

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
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<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Bankruptcy order discharging all liens (see document for details)		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
KeyBank National Association		04/30/2004	National banking Association:
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Oglebay Norton Company		
<b>Street Address:</b>	1001 Lakeside Avenue, 15th Floor		
<b>City:</b>	Cleveland		
<b>State/Country:</b>	OHIO		
<b>Postal Code:</b>	44114		
<b>Entity Type:</b>	CORPORATION: OHIO		
<b>PROPERTY NUMBERS Total: 6</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	2028307	ON	
Registration Number:	2028305	ON	
Registration Number:	2085242	OGLEBAY NORTON	
Registration Number:	2088556	ON	
Registration Number:	2080590	ON	
Registration Number:	1161244	ON	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(216)579-0212		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Email:</b>	jrmix@jonesday.com		
<b>Correspondent Name:</b>	Jones Day		
<b>Address Line 1:</b>	901 Lakeside Ave.		
<b>Address Line 2:</b>	c/o James R. Mix, Legal Assistant		
<b>Address Line 4:</b>	Cleveland, OHIO 44114-1190		
<b>ATTORNEY DOCKET NUMBER:</b>	510798-080004		

CH \$165.00 2028307

NAME OF SUBMITTER:	James R. Mix
Signature:	/James R. Mix/
Date:	07/26/2006

**Total Attachments: 43**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

**In re** : **Chapter 11**  
 :  
**ONCO INVESTMENT COMPANY,** : **Jointly Administered**  
**a Delaware corporation, et al,** :  
 : **Case No. 04-10558 (JBR)**  
**Debtors.** :  
 : **Ref. Docket No. 132**

**FINAL ORDER AUTHORIZING DEBTORS TO (A) PAY A COMMITMENT FEE  
FOR POSTPETITION FINANCING AND EXIT FINANCING; AND (B) OBTAIN  
POSTPETITION FINANCING AND EXIT FINANCING PURSUANT TO  
11 U.S.C. §§ 105, 362, 363, 364(C)(1), 364(C)(2), 364(C)(3) AND 364(D)(1)**

Oglebay Norton Company ("Oglebay"), and its affiliated debtors and debtors in possession (collectively, the "Debtors"), having moved on March 11, 2004 (the "Motion") for an order authorizing them to pay a commitment fee for and obtain postpetition and exit financing pursuant to sections 105, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code (the "Code") and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and having sought the following relief:

(a) the Court's authorization to pay the Commitment Fee (as such term is defined in the Motion);

(b) the Court's authorization, pursuant to sections 105(a), 361, 363 and 364(c) and (d) of the Code and Bankruptcy Rules 2002, 4001 and 9014, for Oglebay, as Borrower (the "Borrower"), and each of the other Debtors as Guarantors for the Borrower, to obtain from Silver Point Finance, LLC (by itself or, together with one or more of its affiliates "Silver Point") as collateral and syndication agent for the DIP Lenders (as defined herein) and lead arranger (in such capacity, the "Collateral Agent" and, collectively with any other Agents agreed to by the Debtors and Silver Point, the "Agents"), and Silver Point acting for itself, as DIP Lender, and as Agent for other lenders that may from time to time become DIP Lenders (Silver Point, in its

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capacity as Lender, together with any other lenders that may from time to time become DIP Lenders and the Agents collectively, the "DIP Lenders"), cash advances, and other extensions of credit, consisting of term loans, revolving loans and letters of credit, in an aggregate principal amount of up to \$305,000,000, including a sublimit of \$20,000,000 for letters of credit (the loans and letters of credit under such facilities, the "DIP Loans"), pursuant to a Financing Agreement substantially in the form filed with the Court on April 27, 2004 (as amended, modified or supplemented from time to time, the "DIP Loan Agreement"),<sup>1</sup> by and among the Debtors, the DIP Lenders, the Agents and the Documentation Agent, to: (i) fund ongoing working capital and general corporate needs of the Debtors during their chapter 11 cases (the "Chapter 11 Cases"); (ii) pay the fees, costs, expenses, and disbursements of professionals retained by the Debtors or the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102 of the Code (the "Creditors' Committee"); (iii) pay the costs and expenses of members of the Creditors' Committee as approved by the Court; (iv) repay and indefeasibly satisfy all Existing DIP Obligations (as defined herein); (v) repay and, subject to paragraph 19 hereof, indefeasibly satisfy all Existing Pre-Petition Obligations (as defined herein); (vi) make adequate protection payments, as and to the extent required by this Final Order, to the Senior Secured Notcholders; (vii) pay other bankruptcy related charges, all as allowed by the Court, including USF/Clerk Fees (defined herein); and (viii) pay any fees, deposits and expenses (including, without limitation, reasonable attorneys' fees and expenses) owed to the DIP Lenders or the Agents, or otherwise required to be paid under the DIP Loan Agreement and the other agreements, instruments and documents executed in connection therewith (collectively, with the DIP Loan Agreement, the "DIP Loan Documents");

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<sup>1</sup> Unless otherwise defined herein, capitalized terms shall have the meanings as defined in the DIP Loan Agreement.

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

- i. granted superpriority administrative claim status, having priority over any and all administrative expenses of the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 503(b), 506(c), 507, 546(c), 726 and 1114 of the Code, subject only, during the occurrence and continuance of an Event of Default or a default hereunder, to the payment of Priority Professional Expenses (as defined in the DIP Loan Agreement) up to the Carve-Out Amount (defined below) and UST/Clerk Fees (defined below);
- ii. secured under section 364(e)(2) by a first priority, perfected lien on and security interest in all pre-petition and post-petition property of the Debtors, of whatever kind or nature, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to valid, perfected and non-avoidable Liens, including, without limitation, by way of general description only, all property of the "estate" (within the meaning of the Code), and all accounts, inventory, goods, contract rights, instruments, documents, chattel paper, general intangibles, payment intangibles, letters of credit, letter-of-credit rights, supporting obligations, machinery and equipment, real property, Vessels and other marine assets, fixtures, leases, all of the Capital Stock (whether such stock is voting or non-voting stock) in any of its Subsidiaries, money, investment property, deposit accounts, all commercial tort claims and all causes of action arising under the Code or otherwise (excluding all Avoidance Actions and the proceeds thereof), and all cash and non-cash proceeds, rents, products and profits of any of the foregoing (collectively, the "Unencumbered Collateral"), *pari passu*,<sup>2</sup> with the Cash Management Liens (as defined below) and subject only to (a) any Permitted Priority Liens, (b) during the occurrence and continuance of an Event of Default or a default hereunder, the payment of Priority Professional Expenses up to the Carve-Out Amount, and (c) the UST/Clerk Fees;
- iii. secured, under 364(d)(1) of the Code, by a first priority, perfected priming lien on and security interest in any property of the Debtors that, on or as of the Filing Date, was, or thereafter became, subject to any valid, perfected and non-avoidable liens and security interests (the "Existing Pre-Petition Liens") of: (a) Existing Pre-Petition Lenders and Existing Pre-Petition Agents (as defined in the DIP Loan Agreement), as set forth in the Existing Pre-Petition Credit Agreement, Existing Pre-Petition Loan Agreement, or any document executed in connection therewith (collectively, the "Existing Pre-Petition Loan Documents"), to the extent not released as of the date of the entry of this Final Order; and/or (b) the Senior

<sup>2</sup> For the avoidance of doubt, the term "*pari passu*" as used herein, shall mean only that any allocation to be made to a creditor subject to a *pari passu* lien shall be made in an amount equal to the amount of the debt of such creditor divided by the total debt to all creditors having the same priority.

Secured Noteholders (as defined in the DIP Loan Agreement), as set forth in the Senior Secured Notes, the Senior Secured Note Indenture (each as defined in the DIP Loan Agreement) or any other document executed in connection therewith (collectively with the Senior Secured Note Indenture, the "Senior Secured Note Indenture Documents") (all such collateral shall be collectively referred to as, the "Pre-Petition Collateral"), *pari passu* with the Cash Management Liens and subject only to: (w) any Permitted Priority Liens, (x) during the occurrence and continuance of an Event of Default or a default hereunder, the payment of Priority Professional Expenses up to the Carve-Out Amount, and (y) UST/Clerk Fees;

- iv. secured under section 364(c)(3) of the Code by a perfected junior lien on and security interest in all pre-petition and post-petition property of the Debtors (but excluding the property described in clauses (ii) or (iii) as to which the liens and security interests in favor of the DIP Lenders and the Agents will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and non-avoidable Liens in existence immediately prior to the Filing Date or to valid and non-avoidable Liens in existence immediately prior to the Filing Date that are perfected subsequent to the Filing Date as permitted by Section 546(b) of the Code (collectively, the "Junior Collateral" and, together with the Unencumbered Collateral and the Pre-Petition Collateral, the "Collateral"), *pari passu* with the Cash Management Liens and subject only to (a) any Permitted Priority Liens, (b) during the occurrence and continuance of an Event of Default or a default hereunder, the payment of Priority Professional Expenses up to the Carve-Out Amount, and (c) UST/Clerk Fees;

