loans, so that this portion of the DIP proceeds do not require any new dollars to be extended). This process is known as a "roll-up," and is considered an extraordinary measure by many courts which is subject to high level scrutiny. *Union Sav. Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515, 517 (2d Cir. 1988); *Gen. Elec. Capital Corp. v. Nigro (In re Appliance Store, Inc.)*, 181 B.R. 237, 243 (Bankr. W.D. Pa. 1995); *In re FCX, Inc*., 54 B.R. 833, 842 (Bankr. E.D.N.C. 1985). *See generally* G. Ray Warner, *Selected DIP Loan Issues: Hot Topics*, Am. Bankr. Inst. Winter Leadership Conf. (Dec. 2002). Roll-ups have been allowed in a number of recent cases, at least where the rights of the committee to object to the pre-petition loan were preserved for a specific amount of time, and where it appeared that the roll-ups were only to the extent of the lender's unavoidable pre-petition secured claim valuation. *See* Goldstein, *Debtor in Possession Financing* at 126. *See also Specialty Packaging Holdings, Inc., et al*., Chapter 11 Case No. 10-10142 (Bankr. D. Del.). Local rules also require special highlighting of roll-up issues in financing orders. *See, e.g.*, Del. Bankr. L.R. 4001-2(a)(i)(E); S.D.N.Y. Bankr. L.R. 4001-2(a)(7).

Where a financing order involves a roll-up, typical provisions to include are modification of the automatic stay to allow paydown of prepetition amounts, and a waiver of the need for the lender (in pre-petition or post-petition capacity) to file a proof of claim.

The financing order will also typically contain an authorization for the Debtor to perform all acts consistent with the order and DIP financing agreement, as well as authorization to pay all

fees and expenses of the DIP lender. Often the financing order will set up a procedure for the DIP lender to circulate a fee statement regarding its counsel expenses, which in the absence of objection within 10 days, will be paid automatically.

Adequate Protection:

Cash Collateral

Adequate protection is the central issue in use of cash collateral, and almost all of the other sections of the cash collateral order are themselves safeguards to protect (adequately?) cash collateral (think of segregation, budgeting, etc.).

Important to any cash collateral order is saying that the lender has demanded adequate protection. Why? Because this gives the secured creditor the right to a Section 507(b) superpriority claim if there is a failure of adequate protection—if the lender has not demanded it, however, then there is a significant question as to whether the lender can get a Section 507(b) claim. *In re Smith*, 75 B.R. 365 (Bankr. W.D.Va.1987)(creditor seeking superpriority claim must have been provided with some form of adequate protection at earlier time and that protection must later prove to be inadequate); *In re California Devices, Inc*., Bkrtcy.N.D.Cal.1991, 126 B.R. 82 (party entitled to 507(b) claim based on prior agreement as to adequate protection); *In re Gateway Access Solutions Inc*., 368 B.R. 428, 434 (Bankr. M.D. Pa. 2007) (refusing Section 507(b) claim to parties who were not entitled to adequate protection); Harold Kaplan and Daniel Northrup, *Judge Sets Aside Jury Verdict Against Trustees In Bluebird Case*, Gardner Carton & Douglas Client Memorandum (Sept. 2004) (available at http://www.drinkerbiddle.com/Templates/media/files/publications/2004/judge-sets-aside-jury-verdict-against-trustees-in-bluebird-case.pdf) (involving lawsuit against indenture trustee that failed to get 507(b) superpriority claim upon deterioration of collateral, ostensibly for earlier failing to move for stay relief as a prerequisite to obtaining adequate protection).

While lenders want to make clear in the order that they have demanded adequate protection, should there be a determination in the order that a lender is fully adequately protected? Probably not, because a finding that the cash collateral order provides the lender with adequate protection can preclude a lender's right to seek stay relief under Section 362(d)(1) for lack of adequate protection. The better alternative is often finding that (1) the lender has demanded adequate protection, (2) the parties have negotiated the proposed order, and (3) nothing precludes the lender's right to seek further adequate protection or assert lack of adequate protection in a stay relief motion.

a) Payments as a form of adequate protection

If the lender is receiving payments as adequate protection, or an escrow of excess cash flow from the debtor, one of the major issues is how to characterize these funds. If the lender is oversecured, the funds generally are allocated to interest and fees under Section 506(b), and may also be allocated to the paydown of principal.

If a lender is undersecured, the debtor will want the funds to be escrowed or to be applied to reduce the secured part of the lender's claim, so that the unsecured deficiency is not reduced; the lender, on the other hand, may want to argue that the unsecured portion of its claim is being reduced so that as a result of the funds generated by the debtor post-petition, the lender's collateral position grows to approach the value of the debt. (For example, if a lender is owed $10,000,000, has $6,000,000 in collateral, and the debtor has excess cash flow during the case of $100,000 prior to confirmation, the lender will want that $100,000 to be part of its secured claim valued at confirmation, either by having used the money to reduce its unsecured deficiency and overall debt, or by having it added to the value of the collateral if it remains in escrow). *See In re Creekstone Apartments Assoc. L.P.*, 165 B.R. 845, 850 (Bankr. M.D. Tenn. 1993); *aff'd, Creekstone*, 1995 U.S. Dist. LEXIS 14876, *16 (M.D. Tenn. Sept. 18, 1995); See also *United Saving Assoc. of Texas v. Timbers of Inwood Forest Assoc., Ltd*,. 484 U.S. 365 (1988) (post-petition increase in collateral value benefits lender).

b) Replacement liens as a form of adequate protection

Generally, a lender will demand, and a debtor will grant, replacement liens in post-petition collateral to the same extent that liens existed in pre-petition collateral. A lender may want to expand the liens to additional collateral; a debtor will want to restrict the liens. As long as a debtor's business is not generating less in receivables each month and burning cash (for example, because revenues are falling and each turn of the receivables is used to pay steady expenses like payroll while future receivables are reduced in number), replacement liens will allow the debtor to use its existing cash and its accounts receivable to fund operations, and the new cash and receivables generated (presumably in the same or a greater amount) will protect the lender. Note that if a debtor cannot operate simply from its accounts receivable because it has inadequate cash to serve as working capital until it turns new receivables, then the debtor will generally need a DIP loan rather than simply the use of cash collateral.

The statute governing replacement liens on accounts receivable, and framing the negotiation, is 11 U.S.C. Section 552. This section provides that while proceeds of pre-petition collateral continue to be subject to post-petition liens, property acquired by the debtor post-petition (such as new inventory, new accounts receivable, or replacement equipment) are no longer subject to pre-petition liens. The practical effect of this statute is that it gives the debtor something with which to bargain – by giving up a replacement lien in new accounts receivable and inventory, the debtor is giving the secured creditor something that it did not already have as a matter of right.

If the debtor generates rents rather than accounts receivable, then 11 U.S.C. Section 552 provides that a lender with a lien on real estate has a continuing lien in rents generated post-petition (on the general theory that these are proceeds of the real estate). This provision regarding rents was added to the Bankruptcy Code in the 1994 amendments to deal with a long-running dispute where debtors asserted that lenders were not entitled to a post-petition lien on rents unless they had obtained appointment of a receiver pre-petition. This had resulted in many lenders being unsecured in rents, and had balkanized bankruptcy practice across the country based on differences in state law regarding perfection in rents. The 1994 amendments dealing

with rent also amended the Bankruptcy Code to change the way that a number of issues are handled in single asset real estate cases.

The result of the amendments has been to shift leverage in favor of lenders in cases involving rent; confirming single asset cases became more difficult after the amendments, the theory being that most single asset cases involve a two-party dispute which are sometimes better handled outside of bankruptcy via state law foreclosure remedies, compared to companies with large operations and large groups of employees for whom Chapter 11 reorganization was intended to be an available remedy in order to preserve jobs.

Other important parts of the replacement lien provisions which lenders may desire to add to a cash collateral order are automatic perfection of replacement liens in the assets which they cover, and the creation of an automatic Section 507(b) claim in the case of a failure of adequate protection (rather than having to file a request for such a claim).

Scope of replacement liens can be a hotly negotiated issue, with lenders asking to expand the scope to additional classes of assets that were not collateral pre-petition (for example, by expanding to furniture, fixtures, and equipment, when pre-petition the lien may have been only in accounts receivable, inventory, contract rights, and general intangibles). Debtors may be willing to negotiate broader replacement liens in exchange for lender "give-ups" on other issues, and in any event, the replacement liens simply secure the lender to protect against diminution in the value of the collateral being used in which it had a lien pre-petition. In other words, if a lender's secured position on the petition date was $6,000,000 of a $10,000,000 lien, getting replacement liens in a broader collateral base worth $7,000,000 would not increase the lender's secured position – the lender would still have a secured position of $6,000,0000, and the additional collateral would merely be a hedge of protection against a decline in that $6,000,000 value.

Financing

When a financing order is negotiated, the lender generally is not concerned about adequate protection -- its loan is a post-petition obligation. Nevertheless, adequate protection generally comes up in the instance where the DIP loan is priming another party, or where the DIP lender is the same as the pre-petition lender.

In a priming instance, the debtor generally must show that the prior lender's loan will be adequately protected despite the priming lien of the new lender. 11 U.S.C. Section 364(d). This is generally accomplished by showing that the existing lender is oversecured with a substantial equity cushion. *See Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984); *In re Grant Broad of Philadelphia, Inc.*, 75 B.R. 819, 823–24 (E.D. Pa. 1987); *In re Am. Sunlake Ltd. P'ship*, 109 B.R. 727, 732 (Bankr. W.D. Mich. 1989); *McCombs Props. VI, Ltd. v. First Tex. Sav. Ass'n (In re McCombs Props. VI, Ltd.)*, 88 B.R. 261, 265-66 (Bankr. C.D. Cal. 1988). In the absence of an equity cushion, priming liens are almost impossible to obtain without creditor consent. *See Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989).

In the instance of a pre-petition lender acting as the post-petition lender, the financing order will likely contain adequate protection findings similar to a cash collateral order, as well as findings on the necessity of the financing.

One issue that often comes up where the pre-petition lender acts as the DIP lender is whether, in granting replacement liens for the pre-petition loans, the liens can be cross-collateralized with the DIP liens – i.e., whether the broad base of collateral for the DIP liens can also serve as collateral for the pre-petition liens, especially if the pre-petition liens were more limited in scope. Courts often allow it, but the issue is hotly contested as it results in the expansion of pre-petition liens. *See, e.g., In re Vanguard Diversified, Inc.,* 31 B.R. 364 (Bankr. E.D.N.Y. 1983)(setting out five part test to determine permissibility of cross-collateralization). *Compare Shapiro v. Saybrook Mfg. Co. (In re Saybrook Mfg. Co.)*, 963 F.2d 1490, 1496 (11th Cir. 1992)(*per se* impermissible); *In re Monach Circuit Indus., Inc*., 41 B.R. 859, 862 (Bankr. E.D. Pa. 1984)(same) *with Clyde Bergemann, Inc. v. Babcock & Wilcox Co. (In re Babcock & Wilcox Co.)*, 250 F.3d 955 (5th Cir. 2001) (allowing cross-collateralization); *In re Roblin Indus., Inc.*, 52 B.R. 241, 244 (Bankr. W.D.N.Y. 1985)(allowing if proper notice); *In re Gen. Oil Distribs., Inc.*, 20 B.R. 873, 876 (Bankr. E.D.N.Y. 1982)(same); *McCain Foods, Inc. v. Flagstaff Foodservice Co. New England, Inc. (In re Flagstaff Foodservice Corp.)*, 14 B.R. 462, 468–69 (Bankr. S.D.N.Y. 1981)(same); *Borne Chem. Co. v. Lincoln First Commercial Corp. (In re Borne Chem. Co.)*, 9 B.R. 263, 269 (Bankr. D.N.J. 1981)(same).

Finally, when it comes to adequate protection for financing, the question of whether to allow liens on Chapter 5 avoidance actions is another hotly contested quandary. The Bankruptcy Code does not include an express prohibition, but such provisions can be considered over-reaching. *See, e.g*, Letter from Hon. Peter J. Walsh, U.S. Bankr. Judge for the Dist. Of Delaware, to Delaware Bankr. Counsel, "First Day DIP Financing Orders" (April 2, 1998); Bruce H. White and William L. Medford, *Debtor Financing and Liens on Avoidance Actions*, ABI Journal at 18 (March 2004).

Carve-Outs:

Cash Collateral and Financing

Paying its professional fees is a major issue for any debtor undertaking Chapter 11. Prior to the Supreme Court's 1999 decision in *LaSalle*, debtors had a reasonable expectation of being able to keep control of a case in order to confirm a plan, and as we all know, confirmation requires that a debtor be able to pay all of its administrative expenses. So, attorneys were more willing to take Chapter 11 cases on small retainers with the likelihood of payment in full at the end of the case. Post-*LaSalle*, every Chapter 11 puts the company on the block – because generally a for-profit debtor must do one of the following to confirm its plan: (1) pay a 100% plan (so creditors are deemed to vote in favor), (2) get all creditor classes to vote in favor, (3) buy back its equity at a *LaSalle* auction, or (4) waive exclusivity so that other parties can put on a plan. The result is that confirmation is less likely, and counsel will not take the same level of risk.

So, how do counsel now get paid to handle a Chapter 11 case? The following are the primary ways:

1) Pre-petition retainer (usually large enough to cover a substantial amount of the work in the case)

2) Unencumbered assets

3) Equity in the collateral of an oversecured creditor

4) Surcharge of lender's collateral under Section 506(c)

5) Second lien on encumbered assets

6) Third-parties (which can create disinterestedness/retention issues)

7) Unsecured administrative claim required to be paid if/when confirmation happens and plan goes effective (very risky as contingent on confirmation)

8) A **Carve-Out**

What is a "carve-out"? It is the agreement of the lender to fund certain professional expenses in a Chapter 11 case, as a carve-out from its secured collateral. Generally, the carve-out will be considered to be a voluntary payment by the lender which reduces the secured portion of the lender's claim (and therefore reduces the lender's recovery).

What's the legal basis for a carve-out? Realize that a debtor generally cannot force the use of an undersecured lender's collateral to pay the debtor's counsel, unless the debtor can satisfy the requirements to surcharge the lender under Section 506(c) – which requires the showing of a benefit to the creditor. *In re Blackwood Assoc., L.P., 153 F.3d 61* (2nd Cir. 1998); *In re Flagstaff Foodservice Corp*., 739 F.2d 73 (2nd Cir. 1984); *In re Senior-G&A Operating Co., Inc*., 957 F.2d 1290 (5th Cir. 1992); *In re Buttermilk Towne Center*, LLC 442 B.R. 558 (6th Cir.BAP 2010). Richard B. Levin, *Almost All You Ever Wanted to Know About Carve Out*, Amer. Bankr. L. J. 445 (2002, Vol. 76). *See also Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (interpreting Section 506(c) to be unavailable to any party but the debtor, so that committees cannot bring surcharge actions). This creates the background against which carve-outs are negotiated.

Lenders will often agree to carve-outs in exchange for other trades from the debtor in the overall cash collateral negotiation. In addition, in the DIP financing context, many courts will view a carve-out for debtor professionals, committee professionals, and U.S. Trustee fees as the price of admission. *See, e.g*, Letter from Hon. Peter J. Walsh, U.S. Bankr. Judge for the Dist. Of Delaware, to Delaware Bankr. Counsel, "First Day DIP Financing Orders" (April 2, 1998).

There are two typical types of carve-outs: (1) the lump sum/single cap, which provides a specific amount for professionals (for example, $500,000 for all professional fees), and (2) the

"burial carve-out," which provides that until a post-petition default the lender consents to payment of professional fees from its collateral according to a cash collateral budget (which are not a reduction of the lender's claim), and only after default are professionals subject to a specific cap (which is generally a reduction of the lender's secured claim).

Often, the price a debtor pays for a carve-out is a waiver of surcharge rights under Section 506(c), as well as a restriction on carve-out funds so that they cannot be used to pay professionals to attack the lender. Section 506(c) waivers are the subject of much dispute, and if allowed, are generally only allowed in final DIP orders after significant notice. *See, e.g.*, Del. Bankr. L.R. 4001-2(a)(i)(C) (delineating Section 506(c) waivers as extraordinary remedy and requiring special notice).

Since the *LaSalle* decision, Chapter 11's have experienced a dramatic rise in requests for carve-outs. Virtually all large cases, and many mid-market cases, involve carve-outs. Carve-outs can also serve an important function of protecting against disgorgement in the event of conversion to a Chapter 7 case where there are insufficient assets to pay the Chapter 7 trustee's expenses. In the Sixth Circuit at least, a carve-out or pre-petition retainer is essential to protecting against this eventually where a case does not have substantial unencumbered assets. *Specker Motor Sales Co. v. Eisen*, 393 F.3d 659 (6th Cir. 2004); Judith Greenstone Miller, *Protecting Professional Fees From Disgorgement*, ABI Jour. at 40 (June 2006).

