

**SO ORDERED**



DUNCAN W. KEIR  
U. S. BANKRUPTCY JUDGE

**THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)**

**In re**

**The Boyds Collection, Ltd., et al.<sup>1</sup>**

- \* Case Nos. 05-43793DK
- \* 05-43805DK
- \* 05-43816DK
- \* 05-43824DK
- \* 05-43833DK
- \* 05-43838DK
- \* 05-43848DK
- \* 05-43857DK
- \* 05-43863DK

\* Chapter 11

\* (Jointly Administered under

Debtor(s)

\* Case No. 05-43793DK)

INTERIM ORDER: (I) AUTHORIZING DEBTORS IN POSSESSION TO ENTER INTO POST-PETITION CREDIT AGREEMENT PURSUANT TO SECTION 364 OF THE BANKRUPTCY CODE FOR THE LIMITED PURPOSE OF OBTAINING LETTERS OF CREDIT, (II) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (III) GRANTING ADEQUATE PROTECTION PURSUANT TO SECTIONS 363 AND 364 OF THE BANKRUPTCY CODE SOLELY IN CONNECTION WITH THE

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USE OF CASH COLLATERAL AND LETTERS OF CREDIT, (IV)  
SCHEDULING FINAL HEARING PURSUANT TO FED. R.  
BANKR. P. 4001(c), AND (V) APPROVING NOTICE WITH  
RESPECT THERETO

Upon the motion, dated October 16, 2005 (the “Motion”), of Boyds Collection, Ltd. (“Borrower”) and certain of its subsidiaries in the above-captioned chapter 11 cases (the “Subsidiary Guarantors” and, together with Borrower, the “Debtors”): (a) for the entry of Orders authorizing them to: (i) for the limited purpose of obtaining Letters of Credit, enter into that certain Debtor-in-Possession Credit and Guaranty Agreement, dated as of October 16, 2005, as the same may be amended, supplemented or otherwise modified from time to time (the “Post-Petition Credit Agreement,” and together with all agreements, documents, notes, instruments and any other agreements delivered thereto or in connection therewith, the “Loan Documents” ),<sup>2</sup> by and among Borrower, certain of its subsidiaries, the lender or lenders identified in the Post-Petition Credit Agreement (the “Lenders”), Bank of America, N.A, as the initial L/C Issuer and as the administrative agent and collateral agent for the Lenders and the L/C Issuer (together with its successor and permitted assigns in such capacities, the “Administrative Agent”),<sup>3</sup> subject to the terms and conditions set forth herein and in the Post-Petition Credit Agreement; (ii) solely with respect to the use of Cash Collateral and Letters of Credit, grant mortgages, security interests, liens and superpriority claims to the Administrative Agent, acting on behalf of itself and the Lenders (including, as

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<sup>2</sup> Unless otherwise defined herein, all capitalized terms used herein have the meanings ascribed to such terms in the Post-Petition Credit Agreement.

<sup>3</sup> “Letter of Credit” or “Letters of Credit” means commercial letters of credit and standby letters of credit issued or to be issued by the L/C Issuer for the account of any Loan Party pursuant to subsection 3.1. of the Post-Petition Credit Agreement.

specifically set forth herein and in the Post-Petition Credit Agreement, an administrative priority pursuant to section 364(c)(1) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and (3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code); and (iii) pending a final hearing on the Motion (the “Final Hearing”), (x) obtain Letters of Credit under or as provided in the Post-Petition Credit Agreement to and including the date on which the Final Order is entered, and (y) in accordance with Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), request that this Court schedule the Final Hearing and approve notice with respect thereto; and based upon the evidence presented by the Debtors, and the Court having considered the Motion and the Exhibits attached thereto; and in accordance with Bankruptcy Rule 4001(c)(1) and (c)(3), due and proper notice of the Motion having been given, and a hearing to consider, among other things, Borrower’s request for authorization to: (a) obtain Letters of Credit pursuant to the terms of the Post-Petition Credit Agreement; and (b) use Cash Collateral in the ordinary course of the Debtors’ business pursuant to the terms of the Budget<sup>4</sup> (including the cash collateralization of Letters of Credit), having been held and concluded on the date hereof (the “Interim Hearing”); and upon all of the pleadings filed with the Court and all of the proceedings held before the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor,

#### INTRODUCTION:

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<sup>4</sup> A copy of the Budget is annexed hereto as Exhibit 1.