(d) the Court grant, as adequate protection against the diminution in the value or amount of the Pre-Petition Collateral caused by the granting of the senior security interests described in subparagraph (b)(iii) above, and the use of the Senior Secured Noteholders' cash collateral, if any (the "Senior Secured Noteholder Cash Collateral"), to the Senior Secured Noteholders, (i) a superpriority administrative expense claim under section 507(b) of the Code, (ii) replacement liens in the Collateral (including any Senior Secured Noteholder Cash Collateral); which claims and liens granted hereunder shall be subject and subordinate in all respects to the Cash Management Liens and the superpriority administrative expense claim, security interests and liens granted to the DIP Lenders and the Agents under the DIP Loan Documents and this Final Order, and (iii) payment of reasonable post-petition attorneys' fees and costs of the Ad Hoc Committee of Senior Secured Noteholders (defined below);

(c) the Court's entry of this Final Order (the "Final Order") approving on a final basis the post-petition financing pursuant to the DIP Loan Documents and authorizing the Debtors to obtain, on a final basis, DIP Loans thereunder in the amount of \$305 million;

(f) the Court's authorization for the Debtors to enter into all documents required by the Confirmation Lenders (as such term is defined in the Motion) to give effect to the Confirmation Facility (as such term is defined in the Motion) (collectively the "Confirmation Facility Documents"), at no additional cost, on terms substantially similar to those set forth in the Commitment Letter (as such term is defined in the Motion), except as modified herein; and

(g) the Court's finding, pursuant to Bankruptcy Rule 4001(c)(1), that notice of the hearing on this Final Order has been given to (i) the United States Trustee; (ii) counsel to the Creditors' Committee; (iii) counsel to the Existing Pre-Petition Agents; (iv) counsel to the Ad Hoc Committee of Senior Secured Noteholders; (v) counsel to the Agents; (vi) all known lienholders of record; (vii) counsel to the Existing DIP Agents; and (viii) all parties filing a notice of appearance and request for service pursuant to Bankruptcy Rule 2002 as of the date of the Motion (collectively, the "Notice Parties");

(h) and the Court having entered an Interim Order (I) Authorizing Debtors To (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3) and 364(d)(1); and (B) Utilize Cash Collateral Pursuant to 11 U.S.C. §§ 105, 361, 362 and 363; and (II) Granting Adequate Protection To Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 105, 361, 362 and 363, on February 25, 2004, approving the Existing DIP Loan Documents (as defined herein) on an interim basis (the "First Interim Financing Order");

(i) and the Court having entered a Final Order (I) Authorizing Debtors To (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3) and 364(d)(1); and (B) Utilize Cash Collateral Pursuant to 11 U.S.C. §§ 105, 361, 362 and 363; and (II) Granting Adequate Protection To Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 105, 361, 362 and 363, on April 8, 2004, approving the Existing DIP Loan Documents (as defined herein) (the "First Final Financing Order");

(j) and based upon all of the pleadings filed with the Court, the evidence presented at the hearing held on April 28, 2004 (the "Hearing"), to consider approval of the Motion, the representations of counsel made at the hearing on the Motion and the entire record herein; and the Court having noted the appearances of all parties in interest; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors, and that such relief is essential for the continued operations of the Debtors' businesses; and it further appearing that the Debtors are unable to obtain unsecured credit for money borrowed allowable as an administrative expense under section 503(b)(1) of the Code or other secured financing on equal or more favorable terms than those set forth in the DIP Loan Documents; and after due deliberation and consideration, and sufficient cause appearing therefor:



**IT IS HEREBY ORDERED:**<sup>3</sup>

1. Disposition. The Motion is granted as set forth herein. Any objections to the Motion that have not previously been withdrawn or resolved are hereby overruled on their merits.

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

3. Purpose and Necessity of Financing. The Debtors require the financing described in the Motion to fund, among other things, the Debtors' cash requirements for working capital and general corporate needs, for purposes of repayment of all Existing DIP Obligations and all Existing Pre-Petition Obligations (as such terms are defined herein), and for other purposes permitted by the DIP Loan Documents. The Debtors believe that the authorization to borrow under the DIP Loan Agreement and the DIP Loans is in the best interests of the Debtors' estates and creditors. The Debtors are unable to obtain adequate unsecured credit allowable as an administrative expense under section 503 of the Code, or other financing under sections 364(c) or (d) of the Code, on terms that, taken as a whole, are as favorable as those set forth in the DIP Loan Agreement and the other DIP Loan Documents. A loan facility in the amount provided by the DIP Loan Agreement and the other DIP Loan Documents is not available to the Debtors without granting the DIP Lenders superpriority claims, liens and security interests, pursuant to sections 364(c)(1), (2), (3) and 364(d) of the Code, as provided in this Final Order and the DIP Loan Documents. After considering all alternatives, the Debtors have concluded in the exercise

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

of their prudent business judgment that the loan facility provided under the DIP Loan Documents represents the best working capital financing available to them at this time, and affords the added benefit of assuring the Debtors that financing will be available to them upon consummation of a plan of reorganization.

4. Good Cause. The ability of the Debtors to obtain sufficient working capital and liquidity under the DIP Loan Documents is vital to the Debtors' estates and creditors. The liquidity to be provided under the DIP Loan Documents and as a consequence of the use of Cash Collateral will enable the Debtors to continue to operate their businesses in the ordinary course, preserve the value of the Debtors' businesses and expedite their emergence from chapter 11. Good cause has, therefore, been shown for the relief sought in the Motion.

5. Good Faith. The DIP Loan Documents and this Final Order have been negotiated in good faith and at arm's-length between the Debtors, the DIP Lenders and the Senior Secured Noteholders. Any DIP Loans and/or other financial accommodations made to the Debtors by the DIP Lenders and/or the Senior Secured Noteholders, pursuant to this Final Order and/or the DIP Loan Documents shall be deemed to have been extended by the DIP Lenders or the Senior Secured Noteholders, as the case may be, in good faith, as that term is used in section 364(e) of the Code. Accordingly, the DIP Lenders and the Senior Secured Noteholders shall be entitled to all protections afforded under section 364(e) of the Code. The terms of the loan facility provided under the DIP Loan Documents are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration.

6. Borrowing. The Debtors are immediately authorized to obtain Loans, pursuant to the terms of the DIP Loan Documents and this Final Order, in the principal amount of up to \$305 million (which includes a sublimit of \$20 million for letters of credit).

(a) Available financing and advances under the DIP Loan Agreement will be used only as provided under the DIP Loan Agreement, and to fund other amounts required or allowed to be paid in accordance with this Final Order, including, without limitation, indefeasible payment in full of the Existing DIP Obligations, indefeasible payment, subject to paragraph 19 hereof, in full of the Existing Pre-Petition Obligations and adequate protection payments to the Senior Secured Noteholders, as and to the extent required hereunder.

(b) From the date of this Final Order to and including the occurrence of a closing under the DIP Loan Agreement on the Effective Date, the Debtors shall continue to have authorization to obtain Loans (as defined in the Existing DIP Loan Documents) provided, however, that (i) any such borrowing shall be as authorized by the First Final Financing Order and shall be made only in accordance with the Existing DIP Loan Documents and (ii) the proceeds of any such financings and/or advances shall be used only in accordance with the Existing DIP Loan Agreement and First Final Financing Order.

(c) Upon indefeasible payment in full of all outstanding Existing DIP Obligations, indefeasible payment in full, subject to paragraph 19 hereof, of all outstanding Existing Pre-Petition Obligations, this Final Order shall replace and supercede the First Final Financing Order and all of the provisions of such First Final Financing Order shall be of no further force and effect.

7. Use of Collateral. The Debtors are hereby authorized to use the Collateral including any cash (inclusive of the Senior Secured Notcholder Cash Collateral, the "Cash

Collateral"), only in accordance with terms of the DIP Loan Documents and this Final Order. Nothing in this Final Order shall be construed as or deemed to constitute the consent of the DIP Lenders or Senior Secured Noteholders to the use, sale or lease of the Collateral, including the Cash Collateral, on any terms other than as expressly provided herein. Notwithstanding any termination of the Debtors' authority to use the Cash Collateral pursuant to the terms hereof, all liens, priorities, rights and remedies provided to the Senior Secured Noteholders and the collateral agent for the Senior Secured Noteholders (the "Senior Secured Noteholder Agent") in this Final Order shall survive such termination and remain in full force and effect with respect to any indebtedness arising under the Senior Secured Note Indenture Documents (the "Senior Note Indebtedness"), and claims and obligations arising under this Final Order, outstanding on such termination date.<sup>4</sup>

8. Stipulations. In providing for post-petition financing under the DIP Loan Agreement, the Debtors acknowledge, represent, stipulate and agree that:

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

(b) in entering into the DIP Loan Documents, and except as otherwise provided herein, and as consideration therefor, the Debtors hereby agree that until such time as all DIP Obligations are indefeasibly paid in full, in cash, and the Commitments are terminated in accordance with the terms of the DIP Loan Agreement, the Debtors shall not in any way prime or

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<sup>4</sup> Nothing in this Final Order shall be construed as an admission by any party that the consent of the Senior Secured Noteholders or the Senior Secured Noteholder Agent is required for the Debtors' use of Cash

seek to prime (*i.e.*, cause to be subordinated) the liens provided to the DIP Lenders and the Agents under this Final Order by offering a subsequent lender or any party-in-interest a superior or *pari passu* lien, interest or claim pursuant to section 364(d) of the Code or otherwise.