Reporting and Inspection Rights:

Cash Collateral

Similar to loan documents, reporting and inspection rights are extremely important in the context of cash collateral orders.

Standard reporting comes in the form of Monthly Operating Reports, but additional reporting is often necessary. In healthcare, for example, reports may be needed that indicate payor mix, accounts receivable aging, and the like; lenders specializing in various industries will often know what it is that they need to see, so client input on this issue (like most cash collateral and financing issues) is important. It is paramount that the reporting requirements be structured to match the budget periods, so that the lender can determine budget compliance. For additional reporting, is it on an accrual or cash basis?

Consider including additional requirements like: (1) obligation to notify lender of any imminent danger to collateral or value, (2) obligation to provide lender with any offers to purchase collateral or business, (3) right of lender to make surprise site visits during business hours, (4) right of lender to inspect books and records, and (5) obligation to conduct weekly, bi-weekly, or monthly calls with the lender, debtor's officers, and debtor's financial advisors to discuss the financial status and obtain information (the debtor's ability to control information being one of its strongest assets).

Financing

Many of the reporting provisions and additional notification rights will already be included in the separate financing agreement when DIP lending is at issue. Therefore, they are not necessarily set out in detail in the order itself. The exception is often weekly reporting regarding financial performance, especially where the DIP facility involves a revolving credit facility.

***Proceeds of Sales*:**

Cash Collateral and Financing

The Lender should consider including a requirement that upon any one-time sale of major collateral (such as the sale of a subsidiary, a valuable piece of equipment, etc.) that those proceeds be paid directly to the lender, rather than simply expanding cash collateral. Note that when it comes to DIP lending, having the funds from going out of business sales paid to the lender will often reduce a lender's exposure – not just by paying down the debt, but also by ratcheting down any revolver base.

Insurance and Taxes:

Cash Collateral and Financing

When it comes to vehicles, many courts have local rules that require debtors to maintain proof of insurance or suffer the consequences of immediate stay relief. Using this as a basis, and as additional adequate protection, a lender should consider including requirements for insurance maintenance in any cash collateral order. Limits can be set at customary levels, and the lender should require that it be the loss payee. Lenders should also require that taxes be paid post-petition (otherwise, certain taxes can prime the lender's liens).

When it comes to financing, realize that insurance provisions are already typical in financing agreements and are likely to be included in the loan agreement itself.

Termination Events and Defaults:

Cash Collateral

Central to the cash collateral order is a set of termination events, the occurrence of which require the debtor to return to court or work out new permissions with the lender to prevent the automatic loss of cash collateral.

Termination events may include all or some of the following: (1) a date certain on which the debtor's cash collateral rights will terminate, (2) conversion, (3) appointment of a trustee or examiner, (4) the filing of a plan not consented to by lender, (5) an uncured default, (6) a change in control, (7) a failure to extend the deadline for assuming or rejecting leases and contracts, and (8) failure to file plan consented to by lenders by a date certain. Other termination events may be

items like the failure of the debtor to obtain a stalking horse bidder by a date certain, failure to close a sale by a date certain, and the like.

Liens and rights of the lender should specifically survive termination (suffice it to say that the debtor will demand that carve-outs survive termination). The lender and debtor will negotiate who has the burden to go back to court, with the lender trying to make the termination self-executing so the debtor must go back to court to obtain an order continuing debtor's right to use cash collateral.

Defaults under a cash collateral order are typically a separate section closely correlated to the termination section. Defaults generally ripen into a termination event upon failure of the debtor to cure, and in certain events, the lender may negotiate for rights in addition to the simple termination of cash collateral, such as a right to "drop-dead" stay relief for an uncured default, and the right to setoff. Specified defaults usually include (1) failure to comply with the cash collateral order, (2) failure to comply with another material court order, (3) payments made which are not allowed by the order (especially pre-petition payments or insider payments), and (4) late or inaccurate reporting.

Financing

Financing will be very similar to cash collateral on terms regarding defaults and terminations, with the understanding that a financing agreement may contain much more detail and many more events of default than the typical cash collateral order, and all of these will not necessarily be set out in the financing order itself.

Financing orders will also generally contain a prohibition against the debtor trying to obtain a subsequent DIP facility from another party to prime the existing DIP lender or take equal priority.

There are a number of additional triggers that may make their way into DIP financing orders in the current environment; these include a requirement that the debtor sell its assets by a certain time, that it make changes in management, and that it attempt to confirm a specific type of Chapter 11 plan. These provisions are subject to additional scrutiny, although they are sometimes allowed. Goldstein, *Debtor in Possession Financing* at 118-121; Jacqueline Palank, "Bankruptcy Milestones Put Companies on Short Leash," Dow Jones Daily Bankruptcy Review (Jan. 7, 2013).

Miscellaneous Provisions:

Cash Collateral and Financing

Much like any contract, many cash collateral orders will contain a number of miscellaneous provisions that are important to handle administrative matters. Typical examples are: (1) notice provisions, (2) no waivers except in writing, (3) the lender retains its right to request bankruptcy remedies (trustee, stay relief, etc.), (4) binding on successors, (5) preservation of setoff rights, (6) prohibition against marshalling, (7) injunction against other uses

of cash collateral than are allowed by the order, (8) time of the essence, (9) the lender is not in control of the debtor, (10) immediate enforceability, and (11) typical bankruptcy findings regarding notice to all parties in the case being adequate and sufficient.

Financing orders will also have a clear finding regarding good faith under Section 364(e) so that they are not subject to modification on appeal.

Junior liens and subordination are a hot issue in modern financings, and it is typical to put control provisions in the DIP financing or cash collateral order that are consistent with pre-petition intercreditor agreements. This would encompass items such as a prohibition on the junior lienholder objecting to payment of the senior DIP lien or the validity of the senior DIP loan.

APPENDIX

FORM CASH COLLATERAL ORDER
FORM FINANCING ORDER

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In re :	**]**	**Case No. 01-24607**
	]	
RESPONSE ONCOLOGY, INC., *et al.*,	**]**	**Chapter 11**
	]	
Debtors.	**]**	
	]	**(Jointly Administered)**

FINAL ORDER AUTHORIZING DEBTORS TO USE CASH COLLATERAL

Before the Court is the Debtors' Motion for an Order (A) Authorizing Debtors To Use Cash Collateral On An Interim Basis, (B) Deeming The Prepetition Lenders Adequately Protected With Regard Thereto, And (C) Setting A Hearing Date On The Debtors' Final Use Of Cash Collateral (the "Motion") filed by Response Oncology, Inc. ("ROI"), Response Oncology Management of South Florida, Inc. ("RO-S. Florida"), Response Oncology of Fort Lauderdale, Inc. ("RO-Fort Lauderdale") and Response Oncology of Tamarac, Inc. ("RO-Tamarac"), the debtors and debtors in possession herein (the "Debtors").

After granting interim relief to the Debtors, the Court held a final hearing on the Motion on August 3, 2001. Based upon consideration of the evidence presented, the arguments and objections advanced by all parties in interest, it appearing that the Debtors' use of cash collateral is in the best interest of these estates, the Court finds and orders,[1] and the Debtors and Agent (as defined below) stipulate that:

[1] Findings of fact may be construed as conclusions of law, and conclusions of law as findings of fact, to the extent necessary, pursuant to Fed. R. Bankr. P. 7052.

A. Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Each of the above-referenced Debtors is a debtor and debtor-in-possession in its respective Chapter 11 case (the "Bankruptcy Cases"), having filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code on March 29, 2001 (the "Petition Date") in the United States Bankruptcy Court for the Western District of Tennessee (the "Bankruptcy Court"). No trustee, examiner, or official committees have been appointed.

3. Pursuant to an Order of this Court, these voluntary chapter 11 cases have been consolidated for administrative purposes only and are being jointly administered.

B. Debtors' Business, Loan Obligations, and Need For Cash Collateral

4. Debtors are in the business of owning and managing physician oncology practices throughout the United States.

5. Prior to the petition date, Debtors entered into a Credit Agreement (the "Credit Agreement") with certain lenders, including AmSouth Bank (individually, "AmSouth," and in its role as agent as defined in the Credit Agreement, "Agent"), Union Planters Bank, National Association ("Union Planters"), and Bank of America, N.A., f/k/a Nationsbank, N.A. ("Bank of America"). Collectively, AmSouth, Union Planters and Bank of America may be

referred to as the "Lenders." The Credit Agreement, amendments thereto, and all documents, instruments, and agreements executed in connection therewith or related thereto are hereinafter referred to as the "Loan Documents." AmSouth Bank currently acts as Agent (the "Agent") for administering the Loan Documents and the Obligations, under the terms of the Credit Agreement. The Court finds that the Agent, by having its counsel execute this Order, has acted in accordance with the terms of the Loan Documents and has bound the Lenders to the agreements and covenants contained herein.

6. Pursuant to the Loan Documents, Debtors incurred loan obligations (the "Obligations") in favor of the Lenders, which Obligations were in default as of the Petition Date. As of the Petition Date, the Obligations owed to the Lenders totaled no less than $29,445,841.31 (the "Secured Claim"). Since the Petition Date, post-petition interest, charges, fees, and other expenses which are due to Agent and Lenders pursuant to the Loan Documents has continued to accrue upon the Secured Claim. Pursuant to previous interim orders on the Motion, the Agent has received regular monthly payments that it has applied to the interest owed post-petition on the Secured Claim.

7. The Loan Documents are in all respects valid and binding agreements and obligations of the Debtors, not subject to any claim, counterclaim, setoff, recoupment, expense, subordination, or defense of any kind or nature which would in any way affect the validity, enforceability, and

non-voidability of the Obligations, or which would reduce or affect the obligation of the Debtors to pay any of such Obligations.

8. As security for the Obligations, the Debtors granted to or for the benefit of Agent and Lenders various security interests and liens on substantially all, if not all, of their assets and properties, including, without limitation, all the items set out on Exhibit A hereto (collectively, including all collateral pledged to secure the repayment of the Obligations under the Loan Documents, the "Collateral"). The Debtors admit that the Obligations are fully secured pursuant to the Loan Documents by first priority liens on and security interests in the Collateral, and that such liens and security interests in the Collateral are valid, binding, properly perfected, unavoidable, and enforceable against the Debtors (except solely to the extent enforcement is stayed pursuant to section 362 of the Bankruptcy Code).

9. The Debtors are not aware of any claims against Agent and Lenders, and to the extent that any claims may exist, hereby waive all claims or causes of action against the Lenders, Agent, their officers, directors, employees, attorneys, advisors and representatives relating to or arising in connection with the Loan Documents, the Obligations, or any security therefore, including but not limited to any defenses or challenges of Debtors to the validity, extent, perfection, priority or enforceability of any liens, security interests, claims, or causes of action of Lenders or Agent.

10. The Debtors' cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents in any form, including

without limitation income, proceeds, products, rents or profits of property or cash arising from the collection, sale, lease, disposition, use, or conversion to cash of any property, or fees, charges, accounts, or other payments for the use or occupancy of rooms or facilities, and such other forms of property as are contemplated under 11 U.S.C. § 363, constitute cash collateral of the Lenders governed by Bankruptcy Code § 363, whether Lenders' liens or security interests (including, without limitation, any replacement liens or security interests) existed at the commencement of this case or arise thereafter pursuant to this Order or any other order of the Court or applicable law or otherwise, and whether such property that has been converted to cash existed as of the Petition Date or arose or was generated thereafter (collectively, the "Cash Collateral").

11. Debtors and Lenders acknowledge that it is difficult to place an exact value on the Collateral. Some of the Collateral consists of long-term contract rights which may be difficult to place a value upon. Debtors and Lenders are satisfied and have shown this Court with sufficient specificity that the value of the Collateral (including the Cash Collateral) as of the Petition Date slightly exceeds the Obligations. Debtors and Lenders (through the Agent) stipulate, and the Court finds, that without adequate protection of the Collateral, the Debtors' use of the Cash Collateral and the depreciation of non-Cash Collateral assets, entitle the Lenders to the adequate protection provided in this Order in order to maintain the Lenders' slight equity cushion.

12. The Debtors represent that they are without sufficient funds to support their continuing operations unless they are permitted to use Cash Collateral, and the Court finds that the present circumstances require that Debtors be permitted to make use of the Cash Collateral, on the terms set out herein.

13. Agent and Lenders have agreed to consent to the use of their Cash Collateral, and the continued use and depreciation of their Collateral, provided they receive all the adequate protection provided for herein, and all of the terms and conditions of this Order are met.

C. Segregation of Cash Collateral

14. The Debtors shall provide for the establishment of the following post-petition bank accounts, which accounts shall be designated as debtor-in-possession accounts:

(a) "Cash Collateral Account": an account into which will be deposited the Cash Collateral;

(b) "Security Deposit Account": an account in which is being held the total amount of any security deposits held by Debtor from lessees or residents of any property, as applicable;

(c) "Tax Escrow Account": an account into which Debtor will deposit the amounts to be escrowed for real estate taxes as set forth in the "Budget" (as hereinafter defined); and

(d) "ERP Escrow Account": an account into which Debtor has deposited $125,000 of Cash Collateral escrowed pursuant to that certain Order entered in connection with the hearing on July 16, 2001 in connection with the Employee Retention Program.

15. Debtors' Concentration Account[2] held with Agent shall become the Cash Collateral Account, and shall be denominated as such and as a debtor-in-possession account. All of the debtor-in-possession accounts discussed in Paragraph 12 above shall be maintained with Agent, and may be maintained as interest-bearing accounts, if such interest-bearing accounts are authorized by the Bankruptcy Court and are available for such accounts.

16. The Debtors shall immediately segregate, remit, and deposit in the foregoing accounts all Cash Collateral in the Debtors' possession, custody, or control, and which any Debtor may receive during the course of this case. Further, any Cash Collateral currently held by or received by Agent or Lenders under the Credit Agreement and Loan Documents, or by any other person or entity, including any PPM as that term is defined in the Motion, after the Petition Date shall be immediately deposited into the Cash Collateral Account.

17. Debtors shall escrow in the Tax Escrow Account the amounts allocated in the line item Budget attached hereto as Exhibit "A" (as may be amended with the agreement of Agent and Lenders, the "Budget") for post-petition real property taxes. Debtor shall use the amounts allocated for real property taxes toward the payment of post-petition real property taxes; provided, however, Cash Collateral may be used only for payment of such charges or taxes directly related to the Collateral.

[2] Capitalized terms in this Order shall have the meaning ascribed to them in the Motion or the Loan Documents, unless otherwise noted.

18. Debtor shall not commingle the Cash Collateral, or the proceeds thereof, with any other funds. All funds deposited into the Cash Collateral Account shall be deemed Cash Collateral.

D. Limited Use of Cash Collateral

19. Debtors shall be permitted to use the Cash Collateral only under the terms and conditions contained in this Order during the term hereof, or during any extensions thereof, or any other orders of the Bankruptcy Court, which orders shall issue only after notice to Agent and Lenders and an opportunity for Agent and Lenders to be heard. Use of Cash Collateral under this Order shall terminate at the conclusion of the Cash Collateral Period, as defined below.

20. From the Cash Collateral Account, Debtors shall pay the current, normal, actual, ordinary, and reasonable post-petition expenses of operating and maintaining their businesses (the "Post-Petition Expenses"), which amounts and the extent of said payments are categorized and enumerated in the Budget. Debtors may not exceed any particular line item expense in the Budget by more than 5% per month, without the prior written consent of Agent or further Order of the Bankruptcy Court, as provided below. Debtors shall only incur and pay Post-Petition Expenses to the extent specifically provided in the Budget; provided, however, in addition, Debtors may use Cash Collateral to pay the following: (1) the quarterly fee due to the United States Trustee pursuant to Chapter 123 of Title 28, United States Code Section 1930, as the Court or the United States Trustee shall direct; or (2) payments of allowed

professional fees and disbursements by the attorneys, accountants, or other professionals retained pursuant to § 327 of the Bankruptcy Code by any of the Debtors, as authorized by the Bankruptcy Court after notice and hearing pursuant to 11 U.S.C. § 330, for services performed through the effective date of any plan, in an aggregate amount calculated from the Petition Date not to exceed $500,000.00 (the "Carve-Out"), and subject to the terms of the Budget. With respect to the Carve-Out, Lenders' Cash Collateral may be used to pay allowed fees and disbursements up to the amount of the Carve-Out only to the extent there is no unencumbered cash of the estates to pay for such fees and expenses, and upon confirmation of a plan of reorganization or liquidation, Lenders shall be entitled to an administrative claim pursuant to 11 U.S.C. § 503 to reimburse any payments made against the Carve-Out.