I. The purpose of this Order is to provide the Debtors with the ability to (a) use Cash Collateral and (b) obtain Letters of Credit in accordance with the terms and conditions of the Post-Petition Credit Agreement. This Order does not authorize the Debtors to use the \$8 million revolver referenced in Section 2 of the Post-Petition Credit Agreement. The issue of whether the Debtors will be authorized to use such revolver will be addressed at the Final Hearing. However, to obtain Letters of Credit, which the Debtors need to maintain their operations, the Debtors must enter into the Post-Petition Credit Agreement at this time because it is an integrated document, the terms and conditions of which govern not only the revolver, but also the Letters of Credit.

II. To induce the Lenders to provide Letters of Credit, the Lenders will receive priming liens on any cash pledged by the Debtors to secure such Letters of Credit. The Lenders will not receive priming liens on any other assets. As adequate protection for the use of their Cash Collateral and for being primed in connection with the Letters of Credit, the Pre-Petition Lenders will receive replacement liens on all of the Debtors' assets in amount equal to any diminution in the value of their collateral. The replacement liens are junior to the priming liens (whether now or hereinafter created), the Carve-Out and, to the extent that it is approved by the Court, the KERP Carve-Out.

III. To lift the automatic stay, the Lenders will need to seek authority from the Court, provided, however, that the Administrative Agent shall be free to apply cash collateral securing a Letter of Credit in the amount equal to any draw on such Letter of Credit. However, unless the Debtors' obligations to the Lenders have been satisfied, upon the termination of the Post-Petition Credit Agreement or an Event of Default, the Debtors are prohibited from using Cash Collateral or Letters of Credit.

IV. As a statutory committee has not yet been appointed and the United States Trustee has had limited time to review the Motion and its exhibits, nothing in this Order shall impair the right of any statutory committee or the United States Trustee to object to the Carve-Out, the KERP Carve-Out or provisions contained in Paragraph 12 at the Final Hearing or the right of the Debtors, the Pre-Petition Administrative Agent, the Pre-Petition Lenders, the Administrative Agent and the Lenders to oppose any such objection.

THE DEBTORS HEREBY ASSERT AND THE PRE-PETITION ADMINISTRATIVE AGENT, THE PRE-PETITION LENDERS, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY AGREE:

A. On October 16, 2005 (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has yet been appointed in the Debtors’ chapter 11 cases.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are sections 105, 361, 362, 363 and 364 of the Bankruptcy Code and Bankruptcy Rules 4001(b) and (c). Venue of the Debtors’ chapter 11 cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Pursuant to that certain Credit Agreement, dated as of February 23, 2005, among Borrower and certain of its subsidiaries, the Pre-Petition Lenders and the

Pre-Petition Agent (as amended, supplemented or otherwise modified from time to time, the “Pre-Petition Credit Agreement” and together with all agreements, documents, notes, instruments and any other agreements delivered pursuant thereto or in connection therewith, the “Pre-Petition Loan Documents”), Borrower received loans and advances and/or provided other financial accommodations to, *inter alia*, fund its operations (the “Pre-Petition Loans”).

D. The Debtors admit that, as of the Petition Date, approximately \$56,500,000 was outstanding in respect of the Pre-Petition Loans made pursuant to the Pre-Petition Credit Agreement, plus interest thereon and fees and expenses incurred in connection therewith as provided in the Pre-Petition Loan Documents. Additionally, as of the Petition Date, \$1,019,524.63 was outstanding in face amount of pre-petition letters of credit, plus interest thereon and fees and expenses incurred in connection therewith as provided in the Pre-Petition Loan Documents. For purposes of this Order, the term “Pre-Petition Indebtedness,” as hereinafter defined, shall include the principal of, and, to the extent payable and allowable hereunder or under the Bankruptcy Code, all interest, fees and other charges owing in respect of such loans or indebtedness (including, without limitation, any reasonable attorneys’, accountants’, financial advisors’ and other fees and expenses that are chargeable or reimbursable under the relevant agreements relating to such loans or other indebtedness), as well as reimbursable or other obligations regarding letters of credit.

E. To secure the Pre-Petition Indebtedness, the Debtors pledged personal property (including capital stock or other equivalent equity interest) and real property (all of the foregoing collateral generally described above, together with all of the

proceeds, products, rents and profits thereof shall be referred to herein collectively as the “Pre-Petition Collateral” and such liens shall be referred to herein as the “Pre-Petition Liens”).