(c) the Debtors are indebted to the Existing DIP Agents and the Existing DIP Lenders for the Obligations (as defined in the Existing DIP Credit Agreement) under the Existing DIP Credit Agreement and all documents executed in connection therewith (the "Existing DIP Loan Documents"), as of the date hereof, in the aggregate principal amount of not less than \$4,620,852.34 constituting loans and undrawn letters of credit under the Existing DIP Loan Documents, together with interest and fees accrued and accruing thereon in respect of such loans, together with costs, expenses, fees (including attorneys' fees), indemnities, reimbursement obligations and other charges now or hereafter owed to and including the date of indefeasible payment of the Existing DIP Obligations (as defined herein) by the Debtors to the Existing DIP Agents and the Existing DIP Lenders (collectively, with any amounts advanced under the Existing DIP Loan Documents prior to the indefeasible payment of all such Obligations, the "Existing DIP Obligations"), all of which are secured by the liens and security interests granted to the Existing DIP Agents and Existing DIP Lenders Liens under the Existing DIP Loan Documents and the First Final Financing Order (the "Existing DIP Liens"), and unconditionally owing by the Debtors without avoidance, offset, defense, objection, action, subordination or counterclaim of any kind, nature and description whatsoever;

(d) the Debtors are indebted to the Existing Pre-Petition Agents and the Existing Pre-Petition Lenders for the obligations under the Existing Pre-Petition Loan Documents, as of February 23, 2004, in the aggregate principal amount of not less than

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Collateral.

\$243,200,000 constituting loans and undrawn letters of credit under the Existing Pre-Petition Loan Documents, together with interest, at the non-default rate set forth in the Existing Pre-Petition Loan Documents, and fees accrued and accruing thereon in respect of such loans, together with costs, expenses, fees (including reasonable attorneys' fees), indemnities, reimbursement obligations and other charges now or hereafter owed to and including the date of indefeasible payment of the Existing Pre-Petition Obligations (as defined herein), subject to paragraph 19 hereof, by the Debtors to the Existing Pre-Petition Agents and the Existing Pre-Petition Lenders pursuant to the Existing Pre-Petition Loan Documents, including any interest payable under or in connection with (A) that certain ISDA Master Agreement, dated as of June 30, 2000, between The Chase Manhattan Bank (n/k/a JPMorgan Chase Bank) and Oglebay Norton Company and (B) that certain ISDA Master Agreement, dated January 14, 2002, between National City Bank and ON Marine Services Company and Oglebay Norton Marine Services Company, L.L.C.) (collectively, the "Existing Pre-Petition Obligations"), all of which are secured by the Existing Pre-Petition Liens and are unconditionally owing by the Debtors without avoidance, offset, defense, objection, action, subordination or counterclaim of any kind, nature and description whatsoever;

(e) all of the Debtors will receive and have received reasonable consideration in exchange for the making of the DIP Loans, the use of the Cash Collateral and the other financial accommodations provided under the DIP Loan Documents and this Final Order;

(f) as of the date of this Final Order, there are no other liens on or security interests in the Collateral except for the Permitted Liens, the Cash Management Liens (as defined herein), and the Existing Pre-Petition Liens;

(g) all payments made by the Debtors to the Existing DIP Lenders or Existing DIP Agents, prior to or after the Filing Date, and to the Existing Pre-Petition Lenders, prior to or (subject to paragraph 19 hereof) after, the Filing Date, are legal, valid and non-avoidable;

(h) the Debtors do not possess, may not assert and have waived any claim, objection, action, counterclaim, offset, right or defense of any kind or nature which could in any way affect the validity, priority, enforceability and nonavoidability of the Existing DIP Obligations, Existing Pre-Petition Obligations, Existing DIP Liens or Existing Pre-Petition Liens or which would reduce or affect the obligation of the Debtors to pay the Existing DIP Obligations or the Existing Pre-Petition Obligations;

(i) the Debtors hereby release, discharge and acquit the Existing DIP Agents, Existing DIP Lenders, and subject to the provisions of paragraph 19 hereof, the Existing Pre-Petition Lenders and the Existing Pre-Petition Agents and each of their respective agents, officers, directors, attorneys and employees, from any and all claims and causes of action of every type, nature and description arising out of the Existing DIP Loan Documents, Existing Pre-Petition Loan Documents or any other relationship with the Debtors prior to the entry of this Final Order.

9. Fees and Deposit. All fees paid and payable and costs and/or expenses reimbursed or reimbursable under the DIP Loan Agreement, the other DIP Loan Documents and this Final Order by the Debtors to the DIP Lenders, the Agents, the Existing DIP Agents, the Existing DIP Lenders, the Existing Pre-Petition Lenders or the Existing Pre-Petition Agents are hereby approved. To the extent not previously paid, the Debtors are hereby authorized and directed to pay all such fees, in accordance with the terms of the DIP Loan Documents and this Final Order, without the necessity of the Debtors, the DIP Lenders, the Agents, the Existing DIP

Agents, the Existing DIP Lenders, the Existing Pre-Petition Lenders or the Existing Pre-Petition Agents filing any further application with the Court for approval or payment of such fees or expenses provided, however, that the Court requires all parties receiving reimbursement of professional fees, costs and/or expenses in whole or in part with property or proceeds of property of the estate to file a fee application that sets forth such fees, costs and expenses. Upon payment of such fees, such fees shall be deemed fully earned and non-refundable, subject to the usual fee application process required by this Court.

10. Authority to Excute and Deliver Necessary Documents. Each of the Debtors is authorized and empowered to enter into and deliver the DIP Loan Agreement and the other DIP Loan Documents in each case including any amendments thereto, and including UCC financing statements and mortgages or deeds of trust encumbering all of the Collateral and securing all of the Debtors' obligations under the DIP Loan Agreement, including repayment of all DIP Obligations. Each of the Debtors is hereby further authorized and directed (a) to perform all of their obligations under the DIP Loan Documents and such other agreements as may be required by the DIP Loan Documents to give effect to the terms of the financing provided for in this Final Order; (b) to perform all acts required under the DIP Loan Documents and this Final Order, including, without limitation, the payment of fees and the reimbursement of present and future reasonable costs and expenses (including without limitation, attorneys' fees and legal expenses), subject to the requirement that all professional fees and expenses require approval of the Court, paid or incurred by the DIP Lenders, the Agents, the Existing Pre-Petition Lenders, the Existing Pre-Petition Agents or the ad hoc committee of Senior Secured Noteholders (the "Ad Hoc Committee of Senior Secured Noteholders") as and to the extent provided for in this Final Order, the DIP Loan Agreement and the other DIP Loan Documents, all of which unpaid fees,



commissions, costs and expenses paid or incurred by the DIP Lenders or the Agents shall be included and constitute part of the principal amount of the DIP Obligations, and be secured by a first priority lien on and security interest in all of the Collateral, except to the extent otherwise provided for in this Final Order, the DIP Loan Agreement and the other DIP Loan Documents; and (c) to do and perform all other acts, to make, execute and deliver all other instruments, agreements and documents, which may be reasonably requested by the DIP Lenders, the Agents, the Existing Pre-Petition Lenders or the Existing Pre-Petition Agents. The obligations under the DIP Loan Documents and this Final Order shall constitute valid and binding obligations of each of the Debtors enforceable against each of them, and each of their successors and assigns, in accordance with their terms and the terms of this Final Order.

11. Amendments. The Debtors, with the express written consent of the Required Lenders under the DIP Loan Agreement, may enter into any amendments or modifications to the DIP Loan Agreement and the other DIP Loan Documents without the need of further notice and hearing or order of this Court, provided that such modifications or amendments do not materially adversely affect the rights of any other creditor, equity holder or party in interest, and provided further, that notice of any such amendment shall be filed with the Court and served upon counsel to the Committee, the Office of the United States Trustee, counsel to the Ad Hoc Committee of Senior Secured Noteholders, and any affected creditor, equity holder or party in interest.

12. Repayment of the Existing DIP Obligations. The Debtors are hereby authorized and directed to:

(a) use the proceeds of the DIP Loans, immediately upon entry of this Final Order, to pay in full all Existing DIP Obligations that are outstanding as of the Effective Date

and to replace or cash collateralize, as necessary, any letters of credit remaining outstanding under the Existing DIP Loan Documents; and

(b) upon indefeasible payment in full of all outstanding Existing DIP Obligations from the proceeds of the DIP Loans, all Existing DIP Liens and claims related to the Existing DIP Obligations or arising under the First Interim Financing Order or First Final Financing Order, in respect of the Existing DIP Obligations, shall be and shall be deemed released, extinguished, discharged, fully satisfied and of no further force and effect. The Debtors are hereby authorized and directed, once the Existing DIP Obligations have been Paid in Full (as defined in the Existing DIP Credit Agreement), and any outstanding letters of credit under the Existing DIP Loan Documents have been replaced or cash collateralized, to file any and all termination statements or other similar instruments evidencing the termination of the Existing DIP Liens.

