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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:	)	Case No. 07-_____
	)	Jointly Administered
MOVIE GALLERY, INC., et al., <sup>1</sup>	)	Chapter 11
	)	
Debtors.	)	
	)	

**MOTION OF THE DEBTORS FOR AN ORDER (A) AUTHORIZING, BUT NOT  
DIRECTING, THE DEBTORS TO PAY PREPETITION CLAIMS OF SHIPPERS,  
WAREHOUSEMEN AND OTHER LIEN CLAIMANTS AND (B) AUTHORIZING AND  
DIRECTING BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR  
RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS**

The above-captioned debtors (collectively, the “Debtors”) hereby move the Court, pursuant to this motion (the “Motion”), for the entry of an order, substantially in the form of Exhibit A, (a) authorizing, but not directing, the Debtors to pay certain prepetition claims of shippers, warehousemen and other lien claimants and (b) authorizing and directing financial institutions to receive, process, honor and pay checks issued and electronic payment requests

<sup>1</sup> The Debtors in the cases include: Movie Gallery, Inc.; Hollywood Entertainment Corporation; M.G. Digital, LLC; M.G.A. Realty I, LLC; MG Automation LLC; and Movie Gallery US, LLC.



made relating to the foregoing. In support of this Motion, the Debtors respectfully state as follows:<sup>2</sup>

### **Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a) and 363(b) of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

### **Background**

4. On the date hereof (the “Commencement Date”), each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated. Concurrently with the filing of this Motion, the Debtors have sought procedural consolidation and joint administration of these chapter 11 cases.

5. The Debtors are the second largest North American home entertainment specialty retailer. They currently operate approximately 4,200 retail stores located throughout all 50 states. They rent and sell DVDs, videocassettes and video games through three distinct brands — Movie Gallery, Hollywood Video and Game Crazy.

6. In 2006, the aggregate annual revenues of the Debtors and their non-Debtor affiliates, including rental revenue and product sales, exceeded \$2.5 billion. Of this amount,

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<sup>2</sup> The facts and circumstances supporting this Motion are set forth in the Affidavit of William C. Kosturos, Chief Restructuring Officer of Movie Gallery, Inc., in Support of First Day Motions (the “First Day Affidavit”), filed contemporaneously herewith.

approximately 56% was attributed to DVD rentals, 15% to the sale of previously-rented DVDs, VHS cassettes and video games, 13% to the sale of new and used gaming products, 7% to game rentals, 4% to the sale of concessions and other miscellaneous products, 3% to the sale of movie-related products and merchandise and 2% to VHS cassette rentals. As of September 2, 2007, the Debtors and their non-Debtor affiliates employed approximately 38,800 employees, including approximately 7,500 full-time employees and 31,300 part-time employees.

7. Several factors have led to the filing of these chapter 11 cases. First, the video rental industry is highly competitive. The Debtors face direct competition from competitors such as Blockbuster and Netflix and indirect competition from pay-per-view, cable television and big-box retailers who sell DVDs at increasingly lower prices. Furthermore, recent box office receipts of rental releases have declined over the previous year, contributing to an industry-wide decline in demand for video rentals. Finally, as the Debtors' financial performance has deteriorated, they have experienced contracting trade terms, which have had a negative impact on the Debtors' liquidity, which, in turn, has contributed to the Debtors' inability to comply with certain financial covenants under their credit agreements.

8. The movie and game rental and sale business is shipping intensive. The Debtors operate approximately 4,200 stores throughout all 50 states. To ensure that the Debtors' stores receive timely deliveries of video titles, video games and other merchandise, the Debtors have developed an intricate distribution system.

9. The Debtors operate four primary distribution centers in the United States (collectively, the "Distribution Centers"). The Debtors use the Distribution Centers to receive bulk deliveries of movies, games, concessions and other related products (the "Retail Goods") from their suppliers, including movie studios, video game manufacturers and concessionaires

(the “Vendors”). The Debtors then repackage those bulk deliveries for distribution to the Debtors’ individual store locations. The Debtors’ supply and delivery system depends upon the use of reputable domestic common carriers, shippers, truckers, shipping auditing services and customs agents (collectively, the “Shippers”) to deliver products to and from the Distribution Centers, as well as a network of third-party contractors to store goods while in transit (the “Warehousemen”). The Debtors’ pricing policies, marketing strategies and fundamental business operations rely on their ability to receive and rent or sell the Retail Goods in a timely fashion.