F. The Debtors acknowledge and agree and waive and release any right that the Debtors may have to challenge: (a) the Pre-Petition Liens; (b) that the Pre-Petition Liens constitute valid, binding, enforceable and perfected first priority liens subject only to liens described in or otherwise permitted by the Pre-Petition Credit Agreement, and are not subject to avoidance or subordination (except insofar as such liens are subordinated to the Post-Petition Liens, the Adequate Protection Liens, the Carve-Out and the KERP Carve-Out<sup>5</sup> in accordance with the provisions of this Order)

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<sup>5</sup> As used in this Order, “Carve-Out” means an amount which shall be used, free and clear of and notwithstanding the Administrative Agent’s security interests for the benefit of the Administrative Agent and the Lenders in the Collateral and the Administrative Agent’s rights and superpriority claims hereunder (each of which interests and claims shall be subordinated to the Carve-Out), to pay (i) unpaid fees and expenses of Professionals (as defined in the Bankruptcy Code) retained by the Debtors or the official unsecured creditors’ committee (the “Committee”) appointed in accordance with section 1102 of the Bankruptcy Code that are (a) incurred prior to the occurrence and continuance of an Event of Default and (b) allowed by the Bankruptcy Court, at any time, under sections 105(a), 330 and 331 of the Bankruptcy Code or otherwise, (ii) unpaid fees and expenses of Professionals retained by the Debtors or the Committee up to an amount not to exceed \$450,000 that (a) are incurred after the occurrence and during the pendency of an Event of Default and (b) allowed by the Bankruptcy Court, at any time, under sections 105(a), 330 and 331 of the Bankruptcy Code or otherwise, and (iii) fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a), Title 28, United States Code; provided, however, that the Carve-Out shall not include any fees or expenses incurred in challenging the Liens or claims of the Pre-Petition Agent or the Pre-Petition Lenders; provided, further, however, the Carve-Out shall include any fees or expenses incurred in investigating the Liens or claims of the Pre-Petition Agent or the Pre-Petition Lenders. For so long as no Event of Default shall have occurred and be continuing, the Borrower and the Guarantors shall be permitted to pay compensation and reimbursement of fees and expenses allowed and payable under 11 U.S.C. §§ 321, 330 and 331, as the same may be due and payable, and neither such amounts nor any retainers paid to the professionals retained by the debtors or the committee shall reduce the Carve-Out. “KERP Carve-Out” means an amount which shall be used, free and clear of and notwithstanding the Administrative Agent’s security interests for the benefit of the Administrative Agent and the Lenders in the Collateral and the Administrative Agent’s rights and superpriority claims (each of which interests and claims shall be subordinated to the KERP Carve-Out), to pay any unpaid amounts that are or become due as a result of the provisions set forth in Exhibit M to the Post-Petition Credit Agreement, after and to the extent such provisions have been approved by an order of the Bankruptcy Court. Nothing contained herein shall impair the right of any statutory committee, any chapter 7 or chapter 11 trustee appointed in the cases or the United States Trustee to object to the

pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (c) that the Pre-Petition Indebtedness constitutes legal, valid and binding obligations of the Debtors, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code); (d) that the Debtors have no offsets, defenses or counterclaims to the Pre-Petition Indebtedness; (e) that no portion of the Pre-Petition Liens or the Pre-Petition Indebtedness is subject to avoidance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (f) that, as of the Petition Date, the claim of the Pre-Petition Lenders is an allowed secured claim within the meaning of section 506 of the Bankruptcy Code in an amount that is not less than \$56,500,000 (exclusive of obligations in respect of pre-petition letters of credit), plus accrued but unpaid interest thereon, and the fees, costs and expenses of the Pre-Petition Lenders and the Pre-Petition under or incurred in connection with the Pre-Petition Loan Documents.