(c) Notwithstanding the foregoing or the receipt of payment in full of all Existing DIP Obligations and subject to requirements of the usual fee application process for all professional fees and expenses that are to be paid by or out of the assets of the estate, the Debtors shall pay that portion of the Existing DIP Obligations that constitutes reasonable fees and disbursements of the professionals retained by the Existing DIP Agents and the Existing DIP Lenders in these Chapter 11 cases prior to the indefeasible payment of the Existing DIP Obligations, in amounts in excess of any retainer or pre-paid fees held by such professionals, upon receipt by the Debtors, counsel to the Debtors, counsel to the Committee, counsel to the Ad Hoc Committee of Senior Secured Noteholders, counsel to the DIP Lenders and the Office of the United States Trustee of invoices relating thereto.

13. Repayment of the Existing Pre-Petition Obligations.

(a) The Debtors are hereby authorized and directed to use the proceeds of the DIP Loans, immediately upon entry of this Final Order, to pay in full all Existing Pre-Petition Obligations that are outstanding as of the Effective Date, and to replace or cash collateralize any outstanding letters of credit under the Existing Pre-Petition Loan Documents; and

(b) upon indefeasible payment in full of all outstanding Existing Pre-Petition Obligations ~~from the proceeds of the DIP Loans~~, all Existing Prepetition Liens and claims related to the Existing Pre-Petition Obligations or arising under the First Interim Financing Order or First Final Financing Order shall be and shall be deemed released, extinguished, discharged, fully satisfied and of no further force and effect. The Debtors are hereby authorized and directed, once the Existing Pre-Petition Obligations have been paid in full and any outstanding letters of credit under the Existing Pre-Petition Loan Documents have been replaced or cash collateralized, to file any and all termination statements or other similar instruments evidencing the termination of the Existing Pre-Petition Liens.

(c) Notwithstanding the foregoing or the receipt of payment in full of all Existing Pre-Petition Obligations and subject to the requirements of the usual fee application process for all professional fees and expenses that are to be paid by or out of the assets of the estate, the Debtors shall pay that portion of the Existing Pre-Petition Obligations that constitutes reasonable fees and disbursements of the professionals retained by the Existing Pre-Petition Agents and the Existing Pre-Petition Lenders in these Chapter 11 cases prior to the indefeasible payment of the Existing Pre-Petition Obligations, in amounts in excess of any retainer or pre-paid fees held by such professionals, upon receipt by the Debtors, counsel to the Debtors, counsel to the Committee, counsel to the Ad Hoc Committee of Senior Secured Noteholders,

counsel to the DIP Lenders and the Office of the United States Trustee of invoices relating thereto.

14. Payment of Commitment Fee. The Debtors are authorized and directed to pay all amounts due and owing under the Note (as defined in the Motion) and, upon payment, the Note shall be deemed satisfied in full and cancelled. The Note constitutes a valid and enforceable obligation of the Debtors that evidences the unpaid balance of the Commitment Fee. The payment of the Commitment Fee (as defined in the Motion) represents an exercise of the Debtors' sound business judgment and is in the best interests of the Debtors' respective estates, creditors and parties in interest.

15. Superpriority Claim and Lien Priority. To secure all of the DIP Obligations, the DIP Lenders and the Agents are hereby granted, *subject to the provisions of ¶ 13 hereof:*

(a) an allowed superpriority administrative expense claim (the "Superpriority Claim") pursuant to section 364(c)(1) of the Code for all of the DIP Obligations, having priority over any and all administrative expenses of the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 503(b), 506(c), 507, 546(c), 726 and 1114 of the Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, subject and subordinate in priority of payment only to the Priority Professional Expenses (up to the Carve-Out Amount after an Event of Default or a default hereunder) and the UST/Clerk Fees; and

(b) *pari passu* with the Cash Management Liens and subject only to Permitted Priority Liens and, during the occurrence and continuance of an Event of Default or a default hereunder, to the payment of Priority Professional Expenses up to the Carve-Out Amount and UST/Clerk Fees, as provided in this Final Order, the DIP Lenders and the Agents are hereby

granted, effective immediately: (i) a first priority, perfected security interest in, and lien, under section 364(c)(2) of the Code, upon all of the Unencumbered Collateral; (ii) a first priority, perfected priming security interest in and lien, under section 364(d)(1) of the Code, upon all Pre-Petition Collateral, in all cases, senior to any and all present and future liens, claims or encumbrances against the Pre-Petition Collateral, including, without limitation, any and all Existing Pre-Petition Liens, and Replacement Liens; and (iii) a junior, perfected security interest in and lien, under section 364(c)(3) of the Code, upon all Junior Collateral (collectively, the "Post-Petition Liens");

(c) no lien or security interest granted to the DIP Lenders or the Agents under this Final Order, including the Post-Petition Liens shall (a) be subject to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Code, or (b) hereafter be subordinated to or, except as otherwise provided in this Final Order, made *pari passu* with any other lien or security interest under section 364(d) of the Code or otherwise;

(d) the liens and security interests arising hereunder shall be and hereby are fully perfected liens and security interests, such that no additional steps need be taken by the DIP Lenders or the Agents to perfect such interests. Any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract or other instrument or agreement that requires the consent or approval of one or more landlords, licensors or other parties, or requires the payment of any fees or obligations to any governmental entity, non-governmental entity, or any other person, in order for any of the Debtors to pledge, grant, mortgage, sell, assign or otherwise transfer any fee or leasehold interest, the proceeds thereof or other Collateral shall have no force or effect with respect to the transactions granting the DIP Lenders, the Agents, the

Intermediary Bank, the Senior Secured Noteholders or the Senior Secured Notcholder Agent a priority security interest in such fee, leasehold or other interest or other Collateral or the proceeds of any assignment, sale or other transfer thereof by any of the Debtors in favor of the DIP Lenders, the Agents, the Intermediary Bank, the Senior Secured Noteholders or the Senior Secured Notcholder Agent in accordance with the terms of the DIP Loan Agreement or this Final Order;

(e) the Post-Petition Liens, Superpriority Claim and other rights and remedies granted to the DIP Lenders and the Agents under this Final Order shall continue in this and in any superseding case or cases under the Code, and such liens and security interests shall maintain their first priority as provided in this Final Order until all the DIP Obligations have been indefeasibly Paid in Full (as defined in the DIP Loan Agreement); and

(f) nothing contained herein shall be construed to grant a priming lien on the pre-petition collateral presently subject to the First Preferred Flect Mortgage between the Debtors and National City Bank, dated as of July 14, 1997.

16. Adequate Protection for Senior Secured Noteholders. As adequate protection against the diminution in the value or amount of the Pre-Petition Collateral and for use of the Pre-Petition Collateral (including the Senior Secured Notcholder Cash Collateral) by the Debtors and in accordance with sections 361, 363(e), and 364(d) of the Bankruptcy Code, the Senior Secured Noteholders are hereby granted:

(a) valid, perfected, second priority post-petition security interests in and liens (such liens, the "Replacement Liens") on all Collateral, and all cash and non-cash proceeds, rents, products and profits of any Collateral, which liens and security interests shall be and hereby are fully perfected liens and security interests without the need for any additional steps to

be taken by the Senior Secured Noteholders or the Senior Secured Noteholder Agent to perfect such interests, to secure an amount equal to the aggregate reduction in the value or amount of the Pre-Petition Collateral, whether by depreciation, use, sale, loss, decline in market price or otherwise (any such diminution in value, the "Adequate Protection Obligations"), provided, however, that notwithstanding anything to the contrary, the Replacement Liens shall be and remain junior and subordinate in all respects to (i) the Post-Petition Liens and/or payment of any DIP Obligations on account thereof; (ii) the Permitted Priority Liens; (iii) during the occurrence and continuation of an Event of Default or a default hereunder, the payment of Priority Professional Expenses up to the Carve-Out Amount; (iv) the Cash Management Liens; and (v) the UST/Clerk Fees;

(b) except for (i) the Post-Petition Liens; (ii) the Permitted Priority Liens; (iii) during the occurrence and continuance of an Event of Default or a default hereunder, the payment of Priority Professional Expenses up to the Carve-Out Amount; (iv) the Cash Management Liens; and (v) the UST/Clerk Fees, no lien or security interest in any property of the Debtors granted or arising on or after the Filing Date (including, without limitation, liens and security interests, if any, granted in favor of any federal, state, municipal or other governmental unit, commission, or board for any liability of the Debtors) shall be created or permitted to be *pari passu* with, or senior to the Replacement Liens;