21. In the event there are insufficient revenues generated from the Debtors' businesses in any given month to pay Post-Petition Expenses, as well as any expenses enumerated in subsections (1)-(2) of the foregoing paragraph that come due that month, then a Debtor Affiliate may advance such funds as are necessary to pay the shortfall; provided, however, in no event shall the repayment of any such advances take priority over the obligations under the Loan Documents, nor shall they be entitled to treatment under 11 U.S.C. § 506(c), unless agreed to by the Lenders, in writing, before any such advance is made, or further Order of the Court, after notice and a hearing.

22. In the event the Debtors determine that they need to incur indebtedness post-petition and they seek to grant any lender other than the

Lenders priority liens in the Collateral, no such hearing on such motion shall be held until thirty (30) days after an appropriate motion and scheduling order for discovery on such motion has been entered by the Court.

23. In order to obtain approval for expenditures which exceed the amounts authorized in the Budget, Debtors shall request such approval by written request to Agent and Lenders, which written request must be given by telecopy to Agent and Lenders as set forth herein. Agent and Lenders shall have five (5) business days in which to respond to Debtors' written request by serving notice to the Debtors by telecopy as set forth herein. Should Agent and Lenders fail to respond to Debtors' written request within five (5) business days, Debtors shall treat such failure to respond as a rejection by Agent and Lenders to the expenditure(s) for which permission was sought in the written request. In the event any request hereunder is rejected by Agent and Lenders, Debtors may not use Cash Collateral without additional Bankruptcy Court approval, after notice and an opportunity for hearing is given to Agent and Lenders.

24. During the term of this Order and except as otherwise provided herein, regardless of whether such amounts are set out in the Budgets, Debtors shall not use any Cash Collateral for the following purposes: (1) for the payment of any pre-petition debts or obligations of Debtors or claims against Debtors, (2) for the payment of any debts or obligations of Debtors that are not directly related to the management or operation of their businesses; (3) for prepayment of services that have not yet been rendered, goods which have not

yet been received, or any other items and expense for which payment is not currently due, (4) for payment to themselves, any partners, limited partners, officers, directors, employees, insiders, affiliates, or any corporation, partnership, sole proprietorship or any other entity or insider (as defined in 11 U.S.C. § 101(31)) related to Debtors (except for payments required to be made under the Service Agreements) (the "Debtor Affiliates"), or (5) for payments above the amount of the Carve-Out for allowed professional fees and disbursements by the attorneys, accountants, or other professionals retained pursuant to § 327 of the Bankruptcy Code by any of the Debtors, including but not limited to any appraisal fees of the Debtors. Debtors shall be permitted to use Cash Collateral to make such payments only: (i) with Agent or Lenders' express written consent or (ii) upon further order of the Court after at least twenty (20) days notice to Agent and an opportunity for Agent to be heard.

25. All fees and expenses of any professional managers or management companies retained by Debtors to operate their businesses shall be subject to approval of the Court subject to 11 U.S.C. §§ 330, and shall be paid or reimbursed only after approval of their fees and expenses under such sections, regardless of whether reflected in the Budgets.

E. Adequate Protection Payments

26. Debtors shall pay to Lenders, on or before the first day of each month, commencing September 4, 2001, and continuing through December 14, 2001, a payment equal to monthly interest at the non-default rate as set forth in the Credit Agreement (LIBOR plus) (the "Interest Payment"). In addition,

Debtors shall pay monthly, commencing on the same day the Interest Payment is made, to Agent, for the benefit of Lenders, $25,000. Such payments shall be deemed properly made when received by Agent at the address indicated for notices hereinafter. All payments received by Agent under this paragraph shall be applied first to interest owing on the Obligations, then to Agent's fees and expenses. In the event a payment in any month shall exceed the interest and fees and expenses accruing on the Obligations, such amount shall be applied in future months to the fees and expenses of Agent. If, upon the termination of this Order, any amount remains after paying all of the Agent's fees and expenses and all accrued interest, then such excess shall be applied to reduce the principal of the Obligations. If no principal amount is owed, either, then any excess shall be remitted to the Debtors.

27. Debtors shall also remit to Lenders, as further adequate protection, upon entry of this Order, all amounts collected through July 31, 2001 pursuant to the terms of that letter agreement dated as of February 28, 2001 related to the "Termination of Service Agreement and Agreement for Purchase and Sale of Assets," dated as of January 31, 2001 between Response Oncology, Inc. and Oncology Hematology Group of South Florida, Inc. (the "OHG Agreement"). All amounts attributed to the OHG Agreement shall be applied first to Lenders' outstanding fees and expenses, then to principal. Thereafter, on the last business day of each successive month, all amounts collected by Debtors on account of the OHG Agreement (including the receivables referenced therein), shall be remitted to the Lenders. For the

purposes of this Order, "Cash Collateral" shall include all amounts payable to Lenders, or collected by Debtors, under the OHG Agreement. Thereafter, on the last business day of each successive month, beginning August 31, all amounts collected by Debtors on account of the OHG Agreement shall be remitted to the Lenders until the Debtors and Lenders determine, and the Lenders agree in writing, that no further sums shall be recovered under the OHG Agreement.

28. The payments made by Debtors to Agent pursuant to this subsection E shall be partial adequate protection of Debtors' use of the Cash Collateral of Agent and Lenders and the use and depreciation of the non-Cash Collateral Collateral.

F. Replacement Liens

29. As adequate protection of the Agent and Lenders' interest in the Collateral and Cash Collateral, Agent and Lenders are hereby granted first priority, valid, binding, enforceable, and automatically perfected replacement liens and security interests, and if necessary, adequate protection liens, in the Debtors' Cash Collateral, and in the Collateral as to which Agent and Lenders held a validly perfected lien pre-petition, whether acquired before or after the petition date, whether now owned and existing or hereafter acquired, created, or arising, and all produce and proceeds thereof (including, without limitation, claims of the Debtors' estates against third parties for loss or damage to such

property), and all accessions thereto, substitutions and replacements therefor, and wherever located.

30. As further security, Agent and Lenders are granted a security interest in all property of the Debtors (including unencumbered real and personal property and assets, tangible or intangible, whether now owned or existing or hereafter acquired or arising and regardless of where located, and all proceeds, products, rents, and/or profits thereof (subject to any valid and perfected security interest in such assets in favor of any third party other than the Lenders and further subject to the Carve-Out Expenses)) as adequate protection for any decrease in the value of any Collateral subject to a prepetition security interest, in the assets of Debtors, but only to the extent that the replacement lien granted in the preceding paragraph proves inadequate to furnish such adequate protection.

31. The security interests and liens as granted in this Order shall be effective and perfected immediately and without the necessity of the execution or filing by the Debtors of a security agreement, financing statements, trademark, copyright, tradename or patent assignment filings with the United States Patent and Trademark Office or Copyright Office, mortgages, deeds of trust, landlord lien waivers, licensee consents or otherwise. To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of the liens and security interests authorized or created under this section, or otherwise would impose filing or registration requirements with respect to such replacement liens, such

law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, otherwise applicable federal law, and the judicial power of the United States Bankruptcy Court. The above terms notwithstanding, if Lenders in their sole discretion desire to file such documents, Debtors are directed to execute such documents and instruments, and do such other things, as Agent and Lenders may request, to evidence and perfect such replacement liens and security interest for the convenience and information of third parties, and to evidence the obligations assigned hereunder.

32. Notwithstanding the replacement liens granted to Agent and Lenders herein, the Collateral and liens relating thereto shall be subject and subordinate to the Carve-Out, the quarterly fee due to the United States Trustee pursuant to Chapter 123 of Title 28, United States Code Section 1930, and fees due to the Clerk of the Bankruptcy Court. The priority of such expenses shall survive termination or other expiration of this Order.

33. To the extent the adequate protection provided to Agent and Lenders in this Order is insufficient to adequately protect Agent and Lenders' interests, Agent and Lenders are hereby granted a superpriority administrative expense claim and all of the other benefits and protections allowable under Bankruptcy Code § 507(b), such liens being automatically perfected as set out above.

G. Application of Sales Proceeds

34. Upon the sale of any Collateral outside the ordinary course of business, including the assignment or other transfer of any Service Agreement,

after payment of the reasonable expenses of such assignment, transfer, sale or other disposition of the Debtors, all such proceeds shall be paid directly by such assignee, transferee or buyer, to the Agent at closing. The proceeds of such sale shall be applied first to all accrued and unpaid fees and expenses of Agent, then to all accrued interest and, finally, to the principal amount owed on the Obligations.

H. Reporting And Insurance Obligations

35. By the twentieth day of each month, Debtors shall furnish to Agent, Lenders and to the United States Trustee the standard monthly operating report for the preceding month as required in this District. Debtors agree to furnish such reports to Agent, Lenders, and the United States Trustee by depositing the reports in the mail no later than the twentieth (20th) calendar day of the month following the month for which the report is submitted. Debtors also agree to provide to Agent and Lenders copies of all reports made or documents given to the United States Trustee or to any other creditor, including transcripts of depositions or written discovery taken or produced in this case or any adversary proceeding filed in connection with this case.

36. Every month, commencing _____, 2001, Debtors shall provide to the Lenders, Agent and Agent's counsel, a schedule comparing actual budgeted items versus items listed in the Budget.

37. Without limiting the rights of access and information afforded the Agent or the Lenders, each of the Debtors shall permit representatives, agents, and/or employees of the Agent or Lenders to have reasonable access to such

entity's premises and its records during normal business hours (without unreasonable interference with the proper operation of the Debtors' businesses) and shall cooperate, consult with, and provide to such persons all such non-privileged information as they may reasonably request.

38. Debtors shall promptly notify Agent and Lenders of any imminent danger to the Collateral or to the continuation of Debtors' business of which Debtors become aware, such as, but not limited to, receipt by Debtors of notice of: potential fraud and abuse liability, potential vendor hold or vendor hold deadlines, potential termination from government reimbursement programs, potential environmental liability, the commencement of non-ordinary administrative proceedings, or potential catastrophic damage to the Collateral. Further, Debtors shall promptly notify Agent and Lenders should it become apparent that Debtors cannot maintain their businesses going forward post-petition, or cannot meet post-petition obligations as they come due. Notice to Agent and Lenders pursuant to this paragraph shall be prompt if received by Agent and Lenders within five days of Debtors becoming aware of the relevant crisis, or within sufficient time to allow meaningful intervention by Agent and Lenders, whichever is less.

I. Insurance And Taxes

39. Debtors shall maintain insurance on all insurable property now or hereafter owned by them against such risks and to the extent customary in their industry, which shall include, but not be limited to, insurance on all real property and improvements, equipment and inventory, against all reasonably

insurable hazards. Debtors shall further maintain or cause to be maintained public liability and worker's compensation insurance, in amounts customary in their industry. In addition, Debtors shall maintain insurance for claims, however characterized, against them in connection with the provision of medical services and/or ancillary services provided by them, in an amount of at least $500,000 per occurrence and $1,000,000 in the aggregate for physicians, which insurance shall name Agent on behalf of Lenders as additional insured. Debtors shall cause each Provider (as such term is defined in the Loan Documents) to maintain medical malpractice insurance in the same amounts.

40. Debtors shall provide to Agent and Lenders the number(s) of any and all insurance policies in effect, the names, addresses, and contact persons of any entities issuing such insurance, and a summary of the terms and payment arrangements for any such insurance policies. Agent, on behalf of Lenders, shall be named the first loss payee on such insurance policies.

41. Debtors shall pay all post-petition taxes, including but not limited to payroll, ad valorem, franchise, or personal property taxes, as they come due in the ordinary course of Debtors' business, and prior to assessment of any late fees or interest.

J. Cash Collateral Period And Termination

42. The "Cash Collateral Period" shall be that period of time from the entry of this Order to the earlier of the following events: (a) December 31, 2001, (b) appointment of a Chapter 11 Trustee, examiner with enlarged powers, or

other responsible person, or a sale of any asset of the Debtors in which the Agent or Lenders have a security interest, outside the ordinary course of business, unless prior to entry of an order approving said action, Agent and Lenders have consented in writing to an extension of this Order; (c) conversion of any of these Bankruptcy Cases to a case under Chapter 7 of Title 11 of the United States Code; (d) occurrence of a default hereunder which remains uncured as provided herein; (e) entry of an order dismissing any of these Bankruptcy Cases and such Order becoming effective pursuant to its terms; (f) transfer of the Collateral to Agent or Lenders; (g) confirmation of a plan of reorganization, unless such plan provides for payment in full in cash of the Obligations on the earlier of within ten days after the hearing on such confirmation of such plan, regardless of whether such confirmation order has been entered by the Court, or the transfer of any Collateral to any non-Debtor entity; (h) entry of a final order granting relief from the automatic stay to the holder of any security interest in any asset of the Debtors, which relief or order is not consented to by Agents and Lenders, (i) filing of an adversary or avoidance action by Debtors or any Committee against Agent or Lenders, or (j) further order of this Bankruptcy Court terminating Debtors' use of Cash Collateral authorized hereunder.

43. Debtors have the burden of returning to this Court to seek authorization for any further use of the Cash Collateral in the event such right is terminated by expiration of the Cash Collateral period, or otherwise.

44. Notwithstanding the termination of Debtors' right to use Cash Collateral hereunder or the expiration of this Order, the rights, liens, and security interests granted to Agent and Lenders hereunder shall survive.

45. Further, notwithstanding the termination of Debtors' rights to use Cash Collateral hereunder or the expiration of this Order, Debtors may make all payments allowed under the Carve-Out.

K. Default

46. Debtors shall be in default under this Order if: (a) Debtors fail to pay any amount required by this Order; (b) Debtors fail to perform any of their obligations, agreements, or promises under this Order; (c) Debtors make any payment other than as authorized to be paid pursuant to this Order; (d) Debtors have made any material misstatement or misrepresentation in connection with any of the post-petition monthly reports forwarded to Agent and Lenders pursuant to this Order; or (e) Debtors grant mortgages, security interests, liens or permit encumbrances to attach to the Collateral without the express written consent of the Lenders.

47. Following the occurrence of a default, Debtors shall have three (3) business days after receipt of written notice from Agent or Lenders to cure a monetary default, and five (5) days after receipt of written notice from Agent or Lenders to cure a non-monetary default, if such non-monetary default is of a type that can be cured. If Debtors fail to cure within the specified time period, the Cash Collateral Period shall terminate and Debtor's right to use Cash

Collateral shall cease and terminate immediately without further notice by Agent or Lenders, as set out herein.

48. In addition, upon the event of default as provided herein, and the failure to cure such default within the times specified herein, immediately, upon the expiration of such cure period, the automatic stay imposed by 11 U.S.C. § 362 shall terminate, without further order of this Court, and Agent and Lenders shall be permitted to exercise all rights which they may have against the Collateral, be it at law or in equity, including without limitation a right to setoff any Cash Collateral against the Obligations. Debtors or any other party seeking to reinstate the automatic stay shall have the entire burden of proof at any hearing on any request to reinstate the automatic stay. Nothing in this paragraph shall prohibit Agent and Lenders from also petitioning the Bankruptcy Court for such additional relief under the Bankruptcy Code as they may desire, such as but not limited to appointment of a trustee, dismissal, conversion, or commencement of an adversary proceeding to obtain any relief they may desire, including equitable, injunctive or monetary relief.

49. Agent or Lenders may waive any default hereunder after same has been declared, without impairing their right to declare a subsequent default hereunder and without any further notice from Agent or Lenders that Debtors must strictly comply with the obligations imposed hereunder. Failure of Agent or Lenders to strictly enforce any remedy shall not be justification thereafter to refuse to strictly enforce any remedy which Agent or Lenders may request of the Court.

L. Notice

50. All notices required or permitted under this Order shall be sent to the respective party and attorney at the address listed below by certified mail, return receipt requested, hand-delivery, or by facsimile transmission. In the event of notice by certified mail, notice shall be effective upon receipt and refusal of delivery as shown by the return receipt. In the event of notice by facsimile transmission, notice shall be effective upon successful facsimile transmission. In the event of notice by hand-delivery, notice shall be effective upon receipt.