G. The Debtors will have an immediate and critical need for access to funds in order to continue the operation of their businesses. Without such letters of credit, the Debtors will not be able to fund the continued operation of the Debtors' businesses in a manner that will avoid irreparable harm to the Debtors' estates. At this time, the ability of the Debtors to finance their operations and the availability to them of sufficient working capital and liquidity through the immediate use of cash collateral and access to Letters of Credit are vital to the confidence of the Debtors' vendors and suppliers of other goods and services, to their customers and employees and to the

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Carve-Out or the KERP Carve-Out at the Final Hearing or the right of the Debtors, Pre-Petition Administrative Agent, the Pre-Petition Lenders, the Administrative Agent and the Lenders to oppose any such objection.

preservation and maintenance of the going concern value of the Debtors' estates. The Debtors are unable to obtain the required funds in the form of unsecured credit or unsecured debt 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, unsecured debt having the priority afforded by section 364(c)(1) or debt secured only as described in section 364(c)(2) or (3).

H. The Pre-Petition Lenders consent and agree to the Debtors' entering into the Letter of Credit financing arrangements contemplated by this Order, and the Administrative Agent and the Lenders are willing to provide the financing contemplated herein, all subject to the terms and conditions set forth herein, in the Post-Petition Credit Agreement, in the other Loan Documents, and the provisions of this Order assuring that the Post-Petition Liens, the Adequate Protection Liens (hereinafter defined) and the various claims, super-priority claims and other protections granted pursuant to this Order will not be affected by any subsequent reversal or modification or appeal of this Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the post-petition financing arrangements contemplated by this Order. The Administrative Agent and each of the Lenders have acted in good faith and at arm's-length in consenting to and/or in agreeing to provide the financing contemplated by this Order and the reliance of the Administrative Agent and each of the Lenders on the assurances referred to above is in good faith.

I. Notice of the Interim Hearing on the Motion and this Order has been provided (by hand, fax, overnight mail or courier) to: (i) the Pre-Petition Agent; (ii) counsel to each of the Pre-Petition Lenders; (iii) the Administrative Agent; (iv) counsel to

the Lenders; (v) the United States Trustee, (vi) the holders of the twenty (20) largest unsecured claims against the collective Debtors; and (vii) known holders of liens in and on the Collateral. In view of the urgency of the relief requested, such notice constitutes sufficient notice under Bankruptcy Rule 4001 and no other notice need be given.

J. Good and sufficient cause has been shown for the entry of this Order. Among other things, entry of this Order will minimize disruption of the Debtors' businesses and operations pending the Final Hearing. The financing and adequate protection arrangements authorized hereunder are vital to avoid immediate and irreparable harm to the Debtors' estates. Consummation of such financing arrangements therefore are in the best interests of the Debtors' estates.

K. The financing and adequate protection arrangements authorized hereunder have been negotiated in good faith and at arm's length among the Debtors, the Administrative Agent, and each of the Lenders and the terms of such financing and adequate protection arrangements are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration.

L. The Debtors have requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The permission granted herein to enter into the Loan Documents for the limited purpose of obtaining Letters of Credit thereunder is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing. Entry of this Order is in the best interests of the Debtors and their estates and creditors as its implementation will, among other things, allow for the continued operation and rehabilitation of the Debtors' existing businesses.

M. The Subsidiary Guarantors are jointly and severally unconditionally guaranteeing the Borrower's obligations with respect to Letters of Credit and all other obligations of Borrower under the Loan Documents.

NOW, THEREFORE, IT HEREBY IS ORDERED, THAT:

1. As they relate to Letters of Credit, the Loan Documents constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with their respective terms and the Debtors be, and hereby are, authorized to enter into the Loan Documents in substantially the form annexed to the Motion for the limited purpose of obtaining Letters of Credit thereunder, and perform their obligations hereunder and thereunder in accordance with, and subject to, the terms of this Order and the other Loan Documents, including, without limitation, the applicable Budget. The Debtors may modify the terms and conditions of the Loan Documents as they relate to Letters of Credit so long as the Debtors, the Lenders, the L/C Issuer and the Administrative Agent agree that such modifications are fair and reasonable; provided, however, the Debtors shall not be permitted to increase the Letter of Credit sublimit above \$3,500,000. The Debtors are authorized to enter into and perform any agreements related to the issuance of the Letters of Credit.

2. From and after the Petition Date through the Termination Date (as hereinafter defined), and subject to the terms and conditions of this Order and the Loan Documents, the Debtors are authorized to obtain Letters of Credit and use Cash Collateral pursuant to the terms and provisions of this Order, the Post-Petition Credit Agreement and the other Loan Documents, including, without limitation, the Budget. For purposes of this Order, "proceeds" of any collateral shall mean proceeds (as defined in the

Uniform Commercial Code) of such collateral as well as: (x) any and all proceeds of any insurance, indemnity or warranty or guaranty payable to the Debtors from time to time with respect to any of such collateral; (y) any and all payments (in any form whatsoever) made or due and payable to the Debtors in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of such collateral by any governmental body, authority, bureau or agency (or any person under color of governmental authority); and (z) any other payments, dividends, interest or other distributions on or in respect of any of such collateral.