(c) to the extent that the Replacement Liens prove insufficient to provide the Senior Secured Noteholders with adequate protection, the Senior Secured Noteholders shall be granted a junior superpriority administrative claim (the "Adequate Protection Claims") under section 507(b) of the Code, in an amount equal to the Adequate Protection Obligations, having priority over any other claims including claims made pursuant to section 507(b) of the

Bankruptcy Code, and junior in priority only to the Superpriority Claim held by the DIP Lenders and subject only to payment of DIP Obligations, the UST/Clerk Fees, and during the occurrence and continuance of an Event of Default, the payment of Priority Professional Expenses up to the Carve-Out Amount; and

(d) provided that no Event of Default or default hereunder has occurred and is continuing, as further protection for use of the Pre-Petition Collateral (including the Senior Secured Noteholder Cash Collateral) by the Debtors, and in accordance with sections 361, 363(e), and 364(d) of the Bankruptcy Code, the Debtors shall pay all reasonable attorneys' fees and costs of Hennigan, Bennett & Dorman LLP and local counsel for the Ad Hoc Committee of Senior Secured Noteholders, incurred by the Ad Hoc Committee of Senior Secured Noteholders from and after the Filing Date, subject to the requirements of the usual fee application process for all professional fees and expenses that are to be paid by or out of the assets of the estate and otherwise upon receipt of invoices for such professional fees and expenses by the Debtors, counsel to the Debtors, counsel to the Committee, counsel to the Agents and the Office of the United States Trustee.

17. Section 552 Rights. For the sake of clarity and specificity, nothing contained in this Final Order or the DIP Loan Documents shall in any way be construed as an order limiting or otherwise impairing the rights of the DIP Lenders, the Agents, the Senior Secured Noteholders or the Senior Secured Notcholder Agent as provided in Section 552 of the Code;

18. Priority Professional Expenses and UST/Clerk Fees Carve-Out. The payment of any amounts on account of the liens and security interests and the Superpriority Claim granted herein to the DIP Lenders and the Agents shall be subject and subordinate only to:



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

(b) allowed fees and expenses of attorneys, accountants, and other professionals retained in these Chapter 11 cases pursuant to sections 327, 328, 330, 331 and 1103 of the Code by the Debtors and the Committee to the extent that such amounts do not exceed in the aggregate \$5 million (inclusive of any holdbacks required by the Court) (the "Carve-Out Amount"). So long as no Event of Default or default by any of the Debtors in the performance or observance of any of their obligations under this Final Order has occurred and is continuing, the Debtors shall be permitted to pay UST/Clerks Fees and Priority Professional Expenses allowed and payable under sections 327, 328, 330 and 331 of the Code, as the same may be due and payable in accordance with any applicable order of the Court, and such payments shall not be applied against the Carve-Out Amount. After the occurrence and during the continuation of an Event of Default or a default by any of the Debtors in the performance or observance of any of their obligations under this Final Order, any payments actually made of fees and expenses to such professionals (including payments made out of pre-Petition Date retainers) pursuant to sections 327, 328, 330, 331 and 1103 of the Code or otherwise, shall reduce the Carve-Out Amount on a dollar-for-dollar basis; and

(c) Priority Professional Expenses shall also include any payments which are authorized to be made pursuant to any Court-approved procedure for monthly or other payment of administrative expenses; provided, that nothing contained herein shall (i) be construed to exempt those persons hereafter receiving interim compensation payments or reimbursement of expenses pursuant to any such Court-approved procedure for interim payments of administrative expenses from the applicable provisions of bankruptcy law, including the requirements that such

compensation or reimbursement be allowed on a final basis after the filing of appropriate fee applications and (ii) be construed as consent to the allowance of any fees and expenses referred to above and shall not affect any right of the DIP Lenders, the Agents, the Senior Secured Noteholders or the Senior Secured Noteholder Agent to object to the reasonableness of such amounts; provided, further, that Priority Professional Expenses shall not include, and proceeds of the DIP Loans (as to the DIP Lenders) and the Cash Collateral (as to the DIP Lenders and the Senior Secured Noteholders) shall not be used for the payment or reimbursement of, any fees or disbursements of the Debtors, the Committee or any trustee appointed in these Chapter 11 Cases incurred in connection with the assertion and prosecution of, or joinder in, any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief: (A) commencing or prosecuting any action asserting claims pursuant to sections 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Code or other cause of action (whether arising under state law, the Code or other federal law) against the DIP Lenders, the Agents, the Existing DIP Lenders, the Existing DIP Agents or the Intermediary Bank with respect to the validity and extent of the DIP Obligations, the Existing DIP Obligations, or the validity, extent and priority of liens and security interests securing the DIP Obligations and the Existing DIP Obligations of the Debtors; (B) invalidating, setting aside, avoiding or subordinating, in whole or in part, the DIP Lenders', the Agents' or the Intermediary Bank's liens or security interests in the Collateral; (C) preventing, hindering or delaying (whether, directly or indirectly) the DIP Lenders or the Agents in respect of their liens and security interests in the Collateral or (D) authorizing the use of the Cash Collateral on terms other than those set forth in this Final Order without the consent of the DIP Lenders, the Agents. No liens, claims, interests or priority status other than Permitted Priority Liens, Priority

Professional Expenses (up to the Carve-Out Amount after an Event of Default or a default hereunder), the Cash Management Liens and UST/Clerk Fees, having a lien or administrative priority superior to, or *pari passu* with, those granted by this Final Order to the DIP Lenders, the Agents, the Senior Secured Noteholders or the Senior Secured Noteholder Agent shall be granted while any portion of the DIP Obligations remains outstanding or any Commitment under the DIP Loan Agreement remains in effect without the written consent of the Required Lenders under the DIP Loan Agreement.

(d) Effective upon entry of this Final Order, in exchange for priority payment of the Priority Professional Expenses, the parties entitled to be paid therefrom shall not be entitled, directly or indirectly, to charge the Collateral whether by operation of Sections 105, 506(c) or 552(b) or otherwise. The waiver set forth in the immediately preceding sentence is for the sole benefit of the DIP Lenders, the Agents, the Intermediary Bank, the Senior Secured Noteholders and the Senior Secured Noteholder Agent and no other party shall be entitled to assert any claim or defense on account of such waiver.

19. Committee Investigation Period. Notwithstanding anything in this Final Order or in the DIP Loan Agreement to the contrary, any party in interest (other than the Debtors, the Senior Secured Noteholders and Senior Secured Noteholder Agent who have expressly waived their rights to do so upon entry of this Final Order as provided herein), including the Committee, may commence any adversary proceeding or contested matter challenging the validity, enforceability or priority of the obligations owed to the Existing Pre-Petition Lenders or the Existing Pre-Petition Obligations or, to the extent they secure obligations owed to the Existing Pre-Petition Lenders or the Existing Pre-Petition Obligations, the Existing Pre-Petition Liens, or otherwise assert on behalf of the Debtors, their estates and their creditors any claim or cause of

action against the Existing Pre-Petition Lenders, no later than the date that is sixty (60) days after the filing of an application for entry of an order authorizing the retention of counsel for the Committee (the "Investigation Termination Date"). If no such adversary proceeding or contested matter is properly commenced as of such date (or such later date as extended only by written consent of the Existing Pre-Petition Lenders or further order of this Court, upon cause shown), the obligations owed to the Existing Pre-Petition Lenders shall constitute allowed claims, not subject to avoidance or subordination, for all purposes in the Chapter 11 Case, and the Existing Pre-Petition Liens shall be deemed legal, valid, binding, perfected, enforceable and otherwise unavoidable, and the obligations owed to the Existing Pre-Petition Lenders and the Existing Pre-Petition Liens shall not be subject to any other or further challenge by any party in interest, and the stipulations in paragraphs 8(c) and 8(d) and 8(g) through 8(i) (in each case, inclusive) shall be deemed binding on all parties.

20. Limitation On Additional Surcharges. Neither the Collateral nor the DIP Lenders, Agents, the Existing DIP Lenders, Existing DIP Agents, the Intermediary Bank, the Senior Secured Noteholders or Senior Secured Noteholder Agent shall be subject to surcharge, pursuant to sections 506(c), 552(b) or 105(a) of the Code, or otherwise, by any of the Debtors or any other party in interest. No action, inaction, or acquiescence by the DIP Lenders, the Agents, the Existing DIP Lenders, the Existing DIP Agents, the Intermediary Bank, the Senior Secured Noteholders or Senior Secured Noteholder Agent including funding the Debtors' ongoing operations under this Final Order, shall be deemed to be or shall be considered as evidence of any alleged consent by the DIP Lenders, the Agents, the Existing DIP Lenders, the Existing DIP Agents, the Intermediary Bank, the Senior Secured Noteholders and Senior Secured Noteholder Agent to a charge against the Collateral pursuant to sections 506(c) or 105(a) of the Code. The

DIP Lenders, the Agents, the Existing DIP Lenders, the Existing DIP Agents, the Intermediary Bank, the Senior Secured Noteholders and the Senior Secured Noteholder Agent shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

21. Additional Perfection Measures.

(a) The liens, security interests and priority granted to the DIP Lenders, the Agents, the Intermediary Bank (as defined below), the Senior Secured Noteholders and Senior Secured Noteholder Agent pursuant to this Final Order with respect to property of the Debtors' estates shall be perfected by operation of law upon entry of this Final Order by the Court. Neither the Debtors nor the DIP Lenders, the Agents, the Senior Secured Noteholders and Senior Secured Notcholder Agent shall be required to enter into or to obtain landlord waivers, mortgage waivers, bailee waivers, warehouseman waivers or other waiver or consent, or to file or record financing statements, mortgages, deeds of trust, leasehold mortgages, notices of lien or similar instruments in any jurisdiction (including, trademark, copyright, trade name or patent assignment filings with the United State Patent and Trademark Office, Copyright Office or any similar agency with respect to intellectual property), or obtain consents from any licensor or similarly situated party-in-interest, or take any other action in order to validate and to perfect the security interests and liens granted to the DIP Lenders, the Agents, the Intermediary Bank, the Senior Secured Noteholders and Senior Secured Noteholder Agent pursuant to this Final Order.