51. If notice is given to Agent and Lenders, it shall be sent to:

Robert I. Hart
AmSouth Bank
315 Deaderick Street, 8th Floor
Nashville, TN 37238
Telephone: (615) 736-6246
Facsimile (615) 736-6633

Elizabeth Rouse
Union Planters Bank, N.A.
6200 Poplar Avenue
Memphis, TN
Telephone: (901) 580-5470
Facsimile (901) 580-5451

David Colmie
Bank of America
101 North Tryon
NC1-001-13-26
Charlotte, NC 28255
Telephone: (704) 387-1867
Facsimile: (704) _____

With a copy to: John Tishler
Robert A. Guy, Jr.
Waller Lansden Dortch & Davis

A Professional Limited Liability Company
511 Union St., Suite 2100
P.O. Box 198966
Nashville, TN 37219-8966
Telephone: (615) 244-6380
Facsimile: (615) 244-6804

If notice is given to Debtors, it shall be sent to:

With a copy to:

M. General Provisions And Findings

52. The provisions of this Order shall be binding upon and inure to the benefit of Agent, Lenders, Debtors, and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed for the estate of any of the Debtors, whether in the chapter 11 cases or in the event of the conversion of the cases, and such binding effect is an integral part of this Order.

53. Nothing in this Order shall be a preclusion or limitation as to any setoff rights, including such rights under 11 U.S.C. § 553, of Agent or Lenders against Debtors, all of which rights are hereby preserved.

54. The terms and conditions of the Loan Documents are expressly ratified and assumed by the Debtors. The terms and conditions of the Loan Documents, as modified by this Order, shall continue to govern the relationships between the Debtors, the Agent and the Lenders.

55. Nothing herein shall prejudice Agent or Lenders' rights to challenge any aspect of these Bankruptcy Cases or to seek any relief under Title 11 or

Title 28 with respect to any aspect of these Bankruptcy Cases. Further, nothing herein contained shall be construed to alter, modify, or change in any respect the terms and conditions of the Loan Documents, or to waive Agent and Lenders' rights to full payment of the Obligations thereunder.

56. Notwithstanding anything else herein, none of the Cash Collateral or proceeds thereof (including the Carve-Out) may be used by the Debtors or any other person or entity to object to or contest in any manner, or raise any defenses to, the validity, extent, perfection, priority or enforceability of the Obligations, the Loan Documents, or any liens or security interests with respect thereto, or any other rights or interests of Agent or Lenders, or to assert any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against Agent or Lenders.

57. Nothing contained herein shall limit the rights of Agent or Lenders to (i) seek further relief from the automatic stay of section 362 of the Bankruptcy Code at any future time, (ii) seek additional adequate protection from the Debtors (and nothing contained herein shall be construed as a finding of complete adequate protection as to the Cash Collateral or the Collateral), (iii) request a conversion or dismissal of any or all of the Debtors' chapter 11 cases, or the appointment of a trustee or an examiner, (iv) propose a chapter 11 plan or plans, or object to and oppose a chapter 11 plan or plans, in any or all of the Bankruptcy Cases, or (v) seek such other relief as to which Agent or Lenders may be entitled, including without limitation any adversary proceeding, any claim for substantial contribution under 11 U.S.C. § 503, or any other such

rights and remedies as Agent and Lenders may have under the Bankruptcy Code, at law or in equity, or otherwise.

58. With the exception of the Carve-Out, neither the Collateral (including the Cash Collateral) nor Agent and Lenders shall be subject to surcharge, pursuant to Section 506(c) of the Bankruptcy Code or otherwise, by the Debtor or any other party in interest, and in no event shall Agent and the Lenders be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral. Upon entry of this Order, the Debtors shall have been deemed to have waived, on behalf of their bankruptcy estates, any claim they, or any successor or assign (including any trustee), under Section 506(c).

59. The Debtors will not, at any time during these Chapter 11 cases, grant mortgages, security interests, or liens in the Collateral or any portion thereof to any other parties pursuant to section 364(d) of the Bankruptcy Code or otherwise, except upon consent of Agent and Lenders.

60. Debtors are hereby enjoined from using Cash Collateral, except as provided for in this Order or in an order entered by the Bankruptcy Court following notice to and an opportunity for Agent and Lenders to be heard. Nothing herein contained shall be in prejudice of the right of Agent or Lenders to seek modification or termination of this Order based upon a change of circumstances.

61. In negotiating this Order, or exercising their rights to collect the Obligations, Agent and Lenders shall not be deemed to be in control of the

operations of 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, as amended, or any similar Federal or State statute).

62. Time is of the essence with respect to all performance required by this Order.

63. Sufficient and adequate notice of this Final Order and the relief requested in the Motion has been given pursuant to sections 102(1) and 363(c) of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001(d).

64. This Order constitutes findings of fact and conclusions of law, and takes effect and becomes enforceable immediately upon execution hereof.

65. This Court shall retain jurisdiction to resolve issues that arise pursuant to this Order

66. The Clerk of the Court is hereby directed to forthwith enter this Order on the docket of the Court maintained with regard to these cases.

SO ORDERED.

Dated: Memphis, Tennessee

August 20, 2001

Honorable David S. Kennedy
United States Bankruptcy Judge

Approved for Entry By:

_____

Stanley J. Samorajczyk, Esq.
Sam J. Alberts, Esq.
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
Robert S. Strauss Building
1333 New Hampshire Avenue, N.W.
Washington, D.C. 22036
(202) 887-4000
Attorneys for the Debtors

and

_____

John C. Tishler
Robert A. Guy, Jr.
Waller, Lansden, Dortch & Davis, PLLC
511 Union Street, Suite 2100
P.O. Box 198966
Nashville, Tennessee 37219-8988
(615) 244-6380
Attorney for the Agent

EXHIBIT A

(a) all equipment, machinery, store fixtures, furniture, furnishings, vehicles, tools, spare parts, Inventory, materials, supplies, goods, leasehold improvements and other tangible personal property of the Debtors;

(b) all leases and use agreements of personal property entered into by the Debtor(s) as lessor with other persons as lessees, and all rights of the Debtor(s) under such leases and agreements, including the right to receive and collect all rentals and other moneys (including security deposits) at any time payable under such leases and agreements, whether paid or accruing before or after the filing of any petition by or against the Debtor(s) under the federal Bankruptcy Code;

(c) all leases and use agreements of personal property entered into by the Debtor(s) as lessee with other persons as lessor, and all rights, titles and interests of the Debtor(s) thereunder, including the leasehold interest of the Debtor(s) in such property and all options to purchase such property or the extend any such lease or agreement;

(d) any and all accession and additions now or hereafter made or added to any of the property described in the foregoing granting clauses, any substitutions and replacements therefor, and all attachments and improvements now or hereafter placed upon or used in connection therewith, or any part thereof;

(e) all Accounts of the Debtors;

(f) all General Intangibles of the Debtors;

(g) all moneys of the Debtors, all Deposit Accounts in which such moneys may at any time be on deposit or held, all investments or securities in which such moneys may at any time be invested and all certificates, instruments and documents from time to time representing or evidencing any such moneys;

(h) all of the Debtor(s)' rights as an unpaid vendor or lienor, including stoppage in transit, replevin, detinue and reclamation;

(i) any other property of the Debtors now or hereafter held by the Agent or by others for the Agent's account;

(j) all leases, contracts, agreements, documents, instruments and chattel paper included in the foregoing granting clauses, or related to any of the property described therein, or in connection with which Accounts now exist or may hereafter be created and all of the Debtor(s)' right, title and interest in the Service Agreements described on Exhibit C to the Security Agreements;

(k) all interest, dividends, proceeds, products, rents, royalties, issues and profits of any of the property described in the foregoing granting clauses, whether paid or accruing before or after the filing of any petition by or against the Debtor(s) under the

federal Bankruptcy Code, and all notes, certificates of deposit, checks and other instruments delivered to the Agent in substitution for or in addition to any such property;

(l) all books, documents and records (whether on computer or otherwise) related to any of the property described in the foregoing granting clauses;

(m) all of Response's security interests in and liens on property of other entities and individuals, including its affiliates;

(n) all leases, subleases, lettings and licenses, and other use and occupancy agreements to which Debtor is a party as a lessee thereunder (the "Leases"), now or hereafter pertaining to any Real Property (as defined in the Loan Documents) or Personal Property (as defined in the Loan Documents), including, but not limited to the leases more particularly described in Exhibit A attached to the Collateral Lease Assignments, together with all right, title and interest of Debtor under the Leases in and to any and all of the Real Property and Personal Property, to the fullest extent possible without (i) resulting in any breach of; (ii) constituting a default under; or (iii) causing a termination of any of the Leases; provided, however, so long as no Event of Default exists, Debtor shall have the right under a license granted hereby to occupy the Assigned Property, use the Personal Property and otherwise enjoy all rights, benefits and estates granted to Debtor under the Leases;

(o) all modifications, extensions, renewals, restatements and supplements to or of the Leases and in and to all rights to renew or extend the term thereof (recorded or unrecorded) and (ii) all credits, deposits, options (including any option to purchase all or any part of the Real Property and any property adjoining the same from any of the Lessors (as defined in the Loan Documents)), powers, claims, remedies, privileges and rights of Debtor as lessee or grantee, under the Leases, whether now or hereafter existing, including the right of Debtor to possession under Section 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code") in the event of the rejection of any Lease by the Lessor or its trustee pursuant to said section, the right to exercise options or give consents with respect to the Lease, or to modify, extend or terminate the Lease, the right to surrender the Lease, reject the Lease or elect to treat the Lease as rejected or remain in possession under Section 365 of the Bankruptcy Code, and the right to receive all deposits and other amounts to Debtor under the Lease;

(p) any non-disturbance agreement heretofore, now or hereafter entered into for the benefit of Debtor or Agent or both, by any Person holding a mortgage to which the interests of Debtor or Agent, or both, in either the Leases or the Real Property are subordinate;

(q) any and all estate or interests of Debtor in the Land, the Improvements and the Fixtures (all as hereinafter defined; herein collectively called the "Real Property");

(r) all land Related Licenses and Permits (as defined in the Loan Documents);

(s) all Insurance Policies (as defined in the Loan Documents);

(t) all Abatements, Damages, and Losses or Rebates (all as defined in the Loan Documents);

(u) all modifications, extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the foregoing property, hereafter acquired by or released to Debtor or constructed, assembled or placed by Debtor or its representatives thereon, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, grant, conveyance, assignment or other act by Debtor, which shall become subject to the Lien of this Assignment as fully and completely, and with the same effect, as though now owned by Debtor and specifically described herein;

(v) all machinery, equipment and articles of personal property now or hereafter affixed to, placed upon or used in connection with the Real Property;

(w) all of Debtors' right title interest in and to all of the issued and outstanding shares of capital stock of Response Oncology Management, Response Oncology – Tamarac and Response Oncology – Ft. Lauderdale (together, the "Subsidiary Shares");

(x) all of Debtors' right, title and interest (but not obligations) as general partner, general or limited partner, or both in South Florida Oncology Disease Management, G.P. (the "G.P. Interest"); and

(y) all proceeds of the foregoing.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	**Chapter 11**
	)	
	)	**Case No. 10-10142 (KG)**
SPECIALTY PACKAGING HOLDINGS, INC., *et al.*,[1]	)	**(Jointly Administered)**
	)	
	)	
Debtors.	)	
	)	**Related to Docket No. 14**

FINAL FINANCING ORDER (I) REGARDING POSTPETITION FINANCING; (II) USE OF CASH COLLATERAL; (III) SUPERPRIORITY LIENS AND CLAIMS; (IV) ADEQUATE PROTECTION; AND (V) MODIFYING THE AUTOMATIC STAY

Upon the motion (the "Motion"), dated January, 20 2010, of Specialty Packaging Holdings, Inc. ("SPH"), together with its direct and indirect subsidiaries, The Specialty Packaging Group, Inc. ("SPG"), Cosmetics Specialties, Inc. ("CSI"), Cosmolab, Inc. ("Cosmolab"), Cosmetics Specialties East, LLC ("CSE"), and Cosmolab New York, Inc. ("CNY") (each a "Debtor" collectively, the "Debtors"), pursuant to sections 105, 361, 362, 363, and 364 of the United States Bankruptcy Code, 11 U.S.C. §§101, *et seq.* (the "Bankruptcy Code"), (a) for the entry of an Interim Financing Order (as defined herein) and this Final Financing Order authorizing the Debtors to: (i) obtain post-petition financing pursuant to section 364 of the Bankruptcy Code; (ii) use cash collateral pursuant to section 363 of the Bankruptcy Code; (iii) execute and enter into the DIP Loan Documents (as defined herein) substantially in the form annexed to the Motion as Exhibit A and to perform such other and further acts as may be required in connection with the DIP Loan Documents; (iv) grant priming liens and

[1] The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): Specialty Packaging Holdings, Inc. (7942), The Specialty Packaging Group, Inc. (6668), Cosmetics Specialties, Inc. (0826), Cosmolab, Inc. (1367), Cosmetics Specialties East, LLC (0313), and Cosmolab New York, Inc. (2222). The primary mailing address for the Debtors is: 1100 Garrett Parkway, Lewisburg, TN 37091

superpriority claims to and on behalf of and for the benefit of the Agent and the Bank in all Collateral in accordance with the DIP Loan Documents (as defined herein), the Interim Financing Order (as defined herein), and this Final Financing Order (as defined herein) to secure any and all of the DIP Facility Obligations (as defined herein); (v) subject to the terms and limitations herein, use Cash Collateral (as defined herein); and (vi) (a) pending a final hearing on the Motion (the "Final Hearing"), obtain emergency postpetition loans under the DIP Credit Agreement (as defined herein) in an amount not to exceed $1,200,000 and authorization to use cash collateral to and including the date on which this Final Financing Order is entered, (b) requesting the provision of adequate protection for the Debtors' Pre-Petition Lender, and (c) in accordance with Rules 4001(b)(2) and (c)(2) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), requesting that this Court schedule the Final Hearing and approve notice with respect thereto.

On January 21, 2010, this Bankruptcy Court entered an Interim Financing Order (the "January 21, 2010 Interim Financing Order") (Dkt. No. 43) on the Motion following a hearing to consider approval of the interim commitment held and concluded on January 21, 2010 (the "Interim Hearing"), and on or about February 4, 2010, this Court entered an Agreed Order (I) Extending the Debtors' Authorizations under the Interim Financing Order (A) Regarding Postpetition Financing; (B) Use of Cash Collateral; (C) Superpriority Liens and Claims; and (D) Adequate Protections; and (II) Scheduling and Establishing Deadlines Relating to a Final Hearing on Such Matters (Dkt. No. 77) (collectively with the January 21, 2010 Interim Financing Order, the "Interim Financing Order"). Having considered the Motion and the exhibits attached thereto, including, without limitation, the DIP Loan Documents; and upon all of the pleadings filed with the Court; and having overruled all unresolved objections to the relief requested in the

Motion; and upon the record made by the Debtors at the Interim Hearing and Final Hearing, including the Motion and all of the proceedings held before the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor;

BASED ON THE RECORD, THE COURT HEREBY FINDS:

A. On January 20, 2010 (the "Filing Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Debtors are continuing in the management and possession of their businesses and properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. Pursuant to the order of this Court dated January 21, 2010 (Dkt. No. 34), the Debtors' chapter 11 Cases (the "Cases") have been consolidated for procedural purposes only and are being jointly administered.

C. On January 29, 2010, the U.S. Trustee appointed the Committee of Unsecured Creditors (the "Committee") in accordance with section 1102(a) of the Bankruptcy Code.

D. Consideration of this Motion constitutes a "core proceeding" as defined in 28 U.S.C. §§ 157(b)(2)(A), (D), (G), (K), (M) and (O). This Bankruptcy Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

E. Subject to the limitations in Paragraph 26 of this Final Financing Order, the Debtors, for themselves, their estates, and all representatives of such estates, acknowledge, admit and confirm the following (collectively, the "Debtors' Stipulations"):

(i) Pursuant to that certain Amended & Restated Credit Agreement, dated as of February 17, 2005 (as amended, restated or otherwise modified from time to time, the "Pre-

Petition Credit Agreement"), among SPG, as borrower, SPH, CSI, Cosmolab, CSE, and CNY, together with other parties, as guarantors, and Bank of America, N.A. ("BANA"), as Administrative Agent (in such capacity, the "Pre-Petition Agent"), and as Lender (in such capacity, the "Pre-Petition Lender") and together with the Pre-Petition Agent, the "Pre-Petition Secured Parties"), the Pre-Petition Lender made loans and other financial accommodations to, among others, the Debtors. All such loans, financial accommodations and other amounts owing under, or in connection with, the Pre-Petition Credit Agreement and all collateral and ancillary documents executed in connection therewith (collectively, the "Pre-Petition Loan Documents") are hereinafter referred to as the "Prior Bank Obligations".