3. As security for any Letters of Credit, subject to the provisions contained herein, the Administrative Agent is hereby granted for the sole benefit of the Administrative Agent, the L/C Issuer and the Lenders valid, binding, enforceable and perfected liens (the “Post-Petition Liens”), in any cash pledged by the Debtors as collateral for such Letter of Credit that are senior and superior pursuant to section 364(d)(1) of the Bankruptcy Code to any liens or claims encumbering the Collateral, including, without limitation, the Pre-Petition Liens and the Adequate Protection Liens.

4. The Pre-Petition Lenders are hereby granted for the sole benefit of the Pre-Petition Lenders valid, binding, enforceable and perfected liens (the “Adequate Protection Liens”) in all Collateral<sup>6</sup> to secure an amount of Pre-Petition Indebtedness

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<sup>6</sup> As used in this Order, “Collateral” means all presently owned or hereafter acquired property and assets of the Debtors of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds, products, rents and profits thereof, including, without limitation, all cash (including all Cash Collateral, wherever held), goods, accounts receivable, inventory, cash-in-advance deposits, real estate, investment property, stock or other equity interests in subsidiaries, machinery, equipment, vehicles, trademarks, trade names, licenses, causes of action, rights to payment including tax refund claims, insurance proceeds and tort claims (**but excluding actions for preferences, fraudulent conveyances, and other avoidance power claims and any recoveries under sections 544, 547, 548 or 550 of the Bankruptcy Code**) and the proceeds, products, rents and profits of all of the foregoing.

equal to the sum of, without duplication, the aggregate diminution, if any, subsequent to the Petition Date, in the value of the Pre-Petition Collateral, resulting from the limited priming relating to Letters of Credit authorized hereunder, any loss in market value or otherwise (the "Adequate Protection Obligations"). The Adequate Protection Liens are: (a) subject and subordinate only to (i) the Post-Petition Liens (whether now or hereafter created), and (ii) the Carve-Out, the KERP Carve-Out and any Permitted Encumbrances; and (b) senior and superior pursuant to section 364(d) of the Bankruptcy Code to the Pre-Petition Liens. As additional adequate protection: (i) all fees and expenses of the Pre-Petition Agent and the Prepetition Lenders as may be due under the Pre-Petition Credit Agreement shall be paid in full by the Debtors as and when due thereunder; and (ii) to the extent of any diminution in value of the Pre-Petition Collateral, the claims of the Pre-Petition Lenders and the Pre-Petition Agent shall receive superpriority administrative expense status pursuant to section 507(b) of the Bankruptcy Code, junior in priority only to: (x) the Post-Petition Liens; and (y) the Carve-Out and the KERP Carve-Out. As further adequate protection, to the extent any Pre-Petition Date collateralized letters of credit are drawn upon after the Petition Date, the Pre-Petition L/C Issuer is authorized to recover the amount of the draw plus any related customary fees and charges associated with the payment thereof and setoff against the cash collateral account securing the relevant pre-petition letter of credit, and the automatic stay imposed by section 362(a) of the Bankruptcy Code shall be deemed lifted to permit such recovery. For the purposes of this Interim Order, to the extent any non-collateralized pre-petition letters of credit are drawn upon after the Petition Date, the Debtors are not authorized and directed to reimburse the Pre-Petition L/C Issuer for the amount of the draw. The Pre-Petition L/C

Issuer may renew any of the pre-petition letters of credit or extend the expiry dates of any of the pre-petition letters of credit or modify or amend the terms of any pre-petition letter of credit in accordance with the applicable documentation for such letter of credit; provided, however, in no event shall the face amount of any such pre-petition letter of credit be increased.

5. Except as expressly set forth in this Order or any of the Loan Documents, the liens granted in this Order shall not be: (a) subject to any lien which is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code; or (b) subordinated to or made pari passu with any other lien under section 364(d) of the Bankruptcy Code or otherwise.