(b) If the DIP Lenders, the Agents, the Intermediary Bank, the Senior Secured Noteholders or Senior Secured Notcholder Agent in their sole discretion, choose to obtain consents from any landlord, licensor or other party in interest, to file mortgages, financing statements, notices of lien or similar instruments, or to otherwise record or perfect such security

interests and liens: (i) all such documents shall be deemed to have been recorded and filed as of the time and on the date of entry of this Final Order; and (ii) no defect in any such act shall affect or impair the validity, perfection and enforceability of the liens granted hereunder.

(c) In lieu of obtaining such consents or filing any such mortgages, financing statements, notices of lien or similar instruments, the DIP Lenders, the Agents, the Intermediary Bank, the Senior Secured Noteholders or Senior Secured Noteholder Agent may, at their sole discretion, choose to file a true and complete copy of this Final Order in any place at which any such instruments would or could be filed, together with a description of Collateral located within the geographic area covered by such place of filing, and such filing by the DIP Lenders, the Agents, the Intermediary Bank, the Senior Secured Noteholders or Senior Secured Noteholder Agent shall have the same effect as if such mortgages, deeds of trust, financing statements, notices of lien or similar instruments had been filed or recorded at the time and on the date of entry of this Final Order.

22. Application of Collateral Proceeds. Except as otherwise provided in this Final Order, the Debtors and the Intermediary Bank are hereby authorized and directed to remit to the DIP Lenders or the Agents, as the case may be, one-hundred percent (100%) of all collections on, and proceeds of, the Collateral (subject to the satisfaction of any liens and security interests in such Collateral described particularly in the DIP Loan Agreement and herein as being senior to the liens and security interests of the DIP Lenders and the Agents), including all accounts receivable collections, proceeds of sales of inventory, fixed assets and any other assets, including sales in and outside the ordinary course of business, and all other cash or cash equivalents which shall at any time on or after the Petition Date come into the possession or control of the Debtors, or to which Debtors shall become entitled at any time. The automatic stay provisions of section

362 of the Code are hereby modified to permit the DIP Lenders or the Agents to retain and apply all collections, remittances and proceeds of the Collateral in accordance with this Final Order and the DIP Loan Documents to the DIP Obligations, first to fees, costs and expenses owed under the DIP Loan Documents, then to interest, and then to principal;

(a) Notwithstanding any cash management agreements or any order entered continuing the Debtors' use of their current cash management system, the Existing Pre-Petition Lenders shall not use the proceeds of any Collateral in any accounts maintained or controlled by them except as provided under the DIP Loan Documents and this Final Order and any funds currently held, or received by the Existing Pre-Petition Lenders after the Petition Date, shall be held by such Existing Pre-Petition Lenders or treated in accordance with the DIP Loan Documents and this Final Order, to be dealt with in accordance with the Debtors' cash management system as it has been modified to give effect to the DIP Loan Agreement.

23. Access to Information. Without limiting the rights of access and information afforded the DIP Lenders or the Agents under the DIP Loan Agreement, the Debtors shall permit representatives, agents and/or employees of the DIP Lenders, the Agents, and the Ad Hoc Committee of Senior Secured Noteholders to have reasonable access to their premises and their 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. The Debtors shall timely serve upon counsel to the DIP Lenders, the Agents, and the Ad Hoc Committee of Senior Secured Noteholders all pleadings and other documents filed by the Debtors in the Chapter 11 Cases, including the financial reports required by the United States Trustee's office, and shall continue to supply such reports as are required under the DIP Loan Documents or as requested

by the DIP Lenders, the Agents, and the Ad Hoc Committee of Senior Secured Noteholders. The Debtors shall provide the DIP Lenders, counsel to the Agents, and counsel to the Ad Hoc Committee of Senior Secured Noteholders with copies of all material documents provided to the Committee, as well as copies of all non-privileged consultants' reports, appraisals, business plans, and similar documents as they become available to the Debtors (whether or not provided to the Committee), including, without limitation, any and all audits and other non-privileged reports prepared by the Debtors' accountants.

24. Access to Collateral.

(a) Upon the occurrence of an Event of Default or violation of this Final Order, the automatic stay of Code section 362(a) shall be terminated only after further order of the Court, in response to a motion brought in accordance with paragraph 26(c) hereof, granting relief from the automatic stay allowing the DIP Lenders or Agents to enter upon any leased or licensed premises of any of the Debtors for the purpose of exercising any remedy with respect to Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under such lease or license without interference from the landlords or licensors thereunder, provided that upon the request of the DIP Lenders or Agents, they shall only pay base rent, or other obligations as required under the Code, of the Debtors that first arise after the DIP Lenders' or Agents' written notice of the motion referenced above and that are payable during the period of such occupancy by the DIP Lenders or the Agents, as the case may be, calculated on a per diem basis. Nothing herein shall require the Debtors, DIP Lenders or Agents to assume any lease under section 365(a) of the Code as a precondition to the rights afforded to the DIP Lenders in this paragraph. Such motion for relief from the automatic stay shall be heard in accordance with the terms of paragraph 26(c) of this Final Order.



(b) Debtors shall give the DIP Lenders and the Agents, their representatives and consultants, reasonable access to the Debtors' facilities, offices, books and records during normal business hours to enable such parties, among other things, to inspect the Collateral.

25. Cash Management System. The Debtors are authorized and directed to maintain their cash management system in a manner consistent with the DIP Loan Documents and this Final Order.

(a) Notwithstanding anything to the contrary contained in this Final Order or the DIP Loan Documents, KeyBank N.A., in its capacity as cash management bank with which the Debtors continue to maintain lockbox and operating accounts (in such capacity, the "Intermediary Bank"), is hereby granted for all obligations owed by Debtors to the Intermediary Bank in its capacity as Intermediary Bank, including, *inter alia*, all costs, charges, fees, expenses and other liabilities incurred in such capacity and payable under the Intermediary Bank Agreements (as defined herein) (collectively, the "Intermediary Bank Obligations"), effective immediately, (a) \$1 million of cash to be held as cash collateral by the Intermediary Bank for any Intermediary Bank Obligations,<sup>5</sup> (b) under Section 364 of the Code, a perfected security interest in, and lien upon, \$5 million of the Collateral (the "Cash Management Liens"), \$2 million of which Cash Management Liens shall be *pari passu* with the first \$70 million of Post-Petition Liens granted to the DIP Lenders and the Agents under this Final Order and the DIP Loan Documents and \$3 million of which Cash Management Liens shall be *pari passu* with the second \$235 million of Post-Petition Liens granted to the DIP Lenders and the Agents under this Final Order and the DIP Loan Documents, which Cash Management Liens shall be in all respects senior to the Replacement Liens.

(b) The Cash Management Liens shall be and hereby are fully perfected liens and security interests without the need for any additional steps to be taken by the Intermediary Bank to perfect such interests. No lien or security interest granted to the Intermediary Bank under this Final Order shall be subject to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under Section 551 of the Code, or hereafter be subordinated to or made *pari passu* with any other lien or security interest other than the liens granted to the DIP Lenders and the Agents under this Final Order and the DIP Loan Documents.

(c) Notwithstanding anything to the contrary contained in any document relating to the Debtors or any of their accounts among the Debtors and the Intermediary Bank (collectively, the "Intermediary Bank Agreements"), the Intermediary Bank is not entitled to exercise any remedies, whether pursuant to agreement or applicable non-bankruptcy law, on account of the Cash Management Liens unless and until all DIP Obligations have been indefeasibly paid in full and the Commitments have been terminated.

(d) Notwithstanding anything to the contrary contained herein, the Debtors are authorized to pay to the Intermediary Bank any fees, expenses and charges in accordance with the Intermediary Bank Agreements governing the operation of the Debtor's cash management system and the Intermediary Bank's past practices with the Debtors.

(e) The Intermediary Bank Agreements are hereby approved and the Debtors are authorized to enter into such Intermediary Bank Agreements.