10. In many instances, particularly in the case of “new release” video and game titles, the timing of deliveries is absolutely critical. In the Debtors’ industry, the date that titles will become available to the public for rent or purchase is known as the “street date.” For any given new release, the Debtors typically announce, sometimes with great fanfare, the street date in their stores. The substantial majority of the Debtors’ rental revenues are derived from the rental of new release movies and games. If the Debtors fail to have new release titles available on the applicable street date, the Debtors will suffer a loss of credibility with their customers. It is, therefore, critical to the Debtors’ business that their supply and delivery system continue to function without interruption.

11. Additionally, because the Debtors operate stores in all 50 states, at any given time the Debtors or their various assets may be subject to a wide variety of lien claims, including, but not limited to, mechanics liens and materialmans liens (collectively, the “Miscellaneous Lien Claims”).

**A. Description of Shippers' and Warehousemen's Claims**

12. As described above, the Debtors utilize the Shippers and Warehouseman throughout every stage of this distribution process. The Debtors' ability to timely receive, distribute and return Retail Goods depends on the maintenance of a successful and efficient supply and delivery network, and any disruption in the delivery of Retail Goods would have an immediate and devastating impact on the Debtors' operations.

13. The Debtors pay approximately \$21 million annually to the Shippers and Warehousemen. The Debtors expect that, as of the Commencement Date, the outstanding prepetition invoices of the Shippers and Warehousemen will not exceed \$1.5 million (the "Shipping Charges"). However, this balance can fluctuate on a daily basis depending on the timing of large deliveries and invoices. Absent payment of the Shipping Charges, the Shippers and the Warehousemen will likely refuse to continue to transport goods and make timely delivery or seize the goods in their possession as collateral securing their lien.

14. The Debtors' maintenance of a reliable and efficient supply and distribution system is absolutely essential for the Debtors' businesses and to maximize value for all creditors. The Debtors respectfully submit it is crucial to their businesses that the Shippers and the Warehousemen continue performing timely services and do not attempt to interrupt deliveries or seize the Retail Goods based on state law rights they may assert.

**B. Description of Miscellaneous Lien Claims**

15. The Debtors routinely transact business with a number of third parties who have the potential to assert Miscellaneous Lien Claims against the Debtors and their property if the Debtors fail to pay for the goods or services rendered (the "Lien Claimants"). The Lien

Claimants may perform various services for the Debtors, including miscellaneous store repair and maintenance services and outsourced video game console repair services.

16. Although the Debtors have generally made timely payments to the Lien Claimants, as of the Commencement Date a substantial number of the Lien Claimants may not have been paid for certain prepetition goods and services, which may result in the Lien Claimants having a right to assert and perfect Miscellaneous Lien Claims notwithstanding the automatic stay under section 362 of the Bankruptcy Code. Indeed, pursuant to section 362(b)(3), the act of perfecting such Miscellaneous Lien Claims, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. Under section 546(b), a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection . . . ." 11 U.S.C. § 546(b)(1)(A). Additionally, the existence and perfection of these Miscellaneous Lien Claims could possibly place the Debtors out of compliance under their various leases.<sup>3</sup>

17. Therefore, to avoid undue delay and facilitate the continued operation of the Debtors' business, the Debtors seek immediate authority to pay and discharge, on a case-by-case basis and in their sole discretion, the claims of all Lien Claimants that have given or could give rise to a lien against the Debtors' estates, regardless of whether such Lien Claimants have already perfected their interests; provided, that, the Debtors will not be authorized to pay on account of any particular Miscellaneous Lien Claim unless the applicable Lien Claimant has perfected or, in the Debtors' business judgment, is capable of perfecting, or may be capable of perfecting in the future, one or more liens with respect to such claim. Nor shall such payment be

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<sup>3</sup> The Debtors do not concede that any liens (contractual, common law, statutory or otherwise) described in this Motion are valid, and the Debtors expressly reserve the right to contest the extent, validity or perfection or seek the avoidance of all such liens.

deemed to be a waiver of rights regarding the extent, validity, perfection or possible avoidance of such liens and payments. The Debtors do not expect the payments on account of the Miscellaneous Lien Claims to exceed \$1.5 million.