6. In addition, the Post-Petition Liens, as well as any post-petition unsecured claims arising as a result of the provision of the Letters of Credit, shall have priority in all of these chapter 11 cases in accordance with the provisions of section 364(c)(1) of the Bankruptcy Code over all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code ("Superpriority"), subject and subordinate only to the Carve-Out and the KERP Carve-Out. Except as expressly set forth herein, no costs or administrative expenses which have been or may be incurred in the Debtors' chapter 11 cases, in any conversion of the Debtors' chapter 11 cases pursuant to section 1112 of the Bankruptcy Code, or in any other proceeding related thereto, and no priority claims, including, without limitation, any other Superpriority claims, are or will be prior to or on a parity with the claims of the Administrative Agent or the Lenders against the Debtors arising, as applicable, out of the Adequate Protection

Obligations or any provision of this Order or with the Post-Petition Liens granted herein in and to the Collateral.

7. Letter of Credit Fees on the Letters of Credit and any interest on any reimbursement amounts in connection therewith shall accrue at the rates (including any default rates, if applicable) and shall be paid in accordance with and at the times as provided in the Loan Documents.

8. The Debtors may use the Cash Collateral and Letters of Credit solely at the times and as provided in the Loan Documents, this Order and as set forth in the Budget, subject to the variances set forth in Sections 4.2 and 8.14 of the Post-Petition Credit Agreement.

9. From and after the Petition Date, the proceeds of the Collateral and Letters of Credit shall not, directly or indirectly, be used to pay expenses of the Debtors or otherwise disbursed except for: (i) those expenses and/or disbursements that are permitted under the Loan Documents and set forth in the Budget; (ii) compensation and reimbursement of expenses allowed by this Court to attorneys, accountants, investment bankers, financial advisors or other professional persons retained by the Debtors or any official committees that may be appointed in these chapter 11 cases; (iii) amounts due to the Administrative Agent and its accountants, appraisers, attorneys or other professionals hereunder or under the other Loan Documents; and (iv) amounts due to the Pre-Petition Agent and its accountants, appraisers, attorneys or other professionals hereunder or under the other Pre-Petition Loan Documents; provided, however, that the foregoing shall not be construed as consent to the allowance of any of the amounts referred to in the preceding clause (ii) and shall not affect the right of the Administrative Agent or the

Lenders to object to the allowance and payment of such amounts. Except for the purposes set forth in the first sentence of this Paragraph 11, none of the Lenders, or the Administrative Agent have consented or agreed to the use of the proceeds of the Pre-Petition Collateral, the Collateral or the letters of credit.

10. The automatic stay under section 362(a) of the Bankruptcy Code shall be, and it hereby is, modified to the extent necessary to permit the Administrative Agent for the sole benefit of the Lenders to receive, collect and apply payments and proceeds in respect of the Pre-Petition Collateral and the Collateral in accordance with the terms and provisions of this Order, the Post-Petition Credit Agreement, and the other Loan Documents. Furthermore, immediately upon the drawing of any Letter of Credit issued under the Post-Petition Credit Agreement, the Administrative Agent shall be free to apply Cash Collateral securing such Letter of Credit in an amount equal to the full amount drawn and any additional amounts payable in connection therewith to Borrower's reimbursement obligations in respect thereof without the delivery of any prior notice.

11. Notwithstanding anything herein or in the other Loan Documents to the contrary, the Debtors shall no longer, pursuant to this Order, the other Loan Documents or otherwise, be authorized to use Cash Collateral or obtain Letters of Credit hereunder or under the other Loan Documents upon the Termination Date.

Notwithstanding the occurrence of the Termination Date or anything herein, all of the rights, remedies, benefits and protections provided to the Administrative Agent and the Lenders under this Order shall survive the Termination Date. Upon the Termination Date, the principal of and all accrued and unpaid interest and fees and all other amounts owed to the Administrative Agent or the Lenders hereunder or under the other Loan

Documents shall be immediately due and payable and the Administrative Agent and the Lenders shall have all other rights and remedies provided in the Loan Documents.