26. Automatic Stay Modified. The automatic stay provisions of section 362 of the Code, to the extent applicable and subject to further order of this Court as set forth in Section (c) below, shall, with respect to subparagraph (a), and may, with respect to subparagraphs (b) and

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<sup>5</sup> For purposes of this order, the DIP Lenders agree that they will not assert any senior interest to any portion of the \$1 million cash collateral held by the Intermediary Bank in respect and to the extent of Intermediary

(c), be vacated and modified to the extent necessary so as to permit the DIP Lenders and the Agents:

(a) whether or not an Event of Default or a default by any of the Debtors of any of their obligations under this Final Order has occurred, to require all cash, checks or other collections or proceeds from Collateral received by any of the Debtors to be deposited in accordance with the DIP Loan Documents and this Final Order, and to apply any amounts so deposited and other amounts paid to or received by the DIP Lenders or the Agents, under the DIP Loan Agreement, the other DIP Loan Documents and this Final Order, as provided in the DIP Loan Agreement and this Final Order;

(b) upon the occurrence of an Event of Default or a default by any of the Debtors of any of their obligations under this Final Order, and subject to further order of this Court as set forth in Section (c) below (except as provided in clause (d) below), to exercise all rights and remedies provided for in the DIP Loan Agreement, the other DIP Loan Documents, this Final Order or under other applicable bankruptcy and non-bankruptcy law (including the right to set off funds in accounts maintained by the Debtors with any of the DIP Lenders or the Agents to repay the DIP Obligations).

(c) Upon the occurrence of an Event of Default or a violation of this Final Order, the automatic stay of Code section 362(a), to the extent applicable, shall be terminated only after further order of the Court granting relief from the automatic stay in response to a motion filed by the DIP Lenders or the Agents seeking relief from the automatic stay. Such motion shall be heard, on the request of the DIP Lenders or the Agents, on an expedited basis, on 48 hours prior notice of such motion to counsel to the Debtors, counsel to the Committee,

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Bank Obligations.

counsel to the Ad Hoc Committee of Senior Secured Notcholders, counsel to the Intermediary Bank, any affected landlord or licensor, the United States Trustee, and all parties entitled to notice pursuant to Fed. R. Bankr. P. 2002, which notice may be provided by e-mail and facsimile transmission. Immediately upon such notice being given by the DIP Lenders or the Agents, the Debtors shall only be authorized to pay minimum operating costs until after the entry of an order in response to a motion filed in accordance with this paragraph. The Court shall endeavor to schedule a hearing on any such request for relief from the automatic stay at the earliest practicable date and shall take all reasonable steps to resolve such motion as promptly as possible. Nothing contained herein shall be deemed a limitation of or a waiver by the DIP Lenders or the Agents of their respective rights to assert in any motion for relief from the automatic stay that no relief from the automatic stay is needed in order to exercise any remedies with respect to an Event of Default or a violation of this Final Order, however, nothing in this Final Order is intended to modify the automatic stay or to authorize or permit the DIP Lenders or Agents to exercise any rights or remedies.

(d) Upon the occurrence and continuance of an Event of Default or a violation of this Final Order by any of the Debtors, the DIP Lenders and the Agents shall have no further obligation to provide financing under the DIP Loan Documents or this Final Order, and the DIP Lenders and the Agents are hereby authorized to, without providing any prior notice thereof, charge interest at the default rate set forth in the DIP Loan Agreement and require cash collateralization of obligations relating to letters of credit issued pursuant to the DIP Loan Agreement. The DIP Lenders, the Agents, the Senior Secured Notcholders or the Senior Secured Notcholder Agent shall provide the Debtors and Committee with prompt notice of any violation of this Final Order.

27. No Responsible Person. In making the decision to make Loans and to extend other financial accommodations to the Borrower under the DIP Loan Agreement and this Final Order or in making the decision to collect the indebtedness and obligations of the Debtors, the DIP Lenders, the Agents, the Senior Secured Noteholders and the Senior Secured Noteholder Agent shall not be deemed to be in control of the operations of the Debtors or to be acting as a responsible person or owner or operator with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar federal or state statute).

28. Rights and Obligations of Senior Secured Noteholders. Notwithstanding any provision of the Intercreditor Agreement, the Senior Secured Noteholders shall be entitled to vote claims represented by the Senior Secured Notes, whether secured or unsecured, to accept or reject any plan of reorganization filed in the Chapter 11 Cases, without obtaining any consents or agreements that might otherwise be required in accordance with the terms of the Intercreditor Agreement (as defined in the Motion). The Senior Secured Noteholders may object, on any grounds, whether applicable to secured claims or unsecured claims held by the Senior Secured Noteholders, to any plan of reorganization filed in the above-captioned chapter 11 cases.

(a) Any Senior Secured Noteholders receiving benefits hereunder shall be prohibited from (i) from initiating, consenting to the commencing on their behalf, or joining in any action seeking to invalidate, vacate, reconsider, modify or appeal this Final Order or any provision thereof; and (ii) initiating, consenting to the commencement on their behalf, or joining in any action seeking to avoid, challenge or disallow the DIP Obligations, Post-Petition Liens, Superpriority Claim, Existing DIP Obligations, Existing DIP Liens or the superpriority claim

granted to secured the Existing DIP Obligations, or disgorge any payments made on account of such liens or claims.

(b) Any Senior Secured Noteholders receiving benefits under the First Final Financing Order or this Final Order shall be prohibited from initiating, consenting on their behalf, or joining in any claim, objection, action, counterclaim, offset, right or defense of any kind or nature which could in any way affect the validity, enforceability, priority, and non-avoidability of the Existing Pre-Petition Obligations, Existing Pre-Petition Liens, Existing Lender Replacement Liens (as defined in the First Final Financing Order) or Existing Lender Adequate Protection Claim (as defined in the First Final Financing Order), or to disgorge or challenge the legality, validity or non-avoidability of any payments made on account of such liens, claims or obligations whether before or after the Filing Date.

29. Confirmation Facility. The DIP Lenders represent to the Debtors, that they have committed to provide the Confirmation Facility (as defined in the Motion), in an amount of no less than \$305 million, upon the consummation of a plan of reorganization in the Chapter 11 Cases at no additional cost to the Debtors and on terms no less favorable than those set forth in the Commitment Letter.

(a) Without further order of this Court, the Debtors are hereby authorized to enter into Confirmation Facility Documents on terms that are substantially similar to those set forth in the Commitment Letter. To the extent that the Terms of the Confirmation Facility Documents contain any material variances from the terms outlined in the Commitment Letter, Debtors shall provide notice of such variances in connection with the disclosure statement or plan confirmation process. To the extent necessary, prior to the consummation of a plan of

reorganization, each of the Debtors is hereby authorized to perform any act necessary, or required to negotiate the Confirmation Facility Documents.

(b) Nothing in this order shall preclude, or be deemed to preclude, any party from raising any objection, claim or defense with respect to any plan of reorganization or disclosure statement filed in these Chapter 11 Cases.

30. Successors and Assigns. The DIP Loan Documents and the provisions of this Final Order, as applicable, shall be binding upon the DIP Lenders, the Agents, the Debtors, the Intermediary Bank, the Senior Secured Noteholders and the Senior Secured Noteholder Agent and each of their respective successors and assigns, and shall inure to the benefit of the DIP Lenders, the Agents, the Debtors, the Intermediary Bank, the Senior Secured Noteholders and the Senior Secured Notcholder Agent and each of their respective successors and assigns including, without limitation, any trustee, responsible officer, estate administrator or representative, or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code.

31. Binding Nature of Agreement. The rights, remedies, powers, privileges, liens and priorities of the DIP Lenders and the Agents, including, without limitation the right to be repaid in full in cash on a date no later than the effective date of a plan of reorganization or liquidation in these cases, provided for in this Final Order, in any other DIP Loan Documents shall not be modified, altered or impaired in any manner by any subsequent order (including a confirmation order) or by any plan of reorganization or liquidation in these cases or in any subsequent case under the Code, and the terms and provisions of this Final Order and the rights (including, without limitation the right to be repaid in full in cash on a date no later than the effective date of a plan of reorganization or liquidation in these cases), claims, liens and security interests granted

to the DIP Lenders and the Agents, pursuant to this Final Order and the DIP Loan Documents shall continue in full force and effect notwithstanding the entry of any such order, and the liens, security interests and claims of the DIP Lenders and the Agents shall maintain their priority as provided by this Final Order and the DIP Loan Documents, unless and until the DIP Obligations have first been indefeasibly Paid in Full in accordance with the DIP Loan Agreement.

(a) The rights, remedies, powers, privileges, liens, and priorities provided to the Senior Secured Noteholders in this Final Order shall not be modified, altered, or impaired in any manner by any subsequent Order (including a Confirmation Order) or by any plan of reorganization or liquidation in these cases or in any subsequent case under the Code, and the rights, claims, liens and security interests granted to the Senior Secured Noteholders pursuant to this Final Order shall continue in full force and effect notwithstanding the entry of any such Order, and the liens, security interests and claims of the Senior Secured Noteholders shall maintain their priority as provided by this Final Order.