(ii) The Prior Bank Obligations are not subject to disallowance, subordination, re-characterization, defense, counterclaim, cross-claim, deduction or offset of any kind or otherwise avoidable, and as of the Filing Date, the Debtors were liable to the Pre-Petition Lender in respect of loans made by the Pre-Petition Lender pursuant to the Pre-Petition Credit Agreement in the aggregate amount of not less than $16,239,148, consisting of (i) the aggregate principal amount; and (ii) accrued and unpaid interest thereon at the applicable rate as well as attorneys' fees, costs and other expenses.

(iii) The Prior Bank Obligations are secured by valid, perfected, enforceable, first-priority liens and security interests (collectively, the "Pre-Petition Liens") granted by the Debtors to the Pre-Petition Secured Parties, which liens and security interests are not subject to subordination, defense, disallowance or otherwise avoidable, upon substantially all of the Debtors' assets (the "Pre-Petition Encumbered Assets").

(iv) The Pre-Petition Loan Documents are valid and binding agreements and obligations of the Debtors, and the Pre-Petition Liens on the Pre-Petition Encumbered Assets: (i)

constitute valid, binding, enforceable and perfected first priority security interests and liens; and (ii) are not subject to avoidance, reduction, disallowance, impairment or subordination by the Debtors pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

(v) (i) The Prior Bank Obligations constitute legal, valid and binding obligation of the Debtors, enforceable in accordance with their terms; (ii) the Debtors have no objection, offset, defense or counterclaim of any kind or nature to the Prior Bank Obligations; and (iii) the Prior Bank Obligations, and any amounts previously paid to any Pre-Petition Agent or the Pre-Petition Lender on account thereof or with respect thereto, are not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

(vi) The Pre-Petition Agent (on its behalf and on behalf of the Pre-Petition Lender) perfected its security interests and liens in and on the Pre-Petition Encumbered Assets.

F. For purposes of sections 506(c) and 507(b) of the Bankruptcy Code and Fed. R. Bankr. P. 3012, as of the Filing Date, the value of the Pre-Petition Secured Parties' interest in the Pre-Petition Encumbered Assets was not less than $15,400,000; provided, however, that nothing herein shall prejudice the Pre-Petition Agent's and/or the Pre-Petition Lender's right to later: (1) assert that their respective interests in the Pre-Petition Encumbered Assets lack adequate protection or (2) seek a different valuation of the Pre-Petition Encumbered Assets, it being understood, that the Pre-Petition Agent asserts that value of the Pre-Petition Encumbered Assets will be deemed to have been higher, on a dollar-for-dollar basis, by an amount equal to the amount, if any, by which the amount ultimately recovered by virtue of the Sale Process exceeds the amount that would have been received under the Stalking Horse Bid (as such term is defined herein) (as such Bid was constituted on the Filing Date).

G. That portion of the Pre-Petition Encumbered Assets constituting cash or cash equivalents, including cash constituting the proceeds, product, or profits of any Pre-Petition Encumbered Assets received after the Filing Date, may constitute cash collateral of the Pre-Petition Lender within the meaning of section 363(a) of the Bankruptcy Code (the "Cash Collateral"). The Debtors have no cash or assets readily convertible into cash that are not subject to the asserted liens and security interests of the Pre-Petition Agent on behalf of the Pre-Petition Lender.

H. The Debtors do not have sufficient financing to fund their operations on a long-term basis, and as a result, the Debtors have determined that the appropriate course is a sale of substantially all of their assets under section 363 of the Bankruptcy Code. Towards that end, the Debtors filed on the Filing Date a motion seeking the institution and pursuit of such a section 363 sale process (the "Sale Process") based on a stalking horse bid from All4 Cosmetics, Inc. (the "Stalking Horse Bid"). The post-petition financing and cash collateral arrangements described in the Motion is conditioned upon and otherwise tied to the Sale Process.

I. The use of the Cash Collateral alone will not be sufficient to fund the operations of the Debtors. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense pursuant to Section 364(a) or (b) of the Bankruptcy Code. Financing on a post-petition basis is not otherwise available without the Debtors granting, pursuant to section 364(c)(1) of the Bankruptcy Code, claims having priority over any and all administrative expenses of the kinds specified in sections 503(b) and 507(b) of the Bankruptcy Code, and securing such indebtedness and obligations with security interests in, and liens on, the pre-petition and post-petition property of the Debtors, whether existing on the Filing Date or thereafter acquired, as described below, pursuant to sections

364(c)(2), 364(c)(3), 364(d)(1) of the Bankruptcy Code.

J. The Debtors require post-petition financing to continue operating, and in accordance with the Interim Financing Order, the Debtors have entered into a debtor-in-possession revolving credit facility (as the same may be amended, supplemented or otherwise modified from time to time, the "DIP Revolving Facility") on a superpriority and priming basis on the terms set forth in the proposed DIP financing agreement (as the same may be amended, supplemented or otherwise modified from time to time, the "DIP Credit Agreement")[2] as executed among the parties after the entry of and pursuant to the authorization contained within the Interim Financing Order, between the Debtors and BANA, as Administrative Agent (in such capacity, the "Agent"), and as a Lender (in such capacity, the "Bank") and all other documents, agreements or instruments in connection therewith or related thereto (collectively, as the same may be amended, supplemented or otherwise modified from time to time, the "DIP Loan Documents"), providing for secured postpetition financing up to an aggregate principal amount consisting of (1) up to $2,500,000 in incremental funding and (2) $12,900,000 to be used solely in payment of that amount of the Prior Bank Obligations (the "DIP Facility").

K. The relief requested in the Motion, which relief is a condition to the financing, use of Cash Collateral, priming liens and other matters set forth herein, is necessary, essential and appropriate for the continued operation of the Debtors' businesses and the management and preservation of its assets and is otherwise necessary to avoid immediate irreparable harm to the Debtors' estates and is in the best interests of the Debtors, their estates, and their creditors.

L. The terms and conditions of the DIP Loan Documents and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances, and reflect

[2] Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned thereto in the DIP Credit Agreement.

the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration.

M. The post-petition financing arrangements described in the Motion, as set forth in the DIP Loan Documents, and as entered into by the Pre-Petition Lender, the Pre-Petition Agent, the Bank, the Agent, and the Debtors pursuant to the Interim Financing Order were negotiated at arm's length and in good faith as that term is defined in section 364(e) of the Bankruptcy Code, and the Pre-Petition Lender, the Pre-Petition Agent, the Agent, and the Bank are entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code.

N. The Pre-Petition Agent and the Pre-Petition Lender have consented to: (i) the priming of the Pre-Petition Liens by the DIP Liens (as defined herein) on the terms and conditions set forth in the Interim Financing Order and this Final Financing Order; and (ii) to the Debtors' use of the Pre-Petition Lender's Cash Collateral. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary in order to obtain such consent or non-objection of such parties.

O. Pursuant to the provisions of the Interim Financing Order, and as to be continued and expanded upon entry of this Final Financing Order, the Pre-Petition Agent's interests in the Pre-Petition Encumbered Assets will be provided the adequate protection set forth herein.

P. Notice of the relief sought by the Motion and the Final Hearing with respect thereto was delivered on January 22, 2010, via U.S. Mail, to the following parties in interest: (i) the United States Trustee for the District of Delaware (the "U.S. Trustee"); (ii) those parties listed on the Consolidated List of Creditors Holding Largest Thirty Unsecured Claims Against each Debtor, as identified in the Debtors' chapter 11 petitions; (iii) counsel to the Agent and the

Pre-Petition Agent; (iv) the Internal Revenue Service; (v) any party that has filed a lien against any of the Debtors' assets; and (vi) all parties who filed requests for notices pursuant to Bankruptcy Rule 2002 in the Debtors' chapter 11 Cases and then shortly thereafter, to the members of the Committee and the proposed counsel for the Committee (collectively, the "Final Notice Parties"). Given the nature of the relief sought in the Motion, such notice constitutes sufficient and adequate notice of this Final Financing Order pursuant to Bankruptcy Rules 2002, 4001(b), (c) and (d) and 9014 and section 102(1) of the Bankruptcy Code, as required by sections 363(b) and 364(d) of the Bankruptcy Code, and no further notice of the Motion or this Final Financing Order is necessary or required.

Q. The Debtors have requested, and good, adequate, and sufficient cause has been shown to justify the granting of the relief requested herein. Absent entry of this Final Financing Order, the Debtors' estates will be immediately and irreparably harmed.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Motion Granted. The Motion is granted in its entirety subject to the provisions hereof. Any objections to the relief sought in the Motion that have not been previously resolved withdrawn, waived or settled, and all reservations of rights therein, are hereby denied and overruled on their merits. This Final Financing Order shall become effective immediately upon its entry.

2. DIP Loan Documents.

(a) The Debtors' entry into each and all of the DIP Loan Documents to which they are a party as authorized pursuant to the Interim Financing Order is hereby expressly confirmed and, to the extent any such DIP Loan Documents have not been entered into as of the date hereof, the Debtors continue to be, and hereby expressly are, authorized immediately to

enter into any such DIP Loan Documents, which, upon execution and delivery thereof, shall continue to constitute or shall constitute (as the case may be) valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with their terms (including, without limitation, the use of DIP Facility proceeds or proceeds of Collateral (as defined herein) to reduce Prior Bank Obligations).

(b) To enable the Debtors to continue to operate their business, and subject to the terms and conditions of this Final Financing Order and the DIP Loan Documents, including, without limitation, the budget-related covenants contained in the DIP Credit Agreement (as the same may be modified, supplemented or updated from time to time, the "Budget Covenants"), the Debtors are hereby authorized to incur the DIP Facility Obligations (as defined herein) under the DIP Revolving Credit Facility in an aggregate outstanding principal amount not to exceed $15,400,000, including for the purpose of paying the Roll-Up Amount to the Pre-Petition Agent for application against the Prior Bank Obligations.

(c) The Debtors are authorized and directed to do and perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, security agreements, mortgages and financing statements) that may be contractually required or necessary (as the case may be) for the Debtors' performance of the DIP Loan Documents. The Debtors, the Agent and the Bank may amend or modify the DIP Loan Documents, with the requisite consent of the Pre-Petition Lender (if applicable), without the necessity of any further Bankruptcy Court approval so long as any such amendment or modification does not materially alter the provisions of the Interim Financing Order or this Final Financing Order. Consistent with the terms of the DIP Credit Agreement and the other DIP Loan Documents, the Debtors

may use advances under the DIP Facility as provided in the DIP Credit Agreement, including the payment of the Prior Bank Obligations with proceeds of the DIP Facility or the Collateral.

3. Modification of the Automatic Stay. The automatic stay under section 362(a) of the Bankruptcy Code shall be, and hereby is, modified to the extent necessary to permit the Agent for the sole benefit of the Bank or the Pre-Petition Agent for the sole benefit of the Pre-Petition Lender, as the case may be, to receive, collect and apply payments and proceeds in respect of the assets of the Debtors (including the Pre-Petition Encumbered Assets) and in accordance with the terms and provisions of this Final Financing Order and the DIP Loan Documents.

4. Fees and Expenses. The Debtors are authorized and directed to and shall pay (and the automatic stay imposed by section 362 of the Bankruptcy Code is hereby lifted to the extent necessary) fees and expenses that may be required under the DIP Loan Documents, as such fees and expenses become due, including, without limitation, agent fees, commitment fees, letter of credit fees, underwriting fees, and reasonable attorneys', financial advisors', and accountants' fees and disbursements and fees in respect of internal auditors, all as provided for in and subject to the DIP Loan Documents[3]. In addition, the Debtors are hereby authorized and directed to indemnify the Agent and the Bank, exclusively in their capacity as such, against any liability arising in connection with the DIP Loan Documents to the extent provided in and subject to the DIP Loan Documents. All such fees, expenses, and indemnities of the Agent and Bank shall constitute DIP Facility Obligations (as defined herein) and shall be secured by the DIP Liens and afforded all of the priorities and protections afforded to the DIP Facility Obligations under this

[3] Without limiting the generality of the foregoing, but to avoid uncertainty, the presence of the Secured Lender Counsel (incl. local counsel) line item under the Heading "Bank Debt" on the Debtors' Interim Budget (as such term is defined herein), and attached hereto as Exhibit A, is purely for budget planning purposes and in no manner whatsoever limits the Debtors' obligations with respect to those amounts.

Final Financing Order and the other DIP Loan Documents. Notwithstanding any other provision of this Final Financing Order to the contrary, and solely with respect to invoices submitted by the DIP Agent for the reimbursement of its attorneys' fees and expenses after the date of the entry of this Order, (i) the DIP Agent shall serve copies of any pertinent fee statements (with appropriate redacting to any time entries advisable in the DIP Agent's good faith judgment to address any concerns about the inadvertent disclosure of privileged or confidential material) upon the attorneys for the Debtors, the attorneys for the Committee, and the office of the U.S. Trustee, (ii) such fee statements shall be promptly paid if there are no written objections from any such parties in interest within ten days after such delivery, and (iii) if there are any such written objections within such ten day period, which must be made with specificity (including referencing particular time or expense entries that are objected to as being unreasonable), the balance of such fee statements promptly shall be paid, with any disputed items to be resolved either by subsequent agreement or, in the absence of any such agreement, after notice and hearing requested by the DIP Agent or the objecting party or parties.

5. DIP Facility Obligations. All obligations owed to the Agent and/or the Bank (collectively, and solely in their respective capacities as Agent and Bank and not in their capacity as Agent or Lender under any other facility, collectively the "DIP Secured Parties") under or in connection with the DIP Loan Documents, including, without limitation, all loans, advances, letters of credit and other indebtedness, obligations and amounts (contingent or otherwise) owing from time to time under or in connection with the DIP Loan Documents, and any and all other obligations at any time incurred by the Debtors to any of the DIP Secured Parties, are defined and referred to herein as the "DIP Facility Obligations".

6. Interest on the DIP Facility Obligations; Mandatory Prepayment.

(a) Interest on the DIP Facility Obligations shall accrue at the rates (including any applicable default rates) and shall be paid by the Debtors at the times as provided in the DIP Loan Documents.

(b) Mandatory Prepayments (and concomitant reductions in then-outstanding DIP Facility Obligations) shall also be required in connection with asset sales by the Debtors under the following circumstances:

DIP Facility	All Net Asset Sale Proceeds (as such term is defined below) realized from a Section 363 Sale (as such term is defined below) shall be paid to the Agent until the DIP Facility Obligations are paid full in cash, with a concomitant permanent reduction in the amount of the Commitment. Thereafter, any remaining Net Asset Sale Proceeds shall be distributed to the Pre-Petition Agent for distribution and application to and by the Pre-Petition Agent and the Pre-Petition Lenders pursuant to the provisions of the Existing Credit Agreement. "**Net Asset Sale Proceeds**" shall specifically exclude, without duplication, (i) professional or management fees and expenses attributable to the pertinent sale of any professional whose retention for such purpose has been approved pursuant to an Order entered by the Bankruptcy Court, including allowed and previously unpaid attorneys' fees and expenses (but in all instances subject to the Carve-Out Amount) and including the success fee owing to Morris Anderson (assuming the retention of such firms and such fees have been approved by the Bankruptcy Court and fully earned), (ii) other ordinary and customary sale and transaction costs, and, in the event that the Bank elect to then terminate the DIP Facility, (iii) an amount equal to the sum of (A) the as-yet unfunded amount under the Operating Budgets for the period through the date of the consummation of such sale, and (B) $175,000, such sum shall then be held as Cash Collateral. Absent the occurrence of a DIP Event of Default, Permitted Asset Sales shall not result in a reduction in the Commitments. For these purposes, "**Permitted Asset Sales**" shall consist of: (i) sales of inventory in the ordinary course of business and (ii) sales of other assets (other than pursuant to a Section 363 Sale) where the consideration received from all of such sales does not exceed $50,000 in the

	aggregate (or such greater aggregate amount, if any, agreed-to pursuant to the provisions of the DIP Credit Agreement (as described herein)), but, as indicated, a Section 363 Sale is not a Permitted Asset Sale for this purpose, but instead the net proceeds received as a result of the successful culmination of the Section 363 Sale Process shall be "Net Asset Sale Proceeds" for all purposes under this Summary of Terms and, without limiting the generality of the foregoing, shall be distributed as described herein
Other:	After payment in full in cash of the DIP Facility Obligations, all remaining Net Asset Sale Proceeds (other than proceeds of any Permitted Asset Sales that is not a Section 363 Sale) shall be paid to the Pre-Petition Agent for provisional distribution to and application by the Pre-Petition Agent and the Pre-Petition Lenders per the terms of the Existing Credit Agreement.
Provisional Payment:	The payment from Net Asset Sales Proceeds of the DIP Loan Obligations (to the extent of the Roll-Up Amount) and the remaining Prior Bank Obligations shall be provisional until such time as such liens and claims relating to the Prior Bank Claims are allowed either pursuant to the provisions of Paragraph 26 hereof or otherwise pursuant to an Order of this Court.