12. Notwithstanding anything herein to the contrary, no proceeds of the Collateral (the “Lender Funds”) may be used by any of the Debtors, any statutory committee appointed in the Debtors’ cases or any other person or entity to object to or contest in any manner, or raise any defenses or contests to, the validity, perfection, priority or enforceability of the Pre-Petition Indebtedness or the Pre-Petition Liens, or to assert or prosecute any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims or causes of action against the Lenders or the Administrative Agent (collectively, “Claims and Defenses”); provided, however, nothing contained in the preceding sentence shall prevent any statutory committee appointed in the Debtors' cases or any other person or entity from conducting investigations regarding the Pre-Petition Indebtedness or Pre-Petition Collateral. Without limiting the foregoing: (i) at no time shall any such committee or other person or entity have the right to use Lender Funds to prosecute any such Claims and Defenses; (ii) any such committee or other person or entity shall have the right to assert Claims and Defenses only in an action commenced in this Court on or before the sixtieth (60<sup>th</sup>) day following such committee’s appointment; (iii) if no such action is commenced on or before such date, all Claims and Defenses shall be deemed, immediately and without further action by the Administrative Agent or the Lenders to have been forever relinquished and waived as to such committee and other person or entity; and (iv) the terms of this Order pertaining to the granting of Post-Petition Liens and Superpriority claims for, and the repayment of, Pre-Petition Indebtedness shall be without prejudice to the right of any such committee or other

person or entity to commence and prosecute Claims and Defenses solely as set forth above; and, provided, further, that, as to the Debtors, all such Claims and Defenses are hereby deemed relinquished and waived as of the Petition Date. In addition to the foregoing, no Lender Funds may be used by any of the Debtors, any statutory committee appointed in the Debtors' cases or any other person or entity to object to or contest in any manner the Letters of Credit or the Post-Petition Liens or to assert or prosecute any actions, claims or causes of action against the Administrative Agent or any of the Lenders. Nothing contained herein shall impair the right of any statutory committee, any chapter 7 or chapter 11 trustee appointed in the cases or the United States Trustee to object to this Paragraph 12 at the Final Hearing or the right of the Debtors, Pre-Petition Administrative Agent, the Pre-Petition Lenders, the Administrative Agent and the Lenders to oppose any such objection.

13. The Administrative Agent and the Lenders shall be entitled to apply the payments or proceeds of the Pre-Petition Collateral and the Collateral in accordance with the provisions of this Order, and, in no event shall the Administrative Agent or any of the Lenders be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Pre-Petition Collateral or Collateral or otherwise.

14. Except as provided in the Loan Documents, no order (other than this Order) shall be entered at any time during these chapter 11 cases that grants liens (other than Permitted Encumbrances) in the Pre-Petition Collateral, the Collateral or any portion thereof to any other parties pursuant to section 364(d) of the Bankruptcy Code or otherwise, which liens are senior, on a parity with or junior to the liens of the

Administrative Agent in any cash pledged by the Debtors as collateral for the Letters of Credit. Except for the Motion and except on the terms of this Order and of the Loan Documents, the Debtors shall be enjoined and prohibited from at any time, until any post-petition indebtedness owing to the Lenders has been paid in full or will be paid in full as a result thereof, applying to the Court for an order authorizing the use of the Post-Petition Collateral. Notwithstanding anything to the contrary contained in this Order, nothing herein shall limit the Debtors' ability to seek the granting of: (i) superpriority claims in accordance with section 364 of the Bankruptcy Code; and (ii) liens senior to those held by the Lenders pursuant to this Order or the Pre-Petition Loan Documents, both of (i) and (ii) in connection with and subject to the completion of a Court-approved refinancing and indefeasible payment in full in cash of any post-petition indebtedness owing to the Lenders in connection with or in contemplation of the occurrence of the Termination Date; provided, however, that notwithstanding the foregoing, the Debtors shall not seek to refinance an amount less than the entire amount of the Post-Petition Obligations.

15. The Debtors shall execute and deliver to the Administrative Agent and the Lenders, all such agreements, financing statements, instruments and other documents as the Administrative Agent or any of the Lenders may reasonably request to evidence, confirm, validate or perfect the liens granted pursuant hereto.

16. Without limiting the rights of access and information afforded the Administrative Agent and the Lenders under the Loan Documents, the Debtors shall permit representatives, agents and/or employees of the Administrative Agent, the Lenders, the Pre-Petition Agent or the Pre-Petition Lenders 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 as provided in section 6.5 of the Post-Petition Credit Agreement.