18. The Debtors further propose to condition the payment of Miscellaneous Lien Claims, in their sole discretion, on the written acknowledgment of individual Lien Claimants to continue supplying goods and services to the Debtors on customary, favorable trade terms (the “Customary Terms”) in addition to promptly releasing any existing liens.

19. If any such Shipper, Warehouseman or Lien Claimant accepts payment under these conditions pursuant to an order granting the relief requested this Motion and thereafter does not continue to provide goods or services on Customary Terms or according to a Customary Terms agreement during the pendency of the chapter 11 cases, then (a) any payment on account of a prepetition claim received by such Shipper, Warehouseman or Lien Claimant shall be deemed to be an improper postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request and (b) upon recovery by the Debtors, any prepetition claim of such Shipper, Warehouseman or Lien Claimant shall be reinstated as if the payment had not been made. If there exists an outstanding postpetition balance due from the Debtors to such Shipper, Warehouseman or Lien Claimant, the Debtors may elect to recharacterize and apply any payments made pursuant to an order granting the relief requested in this Motion to such outstanding postpetition balance and the Shipper, the Warehouseman or the Lien Claimant will be required to repay immediately to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims or otherwise.

### **Relief Requested**

20. Accordingly, by this Motion, the Debtors seek an order authorizing, but not directing, them to make payments to Shippers and Warehousemen on account of prepetition claims relating to those shipping and warehousing charges that the Debtors, in their business judgment, determine must or should be paid to obtain the release of Retail Goods held by such Shippers and Warehousemen. Additionally, the Debtors request authority, but not direction, to pay any Miscellaneous Lien Claims, on a case-by-case basis and in the Debtors' sole discretion, that either have resulted or reasonably could result in a lien being asserted against the Debtors' property.

21. In addition, the Debtors request that banks and other financial institutions be authorized and directed to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing, whether such checks were presented or electronic requests were submitted prior to or after the Commencement Date. The Debtors further request that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as appropriate pursuant to this Motion.

### **Basis for Relief**

#### **A. The Court May Rely on Section 363(b) to Grant the Motion**

22. The Court may authorize the Debtors to pay the Shipping Charges and the Miscellaneous Lien Claims pursuant to section 363(b) of the Bankruptcy Code. Section 363 provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. See In re



Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wage claims pursuant to section 363(b)). To do so, “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” Id. at 175.

23. Paying the Shippers, the Warehousemen and the Lien Claimants will benefit the estate and its creditors by allowing the Debtors’ business operations to continue without interruption. Under some state laws, a Shipper or Warehouseman may have a lien on the goods in its possession, which secures the charges or expenses incurred in connection with the transportation of the goods.<sup>4</sup> The Shippers and the Warehousemen may be unwilling to release the goods in their possession to which they may be entitled to liens, since this may result in their claims against the Debtors going from secured to unsecured. Therefore, unless the Debtors are authorized to pay the Shippers and the Warehousemen, it is highly unlikely the Debtors will continue to obtain the goods currently in transit. If the Warehousemen and the Lien Claimants possess lien rights or have the ability to exercise “self-help” remedies to secure payment of their claims, failure to satisfy the Shipping Charges and the Miscellaneous Lien Claims could have a material adverse impact that may ultimately devastate the operations of the Debtors’ business to the detriment of all the Debtors’ creditors.

24. In addition, pursuant to section 363(e) of the Bankruptcy Code, the Shippers or Warehousemen, as bailees, may be entitled to adequate protection of a valid possessory lien. Given that the value of the Retail Goods in the possession of the Shippers, the Warehousemen or the Lien Claimants will generally far exceed the value of their respective claims, creditors will

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<sup>4</sup> For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a “carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier’s receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law.” See U.C.C. § 7-307(a) (2005).

not be harmed — and, in fact, will be benefited — by the satisfaction of certain prepetition claims of such parties because such payments will help preserve the going-concern value of the Debtors’ business.<sup>5</sup>

**B. The Court May Rely on Its General Equitable Powers to Grant the Motion**

25. The Court may also rely on its general equitable powers to grant the relief requested in this Motion as codified in section 105(a) of the Bankruptcy Code. Section 105 empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” Ionosphere Clubs, 98 B.R. at 175-176. Section 105(a) authorizes a court to “permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); see also In re Just for Feet, Inc., 242 B.R. 821, 825 (Bankr. D. Del. 1999).