7. Additional Agreements. The Debtors are hereby authorized and directed to enter into any additional agreements providing for the establishment of lock boxes, blocked accounts or similar arrangements required or requested by the Agent (or other banks or financial institutions acceptable to the Agent) for the benefit and in favor of the Bank for purposes of facilitating cash collections from the Debtors in accordance with and subject to the terms of the DIP Loan Documents.

8. Use of Cash Collateral. Prior to the partial payment of the Prior Bank Obligations in the "Roll-Up Amount" of $12,900,000 (the "Roll-Up Amount"), the Debtors are authorized and directed to remit the Cash Collateral, including, without limitation, all collections on

accounts receivable received after the Filing Date, to the Pre-Petition Agent to be applied in partial satisfaction of Prior Bank Obligations owing under the Pre-Petition Loan Documents. The Debtors' remitting of such Cash Collateral to the Pre-Petition Agent (and the payment of the Roll-Up Amount as authorized herein) is an express condition to the consent of the Pre-Petition Lenders to the priming of the Pre-Petition Agent's Pre-Petition Liens, to the Carve-Out (as set forth in Paragraph 22), and the other provisions of this Final Financing Order. Except as authorized and permitted herein, or permitted by the Pre-Petition Agent, the Debtors shall not use the Cash Collateral as may from time to time be in their possession or control. After the payment of the Roll-Up Amount to the Pre-Petition Agent, the Debtors are authorized to remit the Cash Collateral on a daily basis to the Agent for application against then-outstanding DIP Facility Obligations, to be available for re-borrowing to the extent, and under the circumstances, otherwise permitted pursuant to the provisions of the DIP Credit Agreement.

9. DIP Budget/Permitted Uses. In addition to all, and without limiting any, of the other limitations on the Debtors in their use of Cash Collateral and portions of the Pre-Petition Encumbered Assets or in the use of funds borrowed under the DIP Credit Agreement that are set forth in this Final Financing Order and/or in the DIP Credit Agreement:

(a) Immediately upon entry of this Final Financing Order, and consistent with the terms of the DIP Loan Documents, the Debtors are hereby expressly prohibited from using any funds borrowed under the DIP Facility for any purpose other than to make a payment to the Pre-Petition Agent in respect of Prior Bank Obligations until such Prior Bank Obligations have been reduced by an aggregate principal amount equal to the Roll-Up Amount (as defined herein).

(b) Cash Collateral or funds borrowed under the DIP Credit Agreement, to the extent otherwise permitted under the DIP Loan Documents and/or this Final Financing Order,

may be used to pay only Critical Vendor line items, post-petition operating expenses, and post-petition professional fees and expenses as set forth in an Operating Budget that has been approved in writing by the Agent (an "Approved Budget"), provided, however, that no Cash Collateral or funds borrowed under the DIP Credit Agreement shall be used to make any payment to a Critical Vendor unless such Critical Vendor has committed, in writing, to waive, discharge, and release the Stalking Horse Bidder (or similar purchaser) from any and all claims, causes of action, defenses, setoff, recoupment or other offset rights, whether arising at law or equity, with respect to any and all debts or obligations incurred by the Debtors to such Critical Vendor prior to the Filing Date. The reconstituted Operating Budgets for the period from January 24, 2010 through April 18, 2010 (the "Initial Budgets"), as attached to this Final Financing Order as Exhibit A, shall be deemed to constitute the operative Approved Budgets for such period.

(c) If the Debtors elect to modify any Initial Budget or any subsequent Approved Budget, the Debtors shall submit the modified Operating Budget(s) to the Agent (for distribution to the Bank) for approval by the Agent and the Bank. It shall be in form similar to the Initial Budgets and shall be in substance satisfactory to the Agent, that shows on a line-item basis and broken out on a week-by-week budgetary basis for a rolling thirteen week period (x) the Debtors' forecasted sales and its forecasted cash receipts (excluding as a result of borrowings under the DIP Credit Agreement) and (y) anticipated disbursements of the Debtors for the weekly periods covered by such Operating Budget. Within four (4) business days of the Agent's receipt of a timely-tendered Operating Budget sought to be modified, the Agent shall inform the Debtors as to the decision of the Bank as to whether to approve or disapprove any or all of the expense line items set forth on any such tendered Operating Budget, and the aggregate of items,

if any, so approved (and not those disapproved) by the Agent and the Bank in such modified and re-submitted Operating Budget for such period shall then set forth and constitute the Approved Budget for such period on a going-forward basis.

(d) Subject to the limitations of subsection (d), in no event shall the actual aggregate weekly expenditures for any operative Approved Budget by the Debtors exceed the amount budgeted therefor on such operative Approved Budget by more than ten percent (10%) as measured on a cumulative basis through the date of determination (the "Permitted Variance").

(e) The Permitted Variance shall not apply to Critical Vendor or Professional Fees and Expenses Line Items (such capitalized term defined as those certain expenses as set forth under the heading of "Bankruptcy Expenses" on the Interim Budget, the "Professional Fees & Expenses Line Items") and, accordingly, under no circumstances shall the actual aggregate expenditures for any Critical Vendor line items or Professional Fees & Expenses Line Items exceed the amount budgeted therefor on such line item on the operative Approved Budget by the Debtors.

(f) In the event that the actual expenditures for a budgetary period are less than the budgeted amount for such period under an Approved Budget ("Carryover Allowance"), such unused budgeted expenditures in each pertinent line item (including Critical Vendor and/or Professional Fees & Expenses) may be carried over for use in the payment only of amounts relating to each such pertinent line item to the next budgetary week (and, to the extent not entirely used in that next budgetary week, further may be carried over to any and all budgetary weeks until so fully used in the payment only of amounts relating to each such pertinent line item). Specifically, in the event of a Carryover Allowance, the budgeted amount in each pertinent line item (including Critical Vendor line items and/or the Professional Fees & Expenses

Line Items) for the next, successive budgetary period(s) may be exceeded by the amount of the Carryover Allowance for each such line item.

(g) In no event shall the actual aggregate sales realized by the Debtors after the Filing Date for any monthly period be less than 90% of the amount forecast for such monthly period on the operative Approved Budget.

(h) In no event shall the actual aggregate cash receipts received by the Debtors after the Filing Date for any monthly period be less than 90% of the amount of such cash receipts forecast for such monthly period on the operative Approved Budget.

(i) No later than one week after the conclusion of each week period, the Debtors shall furnish the Agent (for distribution to the Bank) with weekly reconciliations of projected versus actual sales, cash receipts and disbursements for that prior week.

(j) Without limiting the generality of the other provisions of this Final Financing Order, and notwithstanding the provisions of any order authorizing the interim or final payment of professional fees and expenses or of the DIP Credit Agreement, the Debtors shall not be authorized to advance or otherwise pay and shall not advance or otherwise pay more on account of such fees than the budgeted amount for such professional or professional firm set forth on the Approved Budget for the period prior to the occurrence of a Event of Default (or where the concept of Event of Default is no longer applicable because there has been a prior payment in full of the DIP Facility Obligations, a Cash Collateral Event of Default), plus such professional's pro rata share of the $175,000 maximum of Post-Default Fees and Expenses (as defined herein).

(k) In the event that the DIP Facility is terminated and the DIP Facility Obligations have been finally paid in full, the Pre-Petition Agent shall succeed to the budget

approval rights under this Paragraph 9 previously exercised by the Agent, and the Pre-Petition Agent shall thereafter exercise such rights at the direction of the Pre-Petition Lender under the Pre-Petition Credit Agreement.

(l) The Pre-Petition Agent and the Pre-Petition Lender shall be entitled to receive and shall receive all financial statements, reports and other information including, but not limited to, Operating Budgets (including, without limitations, any proposed modified Operating Budgets), and/or any weekly sales/receipts/disbursements reconciliations, that will be required to be provided to the Agent and the Bank as described herein or in the DIP Loan Documents.

10. Release of Claims. Subject to the reservation of rights set forth in Paragraph 26, each and every Debtor, on behalf of themselves and their bankruptcy estates, shall be deemed to have waived, discharged, and released the Pre-Petition Secured Parties, together with their respective affiliates, agents, attorneys, financial advisors, consultants, officers, directors, and employees (all of the foregoing, the "Pre-Petition Releasees") of any and all "claims" (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, setoff, recoupment or other offset rights against any and all of the Pre-Petition Releasees, whether arising at law or equity, including, without limitation (i) any recharacterization, subordination, avoidance, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or any other similar provisions of applicable state or federal law, and (ii) any right or basis to challenge or object to the amount, validity, priority, or non-avoidability of the Pre-Petition Liens securing the Prior Bank Obligations.

11. Collateral. The Collateral (collectively, the "Collateral") securing the repayment, reimbursement, and satisfaction of the DIP Facility Obligations shall consist of all presently owned and hereafter acquired property, assets, interests and rights, of any kind or nature, of the

Debtors, wherever located, including, without limitation, any deposits required or otherwise made in connection with the Sale Process or otherwise that are either forfeited or applied against any purchase price (or similar obligation) and any and all rights, claims, avoidance actions and other causes of action of the Debtors' estates (including any actions asserted by any Debtor or any subsequently appointed trustees or representatives of that Debtors' estates under sections 544, 545, 547, 548, 549, 550, 553(b), and 724(a) of the Bankruptcy Code (collectively, the "Bankruptcy Actions"), but only with respect to the DIP Facility Obligations relating to the $2,500,000 in the incremental funding provided under the DIP Facility and not with respect to the DIP Facility Obligations relating to the Roll-Up Amount).

12. Consensual Priming. The Pre-Petition Secured Parties have consented to the priming of the Pre-Petition Liens by the DIP Liens, as well to the Carve-Out (as defined herein), on the terms and conditions set forth in the DIP Loan Documents and this Final Financing Order. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary in order to obtain such consent or non-objection of such parties.

13. DIP Liens. In order to provide the Bank with security for the Debtors' repayment, reimbursement, and satisfaction of any and all of the DIP Facility Obligations, but subject to the Carve-Out (as set forth in Paragraph 22), the Agent, on behalf of the Bank, shall have, and hereby is granted liens in the Collateral (the liens described in the following subparagraphs (a) – (c), collectively, the "DIP Liens"), as follows:

(a) Pursuant to section 364(c)(2) of the Bankruptcy Code, for the sole benefit of the Bank, valid, binding, continuing, enforceable, first priority and fully perfected liens in the all of the Collateral that was unencumbered as of the Filing Date.

(b) Pursuant to section 364(c)(3) of the Bankruptcy Code, for the sole benefit of the Bank, valid, binding, continuing, enforceable, first priority and fully perfected liens on all of the Collateral that was encumbered as of the Filing Date, junior only to the valid, perfected and non-avoidable liens on such assets as of the commencement of the Cases in favor of creditors other than the Pre-Petition Agent and the Pre-Petition Lender and to valid liens in existence at the time of such commencement in favor of such other creditors that are perfected subsequent to such commencement as permitted by section 546(b) of the Bankruptcy Code (the "Other Pre-Petition Liens").

(c) Pursuant to section 364(d)(1) of the Bankruptcy Code, for the sole benefit of the Bank, and insofar as the priority of the liens of the Pre-Petition Agent for the benefit of the Pre-Petition Lender shall be concerned, valid, binding, continuing, enforceable, first priority and fully perfected liens on all of the Collateral that constitutes Pre-Petition Encumbered Assets.

14. Super-Priority Claims. In addition to the DIP Liens granted herein, but subject only to the Carve-Out (as set forth in Paragraph 22), all DIP Facility Obligations shall constitute allowed, super-priority, administrative expense claims under section 503(b) of the Bankruptcy Code and under section 364(c)(1) of the Bankruptcy Code (the "DIP Super-Priority Claims") against the Debtors, having priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, including, without limitation, those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503, 506(c), 507, 546(c), 726, 1113 and 1114 of the Bankruptcy Code, or otherwise whether incurred in the Cases or any conversion thereof to a case under chapter 7 of the Bankruptcy Code or any other proceeding related hereto. The DIP Super-Priority Claims shall be payable from, and have recourse to, all pre-petition and post-petition property of the Debtors whether existing on the Filing Date or

thereafter acquired, and all proceeds thereof (including, with respect to the Bankruptcy Actions, but, in the case of the Bankruptcy Actions, only with respect to the DIP Facility Obligations relating to the $2,500,000 in incremental funding provided under the DIP Facility and not with respect to the DIP Facility Obligations relating to the Roll-Up Amount).

15. Granting of Adequate Protection Liens. In order to provide, pursuant to section 361(2) of the Bankruptcy Code, the Pre-Petition Lender with adequate protection against any diminution in the value of their interest in the Pre-Petition Encumbered Assets (existing as of the Filing Date) resulting to the extent of any diminution in the value of the Pre-Petition Encumbered Assets (including Cash Collateral) from and after the Filing Date, including but not limited to any diminution in value resulting from: (i) the imposition of the automatic stay; (ii) the priming of the Pre-Petition Liens in favor of the DIP Facility Obligations; (iii) the use of the Pre-Petition Lender's Cash Collateral; (iv) the use, sale or lease of Pre-Petition Encumbered Assets; or (v) the subordination of the Pre-Petition Liens of the Pre-Petition Agent in and to the Pre-Petition Encumbered Assets to the extent of the DIP Facility Obligations, and the Carve-Out (as set forth in Paragraph 22), the Pre-Petition Agent, on behalf of the Pre-Petition Lender, shall continue to have, and hereby is granted to the extent not heretofore granted, liens (the "Adequate Protection Liens") against and in all presently owned and hereafter acquired property, assets, and rights, of any kind or nature, of the Debtors, wherever located, including, without limitation, any and all rights, claims, and causes of action of such Debtors' estates (excluding only the Bankruptcy Actions) (the "Adequate Protection Collateral").

16. Reservation of Section 507(b) Rights. While the Adequate Protection Liens are expressly excluded from attaching to the Bankruptcy Actions, the Pre-Petition Lender's rights under section 507(b) of the Bankruptcy Code are not waived, but instead are expressly reserved,

including, without limitation, with respect to the proceeds of the Bankruptcy Actions. The Adequate Protection Liens shall be a first and prior lien on the Adequate Protection Collateral, subject only to any Other Pre-Petition Liens existing on the Adequate Protection Collateral, the DIP Liens, and the Carve-Out (as set forth in Paragraph 22). Consistent with the foregoing, this Paragraph is intended to provide the Pre-Petition Lender with security to protect (and is necessary to protect) the Pre-Petition Lender from any risk of erosion (or diminution) in the value of their Pre-Petition Encumbered Assets as such value existed on the Filing Date, which erosion or diminution would give rise to an adequate protection claim in a minimum amount equal to the amount of such erosion or diminution, and to attempt to mitigate (with the other provisions of this Order) the effect of, without limitation: (i) the DIP Liens and (ii) the subordination of the Pre-Petition Liens in the Pre-Petition Encumbered Assets to the DIP Liens, and to the Carve-Out Amount (as set forth in Paragraph 22). Consistent with, but without limiting the generality of, the other provisions of this Final Financing Order, each of the Agent (on behalf of the Bank) and the Pre-Petition Agent (on behalf of the Pre-Petition Lender) has expressly reserved any right to challenge any asserted Other Pre-Petition Liens in any manner whatsoever, including to contest the amount, the validity, perfection, or priority of any asserted Other Pre-Petition Liens, and nothing contained herein shall constitute a determination of the amount, validity, perfection, or priority of any asserted Other Pre-Petition Lien.

17. Adequate Protection Claims. To the extent that the liens provided herein are insufficient to secure any adequate protection claim of the Pre-Petition Lender with respect to the Debtors' use, sale, lease, or further encumbrance of the Pre-Petition Encumbered Assets, the Pre-Petition Agent, on behalf of the Pre-Petition Lender, shall be granted allowed, super-priority claims under sections 364(c)(1) and 507(b) of the Bankruptcy Code (the "Adequate Protection

Claims"); provided, however, that such priority, consistent with the other provisions of this Final Financing Order, shall be subordinate only to the DIP Liens and the Carve-Out Amount (as set forth in Paragraph 22, and *pari passu* with section 507(b) claims allowed in favor of any of the holders of any Other Pre-Petition Liens). Except as provided in this Final Financing Order as to the superpriority status of the DIP Liens or the Carve-Out Amount (as set forth in Paragraph 22), no costs or expenses of administration which have been or may be incurred in these proceedings, or in any other proceeding related hereto, and no priority claims, are or will be prior to or on a parity with the Adequate Protection Claims of the Pre-Petition Lender (provided, however, that any administrative claimant who is a professional shall be entitled to retain such payment only to the extent of the Carve-Out and that allowed section 507(b) claims of any of the holders of any Other Pre-Petition Liens may be granted on such a parity).