17. The Debtors shall promptly reimburse the Administrative Agent, the Lenders, the Pre-Petition Agent and the Pre-Petition Agent for their reasonable costs and expenses provided for in the Post-Petition Credit Agreement or the Pre-Petition Credit Agreement, as applicable. None of such costs and expenses shall be subject to the approval of this Court, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court. All liens granted herein and in the other Loan Documents shall, pursuant to this Order be, and they hereby are, deemed perfected effective as of the Petition Date, and no further notice, filing or other act shall be required to effect such perfection; provided, however, that, if the Administrative Agent shall, in its sole discretion, choose to file mortgages, financing statements, notices of liens and security interests and other similar documents, all mortgages, financing statements or similar instruments shall be deemed to have been filed or recorded at the time and on the date of entry of this Order. Notwithstanding this paragraph 17, the liens granted hereunder with respect to real property owned by the Debtors shall attach upon the filing of a copy of this Order in the appropriate land records where such property is located.

18. The provisions of this Order shall be binding upon and inure to the benefit the Administrative Agent, each of the Lenders, each of the Pre-Petition Lenders, the Pre-Petition Agent and the Debtors, together with their respective successors and

assigns (including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors).

19. In accordance with section 364(e) of the Bankruptcy Code, which is applicable to the post-petition financing arrangements contemplated by this Order, in the event any or all of the provisions of this Order or any other Loan Documents are hereafter modified, amended or vacated by a subsequent order of this or any other Court, no such modification, amendment or vacature shall affect the validity, enforceability or priority of any lien or claim authorized or created hereby or thereby. Notwithstanding any such modification, amendment or vacature, any claim granted to the Administrative Agent or to the Lenders hereunder or under the other 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 Order and the other Loan Documents, and the Administrative Agent or the Lenders, as the case may be, 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 claim.

20. The Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution of additional security agreements, mortgages and financing statements) and to pay fees and expenses which may be required or necessary for the Debtors' performance under the Loan Documents, including, without limitation: (i) the execution and delivery by the Debtors of the Loan Documents; (ii) the performance of the obligations and enforcement of the rights of the Debtors under the Loan Documents; and (iii) the payment by the Debtors of the fees and other expenses described in the Loan Documents

as such become due and payable, including, without limitation, agents' fees, commitment fees, Letter of Credit fronting fees and facility fees and reasonable attorneys', financial advisers', appraisers' and accountants' fees and disbursements as provided for in the Loan Documents.

21. The obligations of the Debtors in respect of the Letters of Credit shall unless otherwise satisfied or provided as otherwise agreed upon, shall not be discharged by the entry of an order: (i) confirming a plan of reorganization in any of the Debtors' chapter 11 cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors having hereby waived such discharge; or (ii) dismissing any or all of the Debtors' chapter 11 cases. Without limiting the foregoing, the Debtors shall not seek the entry of an order dismissing any of the Debtors' chapter 11 cases under section 1112 of the Bankruptcy Code or otherwise shall be entered unless, prior to the entry thereof: (x) all Letters of Credit owing to the Administrative Agent and the Lenders shall have been satisfied; or (y) all material assets of the Debtors shall have been liquidated and the proceeds thereof distributed in accordance with the priorities established by this Order and the Bankruptcy Code; or (z) agreed to in writing by the Administrative Agent.

22. Notwithstanding anything herein, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the rights of the Administrative Agent or the Lenders under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of the Administrative Agent or the Lenders to: (i) request additional adequate protection of their interests in the Post-Petition Collateral or relief from or modification of the automatic stay extant under section 362 of the Bankruptcy Code; (ii) request conversion

of any of the Debtors' chapter 11 cases to cases under chapter 7 of the Bankruptcy Code; and (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (b) any of the rights, claims or privileges (whether legal, equitable or otherwise) of the Administrative Agent or the Lenders.

23. The Final Hearing shall be held on October 31, 2005 at 10 a.m. (Baltimore local time), in the United States Bankruptcy Court for the District of Maryland, Baltimore Division, 101 West Lombard Street, Baltimore, Maryland before the Honorable Duncan W. Keir, Chief Judge, and notice of the Final Hearing, which shall be provided as set forth in the Motion, constitutes sufficient notice under Bankruptcy Rule 4001 and no other notice need be given.

24. Based upon the record presented to the Court, this Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

25. To the extent of any inconsistency between the terms of this Order and the Post-Petition Credit Agreement, the terms and provisions of this Order shall govern.

26. To the extent not otherwise withdrawn or deemed to be moot, the Objections are hereby overruled.

**END OF ORDER**