26. Application of section 105(a) in the context of this Motion is also appropriate because the relief requested herein is consistent with the rehabilitative policy of chapter 11 of the Bankruptcy Code. A debtor in possession is a fiduciary with a duty to protect and preserve the estate, including the value of the business as a going concern. In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim.”). Granting the relief requested in this Motion will enhance the likelihood of the Debtors’ successful rehabilitation, maximize the value of the estates’ assets and thus benefit the estates’ creditors.

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<sup>5</sup> Additionally, to the extent that a portion of the Shipping Charges are related to the payment of custom duties, such claims may be entitled to priority under section 507(a)(8)(F) of the Bankruptcy Code.

27. Indeed, where debtors have shown that the payment of prepetition claims is critical to the success of their chapter 11 cases, courts in this district and other jurisdictions have granted relief similar to that which is requested here. Indeed, courts in this district and others have authorized payments to shippers, warehousemen and other lien claimants under similar circumstances. See, e.g., In re U.S. Airways, Inc., Case No. 04-13819 (SSM) (Bankr. E.D. Va. Sept. 14, 2004) (authorizing payment to certain prepetition maintenance providers, shippers and contractors); In re AMF Bowling Worldwide, Inc., Case No. 01-61119 (DHA) (Bankr. E.D. Va. Jul. 5, 2001) (authorizing payment of prepetition common carrier and warehousing charges); see also In re Dura Auto. Sys., Inc., Case No. 02-11202 (Bankr. D. Del. Nov. 20, 2006) (authorizing payment of prepetition lienholder claims); In re J.L. French Auto. Castings, Inc., Case No. 06-10119 (Bankr. D. Del. Mar. 6, 2006) (authorizing payment of prepetition shipping, warehousing charges and lien claimant claims); In re Dana Corp., Case No. 06-10354 (Bankr. S.D.N.Y. Mar. 3, 2006) (authorizing payment of prepetition lienholder claims); In re The Boyds Collection, Ltd., Case No. 05-43793 (Bankr. E.D. Md. Oct. 24, 2005) (authorizing payment of prepetition shipping and warehousing charges); In re Tower Auto., Inc., Case No. 05-10578 (Bankr. S.D.N.Y. Feb. 3, 2005) (same).

28. The payment of the Shipping Charges are not simply necessary for the continued operations of the Debtors but critical to the survival of the Debtors' business. The sale and rental of the Retail Goods — especially the new releases, which are the lifeblood of the Debtors' operations — depend upon the Debtors' ability to receive the Retail Goods in a timely fashion. Moreover, the Debtors believe in their sound business judgment that continuation of their positive relationship with the Shippers and Warehousemen is imperative to their continued operations and greatly increases the likelihood of a successful reorganization.

29. The Debtors submit that payment of the prepetition Shipping Charges will benefit the Debtors and their creditors by allowing the Debtors to receive the Retail Goods necessary to operate their business, and will not prejudice unsecured creditors since the Debtors will only pay those claimants that they believe in their business judgment to be secured by valid liens, or that they believe are capable of being secured by perfecting liens in the Debtors' property. Payment of the Miscellaneous Lien Claims will save the Debtors the considerable time and expense of having to negotiate or litigate for the return of or right to use property of the estate that may be subject to these lien claims. As such, the Debtors respectfully submit the Court should exercise its equitable power to grant the relief requested in this Motion.

#### **Waiver of Memorandum of Points and Authorities**

30. The Debtors respectfully request that this Court treat this Motion as a written memorandum of points and authorities or waive any requirement that this Motion be accompanied by a written memorandum of points and authorities as described in Rule 9013-1(G) of the Local Bankruptcy Rules for the Eastern District of Virginia.

#### **Notice**

31. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the Eastern District of Virginia; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the agent for the Debtors' proposed postpetition secured lenders; (d) counsel to the agent for the Debtors' prepetition first lien facilities; (e) counsel to the agent for the Debtors' prepetition second lien facility; (f) the trustee for the Debtors' 11% senior unsecured notes; (g) counsel to Sopris Capital Advisors LLC; (h) the trustee for the Debtors' 9.625% senior subordinated unsecured notes; (i) counsel for certain movie studios; (j) the

Internal Revenue Service; (k) the Securities and Exchange Commission; and (l) the banks that process disbursements in the Debtors' cash management system (Bank of America, Canadian Imperial Bank of Commerce and Wachovia Bank). In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

WHEREFORE, for the reasons set forth herein and in the First Day Affidavit, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, (a) authorizing, but not directing, the Debtors to pay prepetition Shipping Charges and Miscellaneous Lien Claims, (b) authorizing and directing banks and other financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing and (c) granting such other and further relief as is just and proper.