18. Deemed Satisfaction of Senior Claims from Unencumbered Assets. Notwithstanding any other provisions of this Final Financing Order to the contrary, and in order to mitigate the effect of such a priming of the Pre-Petition Liens caused by the DIP Liens and the consensual subordination of the Pre-Petition Liens in favor of the Carve-Out set forth herein, the DIP Liens, as well as the priority of any Carve-Out claim, shall attach first to any assets unencumbered by liens in favor of the Pre-Petition Lender, if any, and shall be deemed satisfied first by the application of any proceeds of such unencumbered assets. Where proceeds of encumbered assets shall have been paid in partial or complete satisfaction of any Carve-Out claims or any DIP Facility Obligations prior to the collection or other liquidation of any and all unencumbered assets, such priority of attachment shall be implemented and otherwise realized through the Pre-Petition Agent and the Pre-Petition Lender being deemed to have been subrogated to such Carve-Out claims and/or DIP Facility Obligations to the extent that the

holders of such claims received proceeds of encumbered assets in payment thereof, with the right of the Pre-Petition Agent to enforce such subrogation being suspended until after payment in full in cash of the DIP Facility Obligations and, to the extent provided for herein, of the Carve-Out claims.

19. Perfection of DIP Liens and Adequate Protection Liens. The liens and security interests granted to the Bank and the Pre-Petition Lender pursuant to the Interim Financing Order and this Final Financing Order shall be valid, enforceable and perfected, as of the date of the commencement of the Cases, without the need for the execution or filing of any further document or instrument otherwise required to be executed or filed under applicable non-bankruptcy law. Notwithstanding that no documents need be executed or filed to create or perfect the liens and security interests granted hereunder, the Debtors, and officers on their behalf, are hereby directed to execute and deliver such further documents as the Agent or the Pre-Petition Agent may, in their sole discretion, request to evidence and give notice of the liens granted hereunder; provided, further, that if the Agent or the Pre-Petition Agent shall, in its sole discretion, choose to require the execution of and/or file (as applicable) such mortgages, financing statements, notices of liens and other similar instruments and documents, all such mortgages, financing statements, notices of liens or other similar instruments and documents shall be deemed to have been executed, filed and/or recorded *nunc pro tunc* at the time and on the date of the Filing Date. Each and every federal, state and local government agency or department is hereby directed to accept the entry by this Bankruptcy Court of this Final Financing Order as evidence of the validity, enforceability and perfection on the Filing Date of the liens granted or authorized pursuant to this Final Financing Order to or for the benefit of the Bank or the Pre-Petition Lender.

20. Effect on Avoided and Preserved Liens, etc. The DIP Liens and the Adequate Protection Liens shall be: (a) senior and accordingly not subject to any lien that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code, the proceeds of such avoided liens being Collateral securing the DIP Facility Obligations, and after the satisfaction of the DIP Facility Obligations shall be available for the satisfaction of the Adequate Protection Liens; or (b) not subordinated to or made *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise. No claim or lien having a priority superior to or *pari passu* with those granted by this Final Financing Order with respect to the DIP Facility Obligations shall be granted or allowed until the indefeasible payment in full in cash and satisfaction of the DIP Facility Obligations in the manner provided in the DIP Loan Documents.

21. Section 506(c). The Debtors, on behalf of themselves and their bankruptcy estates, waive any and all claims, rights, and powers under section 506(c) of the Bankruptcy Code against the Collateral and Pre-Petition Encumbered Assets (including as the result of the Adequate Protection Lien of the Pre-Petition Secured Parties), and any other properties or assets of the Debtors subject in any manner whatsoever to the liens of the Agent, the Bank, and the Pre-Petition Secured Parties which claims, rights or powers arise during or are related to the period from and after the Filing Date through repayment in full of the Prior Bank Obligations and DIP Facility Obligations. The foregoing waiver shall be binding upon any chapter 7 trustee, chapter 11 trustee, or other similar Bankruptcy Court-appointed representative of the estates, but only with respect to administrative expenses (including professional fees and costs) incurred during the course of these Cases or any Successor Case (x) prior to appointment of such chapter 7 trustee, chapter 11 trustee, or other similar estates representative and (y) prior to the termination

of any right of the Debtors to use Cash Collateral. Moreover, the Agent, the Bank, the Pre-Petition Agent, and/or the Pre-Petition Lender do not consent (nor shall they be deemed to have consented) in any manner whatsoever (whether through affirmative participation in these Cases, lack of objection, inaction, or otherwise) to the imposition of any surcharge against any of their collateral for any cost or expense of administration pursuant to section 506(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, (i) the consent of the Agent, the Bank, the Pre-Petition Agent, and/or the Pre-Petition Lender to the entry of the Interim Financing Order or this Final Financing Order, (ii) any support, lack of objection, or other inaction on the part of the Agent, Bank, the Pre-Petition Agent, and/or Pre-Petition Lender regarding the conversion of any Case to one under Chapter 7 of the Bankruptcy or the appointment of any bankruptcy trustee, or (iii) any support, lack of objection, or other inaction on the part of the Agent, Bank, the Pre-Petition Agent, and/or the Pre-Petition Lender regarding the entry of any other order by the Bankruptcy Court, including, without limitation, any order approving a section 363 sale, or any fee or expense application of any professional, shall in no manner and for no purpose whatsoever ever be deemed to constitute any such consent for the imposition of any such charge against any of their respective collateral.

22. Carve-Out

(a) The DIP Liens, the Pre-Petition Liens, and the Adequate Protections Liens shall be junior, in each case, only to (collectively, but subject to the limitations set forth in this Paragraph, the "Carve-Out"): (i) the payment of fees pursuant to 28 U.S.C. § 1930, (ii) in the event of the occurrence and during the continuance of an Event of Default (as defined in the DIP Loan Documents) (or where the concept of such an Event of Default is no longer applicable because there has been a prior payment in full of the DIP Facility Obligations, a Cash Collateral

Event of Default (as such term is defined below)), or an event that would constitute such an Event of Default with the giving of notice or lapse of time, the determination of materiality or any of the foregoing, the payment of allowed and unpaid professional fees and disbursements incurred by the Debtors and any Committee appointed in the Cases after the date of such Default or Event of Default (and regardless of when such fees and expenses become allowed by order of the Bankruptcy Court), in an aggregate amount not in excess of $175,000 (the "Post-Default Fees and Expenses") (plus, all unpaid professional fees and disbursements incurred prior to the occurrence of such Default or Event of Default (and regardless of when such fees and expenses are allowed) to the extent (A) such fees and expenses do not exceed the amounts budgeted therefor on the pertinent Approved Budgets for the period prior to such Default or Event of Default (the "Budgeted Amounts") and (B) such fees and expenses have been or are subsequently allowed by the Bankruptcy Court. Unused amounts in the Carve-Out for any professional or in any other category shall not be carried over or otherwise be available to any other professional or in any other category. The Carve-Out for any professional or professional firm shall be reduced or deemed satisfied dollar-for-dollar by any and all amounts paid to such professional or professional firm, including in the form of a retainer that has not previously been applied in interim or final payment of allowed professional fees and expenses.

(b) Nothing herein shall constitute a waiver by the Pre-Petition Agent, the Pre-Petition Lender, the Agent or the Bank of their rights to object to the fees and expenses of any professional retained by the Debtors or a Committee, all such rights being fully reserved.

(c) Notwithstanding any other provisions of this Final Financing Order to the contrary, no proceeds of any borrowings under the DIP Credit Agreement and no Cash Collateral may be used (and the Carve-Out relating to the professionals retained by the Debtors or any such

committee in no manner shall be available) to challenge (as opposed to, solely in the case of any official creditors' committee, investigate) in any manner whatsoever, whether by motion, adversary proceeding, or other action or proceeding before any Bankruptcy Court (including, without limitation, the Bankruptcy Court) or other body, the amount, validity, perfection, or priority of the DIP Facility Obligations (and/or the accompanying security interests and liens, including, without limitation, the DIP Liens, in, to and against the Collateral and the DIP Super-Priority Claims) or of the Prior Bank Obligations (and/or the Pre-Petition Liens in, to and against the Pre-Petition Encumbered Assets, including, without limitation, as to the amount of any Adequate Protection Claim or the scope of any Adequate Protection Lien) or to otherwise assert and/or prosecute, by way of motion, adversary proceeding, or other action or proceeding before any court (including, without limitation, the Bankruptcy Court) or other body, any other cause of action or other claim of any nature or type whatsoever (whether under any provision of the Bankruptcy Code (including, without limitation, any provision of chapter 5 of the Bankruptcy Code) or otherwise, including, without limitation, whether under contract or tort theory, against any of the Agent, the Bank, the Pre-Petition Agent, the Pre-Petition Lender, and/or BANA in any other capacity. Further, no proceeds of any borrowings under the DIP Credit Agreement and no Cash Collateral may be used (and the Carve-Out relating to the professionals retained by the Debtors or any such committee in no manner shall be available) to (a) prevent, hinder or otherwise delay the Pre-Petition Agent's, Pre-Petition Lender's, the Agent's, or the Bank's assertion, enforcement, or realization on the Collateral or the Pre-Petition Encumbered Assets, as applicable, in accordance with the DIP Loan Documents, the Pre-Petition Loan Documents, the Interim Financing Order, or this Final Financing Order; (b) seek to modify any of the rights granted to the Agent, the Bank or the Pre-Petition Secured Parties hereunder, under the DIP Loan

Documents, or the Pre-Petition Loan Documents, in each of the foregoing cases without such parties' prior written consent; (c) pay any amount on account of any claims arising prior to the Filing Date unless such payments are (1) approved by an order of this Bankruptcy Court and (2) in accordance with the Approved Budget; (d) seek authorization, or support any other person or entity seeking authorization, to use any cash collateral without the consent of the Agent; or (e) obtain a lien senior to, or on a parity with, the liens of the Agent in any Collateral or any portion thereof, without the prior written consent of the Agent.

23. Events of Default.

(a) Upon the occurrence and continuance of any Event of Default as set forth in Section 12 of the DIP Credit Agreement, including, without limitation, the Debtors' violation of any provision of the Interim Financing Order or this Final Financing Order, and in addition to the right of the Bank to refuse to make further loans pursuant to the provisions of the DIP Credit Agreement, the automatic stay under section 362 of the Bankruptcy Code shall be deemed lifted, without further order of or application to the Bankruptcy Court, to permit the Agent to do one or more of the following: (a) terminate the Debtors' use of Cash Collateral and cease to make any loans or advances to the Debtors; (b) declare all DIP Facility Obligations to be immediately due and payable; (c) freeze any accounts maintained with the Bank; (d) terminate any unfunded commitments under the proposed DIP Facility; (d) set off and apply immediately any and all amounts in accounts maintained by any Debtor with any Agent or Bank against the DIP Facility Obligations, and otherwise enforce rights against the Collateral in the possession of any of the Agent and/or the Bank for application towards the DIP Facility Obligations; and (e) take any other actions or exercise any other rights or remedies permitted under the Interim Financing Order, this Final Financing Order, the other DIP Loan Documents, or applicable law to effect the

repayment and satisfaction of the DIP Facility Obligations; provided, that the Agent or Bank shall provide three (3) business days written notice (by facsimile, telecopy, electronic mail, or otherwise) to the U.S. Trustee, counsel to the Debtors and counsel to the Committee prior to exercising any enforcement rights or remedies in respect of the Collateral (other than the rights described in clauses (a), (b) and (c) above (to the extent they might be deemed remedies in respect of the Collateral); provided further, that the Debtors shall have the right to seek continuation of the automatic stay during such three (3) business day period solely on the basis that no Event of Default has occurred.

(b) No holder of a lien primed by the Interim Financing Order, this Final Financing Order, or granted by the Debtors as adequate protection shall be entitled to object on the basis of the existence of any such lien to the exercise by the Agent and the Bank of their respective rights and remedies under the DIP Loan Documents or under applicable law to effect satisfaction of the DIP Facility Obligations or to receive any amounts or remittances due hereunder or under the other DIP Loan Documents. The Agent and the Bank shall be entitled to apply the payments or proceeds of the Collateral in accordance with the provisions of this Final Financing Order and the other DIP Loan Documents, and except to the extent specifically provided herein, the Agent and the Bank shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Collateral or otherwise.

24. Cash Collateral Events of Default. In the event that the DIP Facility is terminated and the DIP Facility Obligations have been finally paid in full in cash, each of those events that previously constituted a Event of Default under the DIP Credit Agreement shall thereafter constitute a "Cash Collateral Event of Default." After the DIP Facility has been terminated and the DIP Facility Obligations have been finally paid in full in cash, and upon the occurrence and

continuance of any of the foregoing Cash Collateral Events of Default, the automatic stay under section 362 of the Bankruptcy Code shall be deemed lifted, without further order of or application to the Bankruptcy Court, to permit the Pre-Petition Agent (including upon the direction of the Pre-Petition Lender under the Pre-Petition Credit Agreement) to terminate the Debtors' ability to use Cash Collateral and to then exercise the other remedies described in, and upon the same terms and conditions set forth, in Paragraph 23 hereof.

25. Preservation of Rights.

(a) Notwithstanding anything herein to the contrary, the entry of this Final Financing Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (i) any of the rights of any of the Agent, the Bank, or the Pre-Petition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, any right of the Agent or the Bank to: (W) request modification of the automatic stay of section 362 of the Bankruptcy Code; (X) request dismissal of any Case, conversion of any Case to a case under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner (including with expanded powers); (Y) be heard with respect to, object to, or assert any other rights with respect to, any aspect of the Sale Process; or (Z) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans, or (ii) any other rights, claims or privileges (whether legal, equitable or otherwise) of the Agent, the Bank, the Pre-Petition Agent or the Pre-Petition Lender.

(b) The DIP Facility Obligations and the Debtors' obligations with respect of the DIP Super-Priority Claims, and the claims and liens granted to or for the benefit of the Agent and the Bank pursuant to this Final Financing Order and the other DIP Loan Documents, are not subject to any setoff or reduction of any kind, including, without limitation, under section 502(d)

of the Bankruptcy Code, and shall not be discharged by the entry of an order: (i) confirming a chapter 11 plan in any Case (and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors hereby waive such discharge); or (ii) converting any Case to a case under chapter 7 of the Bankruptcy Code. Under no circumstances shall any chapter 11 plan in any Case be confirmed or become effective unless such plan provides that the DIP Facility Obligations shall be paid in full in cash and satisfied in the manner provided in the DIP Loan Documents on or before the effective date of such plan.

(c) Based upon the findings set forth in this Final Financing Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the commitments to extend financing contemplated by this Final Financing Order, in the event that any or all of the provisions of the Interim Financing Order, this Final Financing Order, or any other DIP Loan Documents, are hereafter modified, amended, or vacated by a subsequent order of this or any other Bankruptcy Court, no such modification, amendment or vacation shall affect the validity, enforceability, or priority of any lien or claim authorized or created hereby or thereby or any DIP Facility Obligations incurred hereunder or thereunder. Notwithstanding any such modification, amendment, or vacation, any DIP Facility Obligations incurred and any claim granted to the Agent and the Bank hereunder or under the other DIP Loan Documents, arising prior to the effective date of such modification, amendment, or vacation shall be governed in all respects by the original provisions of this Final Financing Order and the other DIP Loan Documents, and the Agent and the Bank shall be entitled to all of the rights, remedies, privileges, and benefits, including the liens and priorities granted herein and therein, with respect to any such DIP Facility Obligations.

(d) The validity, enforceability, priority, or amount of any of the claims and liens granted to or for the benefit of the Agent and the Bank under this Final Financing Order or any other DIP Loan Documents with respect to the DIP Facility Obligations shall not be affected by any finding or order of this Bankruptcy Court or any other court regarding any Pre-Petition Secured Parties or Pre-Petition Liens, including, without limitation, any order of this Bankruptcy Court or any other court invalidating any Pre-Petition Obligation or Pre-Petition Lien.

(e) To the extent that any DIP Facility Obligations remain unpaid, any amounts disgorged by the Pre-Petition Secured Parties in respect of any of the Prior Bank Obligations (whether such amounts were received by the Pre-Petition Secured Parties prior or subsequent to the Filing Date) shall upon such disgorgement be immediately delivered by the Debtors to the Agent to be applied to repay the DIP Facility Obligations in accordance with the terms of the DIP Loan Documents.