32. Subsequent Reversal or Modification. This Final Order is entered pursuant to sections 363 and 364 of the Code, granting the DIP Lenders, the Agents, the Senior Secured Noteholders and the Senior Secured Noteholder Agent all protections afforded by sections 364(e) of the Code. If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, that action will not affect (a) the validity of any obligation, indebtedness or liability incurred hereunder or under the DIP Loan Documents by any of the Debtors to the DIP Lenders, the Agents, the Senior Secured Noteholders and the Senior Secured Noteholder Agent prior to the date of receipt of written notice to the DIP Lenders, the Agents, the Senior Secured Noteholders and the Senior Secured Noteholder Agent of the effective date of such action; or (b) the validity and enforceability of any lien or priority authorized or created hereby or pursuant to



the DIP Loan Documents or pursuant to this Final Order. Notwithstanding any such reversal, stay, modification or vacatur, any post-petition indebtedness, obligation or liability incurred by any of the Debtors to the DIP Lenders, the Agents, the Senior Secured Noteholders and the Senior Secured Notcholder Agent prior to written notice to the DIP Lenders, the Agents, the Senior Secured Noteholders and the Senior Secured Notcholder Agent of the effective date of such action shall be governed in all respects by the original provisions of this Final Order, and the DIP Lenders, the Agents, the Senior Secured Noteholders and the Senior Secured Notcholder Agent shall be entitled to all the rights, remedies, privileges and benefits granted herein and in the DIP Loan Documents with respect to all such indebtedness, obligations or liability.

33. No Waiver. Except as provided herein and to the extent not modified herein, in the Intercreditor Agreement, nothing in this Final Order shall be construed in any way as a waiver or relinquishment of any rights that the DIP Lenders, the Intermediary Bank or the Senior Secured Noteholders, may have to bring or be heard on any matter brought before this Court.

34. Sale/Dismissal. None of Debtors shall file any motion seeking an order dismissing or converting these Chapter 11 Cases under section 1112 of the Code, or appointing a chapter 11 trustee or an examiner with expanded powers, unless and until the DIP Obligations shall have been indefeasibly Paid in Full, in cash, and the Commitments terminated in accordance with the DIP Loan Agreement. No order providing for either the sale of the ownership of the stock of any Debtor or the sale of all or substantially all of the assets of any Debtor under section 363 of the Code shall be entered by the Court unless (i) the proceeds of such sale are sufficient to indefeasibly pay all DIP Obligations in full, and as part of and concurrently with any such event, such DIP Obligations are indefeasibly Paid in Full, and the Commitments are terminated in accordance with the DIP Loan Agreement, or (ii) the Required

Lenders under the DIP Loan Agreement expressly consent, in writing, to any such transaction or the entry of such an order by the Court, or such transaction is expressly permitted in the DIP Loan Documents. The Debtors shall not sell either the stock of any of the Debtors or substantially all of the assets of any of the Debtors under section 363 of the Code unless, in any such event, the Required Lenders under the DIP Loan Agreement expressly consent in writing to any such transaction, such transaction is expressly permitted in the DIP Loan Documents or the terms of the sale expressly provide that the sale shall not be consummated unless the proceeds of the sale are sufficient, and applied, to indefeasibly pay all DIP Obligations and such DIP Obligations shall be, upon the closing of such sale, indefeasibly Paid in Full in cash and the Commitments terminated in accordance with the DIP Loan Agreement. If an order dismissing any of these cases under sections 305 or 1112 of the Code or otherwise is at any time entered, such order shall provide that (a) the liens, security interests and superpriority administrative expense status granted to the DIP Lenders and the Agents hereunder and in the DIP Loan Documents, as the case may be, shall continue in full force and effect, shall remain binding on all parties in interest and shall maintain their priorities as provided in this Final Order until all DIP Obligations shall have been Paid in Full in cash and the Commitments shall have been terminated in accordance with the DIP Loan Agreement, and (b) this Court shall retain jurisdiction, notwithstanding such dismissal, for purposes of enforcing the liens, security interests and superpriority administrative expense status of the DIP Lenders and the Agents, as the case may be.

35. Priority of Terms. <sup>Subject to the provisions of ¶ 13 here of</sup> to the extent of any conflict or inconsistency between or among the express terms or provisions of any of the DIP Loan Documents, the Motion, this Final Order, any other order of this Court (including the First Interim Financing Order or the First

Final Financing Order) or any other agreements, the terms and provisions of this Final Order shall govern.

36. Adequate Notice. The notice given by the Debtors of the Hearing was given in accordance with Bankruptcy Rules 2002 and 4001(c)(2) and the local rules of this Court. Under the circumstances, no further notice of the request for the relief requested in the Motion is required.

37. Entry of Order; Effect. This Final Order shall take effect immediately upon execution hereof, notwithstanding the possible application of Fed. R. Bankr. P. 6004(g), 7062, 9014, or otherwise, and the Clerk of the Court is hereby directed to enter this Final Order on the Court's docket in these cases.

38. Binding Effect of Order. The terms of this Final Order shall be binding on any trustee appointed under Chapter 7 or Chapter 11 of the Code.

39. U.S. Bancorp. Nothing contained in this Final Order or the DIP Loan Agreement shall be construed to grant the DIP Lenders, the Intermediary Bank or the Senior Secured Noteholders liens on any equipment including all vessels and other marine assets leased or chartered by Debtors from US Bancorp Finance, Inc. and/or any of its affiliates ("US Bancorp") to the extent that such lease or charter arrangements are "true" valid binding lease or charter arrangements between the Debtors and US Bancorp. Further, notwithstanding anything to the contrary in this order or the DIP Loan Agreement, the priming Liens to be granted to the DIP Lenders shall not attach or apply to any equipment including all vessels and other marine assets leased or chartered by Debtors from US Bancorp by the Debtors. Nothing contained in this Final Order, or the DIP Loan Agreement shall be construed to prime or in any way affect any liens of US Bancorp on the Vessel and the Equipment that are valid, perfected and unavoidable liens or

security interests existing as of the Filing Date. Nothing contained in this Final Order or the DIP Loan Agreement shall be construed to affect rights or remedies that US Bancorp may have under 11 U.S.C. § 1110, if any, with respect to the Charter Agreement, the Vessel Acquisition Agreement, and Trust Agreement, all dated December 30, 1998, between US Bancorp (as successor) and Oglebay Norton Company.

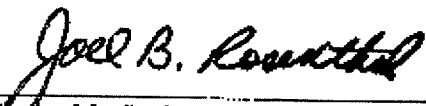
40. Reporting Requirements. During the term of this Final Order, the Debtors shall submit to the Agents, counsel to the Ad Hoc Committee of Secured Noteholders, counsel to the Committee, by 12:00 p.m. of every second Friday, commencing Friday, May 14, 2004, a report, which report shall include (i) a rolling thirteen (13) week cash flow projection, (ii) a cash flow summary of receipts and disbursements during the previous two week period, (iii) a report on collections of any amounts received as a result of asset sales and (iv) an update on all discussions associated with a reorganization plan, restructuring transaction, equity investment and/or financing transaction.

41. Preservation of Rights. Except as otherwise specifically provided herein, or in the Intercreditor Agreement, to the extent modified herein, entry of this Final Order shall be without prejudice to any and all rights, remedies, claims and causes of action which the DIP Lenders, the Agents, the Existing Pre-Petition Lenders, the Existing Pre-Petition Agents, the Senior Secured Noteholders and the Senior Secured Noteholder Agent may have against the Debtors or any third parties (including any rights granted under the Intercreditor Agreement), and without prejudice to the right of the DIP Lenders, the Agents to seek relief from the automatic stay in effect pursuant to section 362 of the Code, or any other relief under the Code or applicable non-bankruptcy law, including, without limitation, the right of the DIP Lenders, the Agents, the Senior Secured Noteholders and the Senior Secured Noteholder Agent to (i) as to the DIP

Lenders and the Agents seek additional relief from the Court in respect of their respective interests in the Collateral (including, without limitation, the Cash Collateral) or relief from or modification of the automatic stay under section 362 of the Code, (ii) request conversion of any of the Chapter 11 Cases to cases under Chapter 7 of the Code, and/or (iii) propose, subject to the provisions of section 1121 of the Code and the Debtors' rights to seek extensions thereunder one or more Chapter 11 plans. Except as otherwise set forth herein, the Intercreditor Agreement shall remain in full force and effect in accordance with its terms.

42. No Release of Non-Debtors. Nothing contained in this Final Order shall be deemed to terminate, modify or release any obligations of any non-debtor guarantor to the DIP Lenders, the Agents, the Senior Secured Noteholders and the Senior Secured Noteholder Agent with respect to the respective obligations owed to the DIP Lenders, the Agents, the Senior Secured Noteholders, the Senior Secured Noteholder Agent, or otherwise.

Dated: Wilmington, Delaware  
April 30, 2004

  
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The Honorable Joel B. Rosenthal  
United States Bankruptcy Judge