Richmond, Virginia

Dated: October 16, 2007

/s/ Peter J. Barrett

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## **EXHIBIT A**

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Proposed Co-Counsel to the Debtors

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:	)	Case No. 07-_____
	)	Jointly Administered
MOVIE GALLERY, INC., et al., <sup>1</sup>	)	Chapter 11
	)	
Debtors.	)	
	)	

**ORDER (A) AUTHORIZING, BUT NOT DIRECTING,  
THE DEBTORS TO PAY PREPETITION CLAIMS OF SHIPPERS,  
WAREHOUSEMEN AND OTHER LIEN CLAIMANTS AND (B) AUTHORIZING AND  
DIRECTING BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR  
RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors (collectively, the “Debtors”) for the entry of an order (the “Order”) (a) authorizing, but not directing, the Debtors to pay certain prepetition claims of shippers, warehousemen and other lien claimants and (b) authorizing and directing financial institutions to receive, process, honor and pay all checks issued and electronic payment requests made relating to the foregoing and the First Day

<sup>1</sup> The Debtors in the cases include: Movie Gallery, Inc.; Hollywood Entertainment Corporation; M.G. Digital, LLC; M.G.A. Realty I, LLC; MG Automation LLC; and Movie Gallery US, LLC.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.



Affidavit; it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED

1. The Motion is granted in its entirety.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay prepetition amounts (the "Shipping Charges") to domestic common carriers, shippers, truckers, shipping auditing services and customs agents (collectively, the "Shippers") and to the Debtors' network of third-party contractors to store goods while in transit (the "Warehousemen").
3. The Debtors are authorized, but not directed, in their sole discretion, to pay prepetition amounts on account of any other lien claims, including but not limited to mechanics liens and materialmans liens (collectively, the "Miscellaneous Lien Claims") without further Court order; provided that the Debtors are not authorized to pay a Miscellaneous Lien Claim unless the applicable party who has the potential to assert Miscellaneous Lien Claims against the Debtors and their property if the Debtors fail to pay for the goods or services rendered (the "Lien Claimants") has perfected or, in the Debtors' business judgment, is capable of perfecting or may be capable of perfecting in the future, one or more liens in respect of such claim; provided, further, that such payment shall not be deemed to be a waiver of rights regarding the extent, validity, perfection or possible avoidance of the related liens and payments.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and that all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

5. The Debtors are authorized to reissue any check or electronic payment that originally was given in payment of any prepetition amount authorized to be paid under this Order and is not cleared by the applicable bank or other financial institution.

6. Nothing herein shall impair the Debtors' ability to contest, without prejudice, in their sole discretion, the validity and amounts of any claim obligations to the Shippers, the Warehousemen and the Lien Claimants.

7. The Debtors do not concede that any liens (contractual, common law, statutory or otherwise) satisfied pursuant to this Order are valid, and the Debtors expressly reserve the right to contest the extent, validity or perfection or seek the avoidance of all such liens.

8. Nothing herein shall be deemed to constitute the postpetition assumption of any executory contracts between the Debtors and the Shippers, the Warehousemen or the Lien Claimants.

9. The entry of this Order is conditional on the terms set forth herein. Any party in interest may object to the entry of this Order within ten (10) days after the date of entry of this Order (an "Objection"). If an Objection is timely filed and not withdrawn before such hearing, the Objection shall be heard at the next regularly-scheduled omnibus hearing date. At the hearing, the Court may vacate this Order, modify it or make it final. If no timely Objection is

filed (or is filed and subsequently withdrawn), this Order shall become final at the conclusion of such objection period without further order of the Court. This Order shall remain in effect until further order of the Court. The modification or vacation of this Order shall not impair any action taken pursuant to it prior to its modification or vacation.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

11. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Richmond, Virginia

Date: October \_\_\_\_, 2007

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United States Bankruptcy Judge