(f) The rights and remedies of the Agent and the Bank specified herein are cumulative and not exclusive of any rights or remedies that the Agent and the Bank may have under the other DIP Loan Documents or otherwise. The failure or delay by the (i) Agent and the Bank to seek relief or otherwise exercise their rights and remedies under this Final Financing Order or any other DIP Loan Documents or (ii) or the Pre-Petition Secured Parties to exercise its rights and remedies under this Final Financing Order shall not constitute a waiver of any of the rights of the Agent, the Bank, the Pre-Petition Agent or Pre-Petition Lender hereunder, thereunder, or otherwise, and any single or partial exercise of such rights and remedies against any party or Collateral shall not be construed to limit any further exercise of such rights and remedies against any or all of the other party and/or the Collateral.

(g) This Final Financing Order shall not prejudice or limit the Pre-Petition Lender's right to request or seek other or additional protection with respect to the Pre-Petition Encumbered Assets. Other than as it may pertain to the terms and conditions of the DIP Credit Agreement, the Pre-Petition Agent and the Pre-Petition Lender shall be entitled to exercise all of their other rights under the Bankruptcy Code, including, without limitation, the right to seek and obtain relief from the automatic stay or the provision of additional adequate protection based on an erosion of the value of its collateral and to oppose the confirmation of any plan of reorganization proposed by any Debtor or any other party. In addition, the protections granted in favor of the Pre-Petition Lender under this Final Financing Order or otherwise cannot be altered without the prior consent of the Pre-Petition Lender (by required percentage vote under the Pre-Petition Credit Agreement).

(h) Without limiting the other provisions of this Final Financing Order, if an order dismissing any Case 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(b) of the Bankruptcy Code) that: (i) the claims and liens (and other protections) granted pursuant to this Final Financing Order to or for the benefit of the Agent and the Bank, and/or the Pre-Petition Agent and the Pre-Petition Lender, shall continue in full force and effect and shall maintain their priorities as provided in this Final Financing Order; (ii) that prior to dismissal, the Debtors shall deliver to the Agent and record, at the Debtors' cost, financing statements, mortgages, and other documentation evidencing perfected liens in the Collateral; and (iii) this Bankruptcy Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and liens.

26. Reservation of Certain Third Party Rights and Bar of Challenges and Claims. Subject to the reservation of rights set forth in this Paragraph, the Debtors' Release of Claims in Paragraph 10 shall be binding upon the Debtors in all circumstances and shall be binding upon each other party in interest, including the Committee (as well as any other official or unofficial committee), unless (a) such party in interest obtains the requisite standing to commence, and commences, by the earlier of (x) April 2, 2010, or (y) the date upon which an order is entered confirming a plan of reorganization for the Debtors (the "Confirmation Date") (such time period established by the earlier of clauses (x) and (y) shall be referred to as the "Challenge Period," and the date that is the next calendar day after the termination of the Challenge Period, in the event that no objection or challenge is raised during the Challenge Period, shall be referred to as the "Challenge Period Termination Date"), (i) a contested matter or adversary proceeding challenging or otherwise objecting to the admissions, stipulations, findings or releases included in the Debtors' Stipulations, or (ii) a contested matter or adversary proceeding against the Pre-Petition Secured Parties in connection with or related to the Prior Bank Obligations (excluding the roll-up of such Prior Bank Obligations into the DIP Facility Obligations except solely on the grounds that the Prior Bank Obligations did not constitute valid and enforceable claims in the principal amount of at least $12,900,000 or were not secured by perfected security interests and liens), or the actions or inactions of the Pre-Petition Secured Parties arising out of or related to the Prior Bank Obligations or otherwise, including, without limitation, any claim against the Pre-Petition Secured Parties in the nature of a "lender liability" causes of action, setoff, counterclaim or defense to the Prior Bank Obligations (including but not limited to those under sections 506, 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against any of the Pre-Petition Secured Parties) (the objections, challenges, actions and claims referenced in clauses

(a)(i) and (ii), collectively, the "Claims and Defenses"), and (b) there is a final order in favor of such party in interest sustaining any such Claims and Defenses in any such timely filed contested matter or adversary proceeding prior to the Confirmation Date; provided that as to the Debtors, for themselves and not their estates, all such Claims and Defenses are irrevocably waived and relinquished as of the Filing Date. Notwithstanding anything to the contrary set forth in this Final Financing Order, the only remedy available upon a successful Claim and Defense relating to the roll-up of the Prior Bank Obligations into the DIP Facility Obligations shall be the deemed reduction of the principal amount of the DIP Facility Obligations (and the deemed reinstatement of the Prior Bank Obligations) by the amount of the Prior Bank Obligations below $12,900,000 that are so determined not to have constituted valid and enforceable claims or that are so determined not to have been secured by perfected security interests and liens, it being understood that, to the extent any such portion of the DIP Facility Obligations already shall have been reduced by the application of Net Asset Sales Proceeds, such reduction shall be deemed to have been provisional only. If no Claims and Defenses have been timely asserted in any such adversary proceeding or contested matter, then, upon the Challenge Period Termination Date, and for all purposes in these Cases and any Successor Case, (i) all payments made to the Pre-Petition Secured Parties pursuant to this Final Financing Order or otherwise shall not be subject to counterclaim, set-off, subordination, recharacterization, defense or avoidance, (ii) any and all such Claims and Defenses by any party in interest shall be deemed to be forever released, waived and barred, (iii) the Prior Bank Obligations shall be deemed to be an allowed secured claim within the meaning of section 506 of the Bankruptcy Code, and (iv) the Release of Claims contained in Paragraph 10 herein shall be binding on all parties in interest, including any Committee. The Challenge Period in respect of the Pre-Petition Credit Agreement may be

extended by written agreement of the Pre-Petition Agent in its sole discretion. Nothing in this Final Financing Order vests or confers on any person or entity, including any Committee, standing or authority to pursue any cause of action belonging to any or all of the Debtors or their estates, including, without limitation, any Claim and Defense or other claim against the Pre-Petition Secured Parties or the DIP Secured Parties.

27. Insurance Policies. Upon entry of this Final Financing Order, the Agent shall be, and shall be deemed to have been as of the date of the Interim Financing Order, without any further action or notice, named as an additional insured and loss payee on each insurance policy maintained by the Debtors which in any way relates to the Collateral. The Debtors are authorized and directed to take any action necessary to have the Agent added as an additional insured and loss payee on each such insurance policy (to the extent any such actions have not been taken after entry of the Interim Financing Order).

28. Conclusive Evidence of DIP Facility Obligations. The terms, conditions and covenants of the DIP Credit Agreement and the other DIP Facility Documents shall be sufficient and conclusive evidence of the borrowing and financing arrangements among the Debtors and the Bank for all purposes, including, without limitation, the Debtor's obligation to pay all principal, interest, fees (including, without limitation, unused line fees, agency fees, servicing fees, letter of credit fees, closing fees, syndication fees, early termination fees and appraisal fees), and other costs and expenses (including, without limitation, all reasonable fees and expenses of consultants, advisors and attorneys), as more fully set forth and to the extent provided in the DIP Credit Agreement and the other DIP Loan Documents.

29. Maintenance of Collateral. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the Collateral, except for sales expressly permitted by the

DIP Credit Agreement, sales of the Debtor's inventory in the ordinary course of their businesses, or except as otherwise provided for in the DIP Loan Documents and/or this Final Financing Order. Nothing contained in this Paragraph shall limit or impair the right of any lessor or other contract party of any Debtor to request that the Bankruptcy Court compel the Debtors to assume or reject any lease or license of real or personal property.

30. Collateral Rights. Until all of the DIP Facility Obligations shall have been indefeasibly paid and satisfied in full in immediately available funds and without further order of the Bankruptcy Court:

(a) In the event that any party who holds a lien or security interest in any of the Collateral that is junior and/or subordinate to the liens and claims of the Agent and the Bank in such Collateral receives or is paid proceeds of the Collateral prior to the indefeasible payment and satisfaction in full of all DIP Facility Obligations, such junior or subordinate lienholder shall be deemed to have received, and shall hold, such Collateral proceeds in trust for the Agent and the Bank and shall immediately turnover to the Agent such proceeds for application to the DIP Facility Obligations in accordance with the DIP Facility Documents and/or this Final Financing Order;

(b) In addition to the rights set forth in Paragraph 19 and in lieu of requiring the Debtors to obtain any account control agreements with respect to their accounts on or prior to the Closing Date, the Pre-Petition Agent is hereby ordered to take direction from the Agent with respect to the Debtors' deposit accounts, including notifying any bank subject to an account control agreement to exercise the rights and remedies of a secured party thereunder, such that the Agent shall have "control" over such accounts as set forth in the applicable Uniform Commercial Code until the DIP Facility Obligations are finally paid in full in cash. In addition, the Pre-

Petition Agent is hereby ordered to take direction from the Agent with respect to any landlord lien waivers, collateral access agreements or any similar instruments such that the Agent shall have all of the rights and remedies of a secured party thereunder.

(c) Upon the acceleration of the DIP Facility Obligations following an Event of Default, and subject to the Agent providing the notice required by this Final Financing Order, in connection with a liquidation of any of the Collateral, the Agent and the Bank (or any of their employees, agents, consultants, contractors or other professionals) shall have the right, at the cost and expense of the Debtors to be added to the DIP Facility Obligations, to: (i) enter upon, occupy and use any personal property, fixtures and equipment owned or leased by the Debtors and (ii) use any and all trademarks, tradenames, copyrights, licenses, patents or any other similar assets of the Debtors, which are owned by or subject to a lien of any third party and which are used by the Debtors in their businesses. If the Agent or the Bank exercise any remedies provided for in this Paragraph, the Agent and the Bank will be responsible for the payment of any applicable fees, rentals, royalties or other amounts due such lessor, licensor or owner of such property for the period of time that the Agent or any Bank actually uses the equipment or the intellectual property (but in no event for any accrued and unpaid fees, rentals or other amounts due for any period prior to the date that the Agent or any Bank actually occupies or uses such assets or properties); and

(d) Upon the acceleration of the DIP Facility Obligations following an Event of Default, and subject to the Agent providing the notice required by this Final Financing Order, as well as three (3) business days notice to any Debtor's real property lessor of the Agent's or the Bank's intention to enter onto or into such lessor's leased premises to remove or otherwise dispose of any Collateral located at such leased premises in accordance with the terms of this

Paragraph, the Agent and the Bank shall have the right, following the expiration of such three (3) business days notice period described in this Paragraph, to enter onto or into such leased premises for the purpose of removing the Collateral from the leased premises or selling such Collateral at the leased premises, in each case subject to the applicable terms of such Debtor's lease arrangements with such lessor to the extent enforceable or effective under the Bankruptcy Code and subject to the rights of the Agent and the Bank provided for herein. Subject to the following sentence, the Debtors shall remain obligated to perform any obligation and to pay any rent and additional rent due under the terms of their leases at all times, including during the period commencing upon the Agent and the Bank obtaining the right to enter the Debtors' leased premises in accordance with this Paragraph. Nothing herein shall require the Agent or the Bank to assume any lease or cure any defaults as a condition to the rights afforded in this Paragraph.

31. Restrictions on Additional Use of Cash Collateral. Additional Financing. All post-petition advances and other financial accommodations under the DIP Credit Agreement and the other DIP Loan Documents are made and/or have been made in reliance on the Interim Financing Order and this Final Financing Order, and in the event that an order is entered at any time in the Debtors' chapter 11 Cases or in any subsequently converted Case under chapter 7 of the Bankruptcy Code which (a) authorizes the use of cash collateral of the Debtors in which the Bank has an interest or the sale, lease, or other disposition of property of the Debtors' estates in which the Agent and the Bank has a lien or security interest, except as expressly permitted hereunder or in the DIP Loan Documents, or (b) authorizes under section 364 of the Bankruptcy Code the obtaining of credit or the incurring of indebtedness secured by a lien or security interest which is equal or senior to a lien or security interest in property in which the Agent and the Bank holds a lien or security interest, or which is entitled to priority administrative claim status which

is equal or superior to that granted to the Agent and the Bank herein; then, in each instance described in clauses (a) and (b) of this Paragraph, (i) the Agent and the Bank, as is required by the DIP Credit Agreement, shall first have given their express prior written consent thereto, no such consent being implied from any other action, inaction or acquiescence by the Agent or the Bank, or (ii) such other order shall require that all DIP Facility Obligations first shall be indefeasibly paid in full in cash in immediately available funds. The liens and security interests granted to or for the benefit of the Agent and the Bank hereunder and the rights of the Agent or the Bank pursuant to this Final Financing Order and the DIP Facility Documents with respect to the DIP Facility Obligations and the Collateral are cumulative and shall not be altered, modified, extended, impaired, or affected by any plan of reorganization of the Debtors.

32. Proofs of Claim. The Agent, Bank, Pre-Petition Agent and Pre-Petition Lender shall not be required to file proofs of claim in any of these Cases or any Successor Case for any claim allowed herein. Any order entered by the Bankruptcy Court in relation to the establishment of a bar date in these Cases or any Successor Case shall not apply to the Agent, Bank, Pre-Petition Agent and/or the Pre-Petition Lender.

33. No Obligation to Extend Credit. The Agent and the Bank shall not have any obligation to make any loan or advance under the DIP Loan Documents unless all of the conditions precedent to the making of such extension of credit under the DIP Loan Documents and this Final Financing Order have been satisfied in full or waived by the Bank in accordance with the DIP Loan Documents.

34. Limitation of Liability. Nothing in this Final Financing Order or the DIP Facility Documents shall in any way be construed or interpreted to impose, or allow the imposition upon the Agent or the Bank of any liability for any claims arising from the pre-petition or post-petition

activities by the Debtors in the operation of its business or in connection with its restructuring efforts.

35. Termination of Postpetition Credit and Cash Collateral Usage. Notwithstanding anything in this Final Financing Order to the contrary, the Bank's obligation to make the DIP Facility Commitments in accordance with the DIP Facility Documents and the Agent's consent to the use of Cash Collateral shall automatically terminate without any further action by the Bankruptcy Court or the Agent or Bank, upon the earliest to occur of: (i) six (6) months after the commencement of these chapter 11 Cases, (ii) the consummation of a sale of substantially all of the assets of the Debtors, (iii) the effective date of a plan of reorganization in respect of a Debtor in the chapter 11 Cases, and (iv) the date the DIP Facility becomes due and payable, whether at stated maturity, upon an Event of Default or otherwise (the "Termination Date").

36. Good Faith. The terms of the financing arrangements among the Debtors, the Agent and the Bank have been negotiated in good faith and at arms' length among the Debtors, the Agent and the Bank and any loans, advances or other financial accommodations which are made or caused to be made to the Debtors by the Agent and the Bank pursuant to the DIP Loan Documents are deemed to have been made and provided in good faith, as the term "good faith" is used in section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Financing Order or the DIP Facility Documents or any provisions are hereafter modified, vacated, amended, or stayed by subsequent order of this Bankruptcy Court or any other court without the consent of the Agent and the Bank.

37. Binding Effect; Successors and Assigns. This Final Financing Order is hereby deemed effective immediately pursuant to Federal Bankruptcy Rules of Procedure 6004(h). The

provisions of this Final Financing Order shall be binding upon and inure to the benefit of the Agent, the Bank, the Pre-Petition Agent, the Pre-Petition Lender, and the Debtors and their respective successors and assigns, including any chapter 7 trustee or other trustee or fiduciary hereafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors in a Successor Case.

38. Committee's Right to Receive Financial Reports/Notices. The Debtors shall provide the attorneys for the Committee with copies of all financial reports and notices that the Debtors are required under the DIP Loan Documents or this Final Financing Order to deliver to the Pre-Petition Agent and the DIP Agent, and the Pre-Petition Agent and the DIP Agent shall provide the attorneys for the Committee with copies of any notices either provides to the Debtors under the DIP Loan Documents or this Final Financing Order.

39. Findings of Fact and Conclusions of Law. This Final Financing Order shall constitute findings of fact and conclusions of law.

40. Conflict. Any conflict between the provisions of the DIP Loan Documents or the Interim Financing Order, on the one hand, and this Final Financing Order, on the other hand, shall be governed by the provisions of this Final Financing Order.

41. Scope of Order. The liens and priorities granted under this Final Financing Order shall apply to all use by the Debtors of the Pre-Petition Encumbered Assets and all advances of the DIP Facility on or after the Filing Date.

Dated: Wilmington, Delaware
February 9, 2010

Kevin Gross
United States Bankruptcy Judge