

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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**In re** : **Chapter 11**  
:   
**SOUTHERN AIR** : **Case No. 12-12690 (CSS)**  
**HOLDINGS, INC., et al.,** :   
: **Jointly Administered**  
:   
**Debtors.**<sup>1</sup> :   
: **Hearing Date: February 25, 2013 at 10:00 a.m.**  
: **Objection Deadline: February 7, 2013 at 4:00 p.m.**  
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**MOTION OF DEBTORS FOR ENTRY OF AN  
ORDER PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY  
CODE EXTENDING THE EXCLUSIVE PERIODS FOR THE FILING  
OF A CHAPTER 11 PLAN AND SOLICITATION OF ACCEPTANCES THEREOF**

Southern Air Holdings, Inc. (“Holdings”) and its affiliated debtor entities, as debtors and debtors in possession (collectively, the “Debtors”), submit this motion (the “Motion”) for entry of an order, pursuant to section 1121(d) of title 11 of the United States Code (the “Bankruptcy Code”), extending the Exclusive Periods (as defined below) for the filing of a chapter 11 plan and solicitation of acceptances thereof, and respectfully represent as follows:

**Jurisdiction**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012. This is a core proceeding

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: (i) Southern Air Holdings, Inc., 6605; (ii) Cargo 360, Inc., 4233; (iii) Southern Air Inc., 2187; (iv) Air Mobility Inc., 3824; (v) 21110 LLC, 3761; (vi) 21111 LLC, 8100; (vii) 21221 LLC, 1567; (viii) 21550 LLC, 8103; (ix) 21576 LLC, 6341; (x) 21590 LLC, 8105; (xi) 21787 LLC, 0617; (xii) 21832 LLC, 7893; (xiii) 23138 LLC, 7192; (xiv) 24067 LLC, 6360; (xv) 46914 LLC, 0322; (xvi) Aircraft 21255, LLC, 5500; (xvii) Aircraft 21380, LLC, 1753; and (xviii) CF6-50, LLC, 9733. The address for all Debtors is 117 Glover Avenue, Norwalk, Connecticut 06850.



pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

2. On September 28, 2012 (the “Petition Date”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

3. On October 18, 2012, the Debtors filed the *Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* (the “Plan”) [Docket No. 165] and a disclosure statement relating thereto [Docket No. 167].

4. On November 21, 2012, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) filed a notice [Docket No. 293] appointing a statutory committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Creditors’ Committee”). No trustee or examiner has been appointed in these chapter 11 cases.

5. Following the appointment of the Creditors’ Committee and negotiations therewith, on December 13, 2012, the Debtors filed the *Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* (the “Amended Plan”) [Docket No. 376] and a disclosure statement relating thereto (the “Prior Disclosure Statement”) [Docket No. 378]. On December 18, 2012, the Bankruptcy Court held a hearing at which it approved the Amended Disclosure Statement and, thereafter, on December 19, 2012, entered an order with respect thereto [Docket No. 408].

6. Due to circumstances described in further detail below, the Debtors, in an exercise of their business judgment, decided not to distribute the Prior Disclosure Statement or the other solicitation materials approved by the Bankruptcy Court. Rather, on January 18, 2013, the Debtors filed the *Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 470] (the “Second Amended Plan”) together with the *Disclosure Statement for the Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 472] (the “Disclosure Statement”), reflecting, among other things, the agreement ultimately reached among the Debtors, the Consenting Lenders (as defined in the Second Amended Plan), the Oak Hill Entities (as defined in the Second Amended Plan), and the Creditors’ Committee and will undertake solicitation of the Second Amended Plan within the timeframe approved by the Court. A hearing to consider the limited modifications contained in the Disclosure Statement is scheduled for January 29, 2013.

### **The Debtors’ Businesses**

7. Southern Air Inc. (“Southern Air”), the Federal Aviation Administration certificated, indirect subsidiary of Holdings, is an experienced provider of long-haul, wide-body air cargo transportation services. Southern Air operates a fleet of eleven aircraft, including four Boeing 777s, four Boeing 747-400s, and three Boeing 747-200s. Southern Air’s staff and flight operations are positioned around the world to facilitate global operations for both governmental and commercial customers. Holdings is the direct or indirect parent company of the other Debtors.

8. As of the Petition Date, the Debtors employed approximately 611 full-time employees. For the twelve months ended July 31, 2012, the Debtors’ unaudited and consolidated financial statements reflected revenues of approximately \$428.2 million and a net

loss of \$159.8 million. As of July 31, 2012, the Debtors' unaudited and consolidated financial statements reflected assets totaling approximately \$206.9 million and liabilities totaling approximately \$486.5 million.

### **The Debtors' Plan Process**

9. As discussed in more detail in the Disclosure Statement, prior to the Petition Date, the Debtors engaged in extensive arms' length and good faith negotiations with the Consenting Lenders and the Oak Hill Entities regarding a comprehensive financial restructuring that would, among other things, bridge the Debtors' short-term lack of liquidity. The result of these negotiations was the Plan Support Agreement, dated September 27, 2012 (the "Plan Support Agreement"), wherein the parties agreed that, among other things: (i) the Debtors' financial restructuring would be effectuated through cases under chapter 11 of the Bankruptcy Code; (ii) the Debtors would file a plan of reorganization and related disclosure statement within ten (10) business days after the Petition Date (as subsequently extended); and (iii) subject to certain conditions, the Consenting Lenders and the Oak Hill Entities would support approval of such plan of reorganization and disclosure statement. In accordance with the terms of Plan Support Agreement, on October 18, 2012, the Debtors filed the Plan and related disclosure statement. Following further negotiations among the Debtors, the Oak Hill Entities and the Consenting Lenders, on December 13, 2012, the Debtors filed the Amended Plan and related Prior Disclosure Statement, which was approved by the Court on December 18, 2012.

10. Although the Debtors have made significant progress in these chapter 11 cases, recent events forced the Debtors to readdress the economics of the Amended Plan and further negotiate related matters with the Consenting Lenders, the Oak Hill Entities and the Creditors' Committee. Specifically, following approval of the Prior Disclosure Statement and

before distribution of solicitation materials in connection with the Amended Plan, the Creditors' Committee advised the Debtors that it had certain objections to the Amended Plan. Shortly thereafter, the Debtors learned that one of their customers intended not to renew its contract, which affected the assumptions and financial projections underlying both the terms of the Amended Plan and agreement reached with respect to the aforementioned objections raised by the Creditors' Committee. These limited modifications, which include increasing the distribution being made available to general unsecured creditors, are the only changes incorporated into the Second Amended Plan and Disclosure Statement filed on January 18, 2013 and such modifications reflect a consensual resolution among the Debtors' key economic stakeholders.

### **Relief Requested**

11. By this Motion, the Debtors request, pursuant to section 1121(d)(1) of the Bankruptcy Code, entry of an order extending the periods within which only the Debtors may file a chapter 11 plan and solicitation of acceptances thereof by one hundred and twenty (120) days. Unless extended, the Debtors' Plan Period and Solicitation Period (each as defined below) will expire on January 28, 2013 and March 27, 2013, respectively. The Debtors seek to extend the Plan Period and Solicitation Period through and including May 28, 2013 and July 25, 2013, respectively, without prejudice to the Debtors' right to seek further extensions of the Exclusive Periods, as may be appropriate under the circumstances. This Motion is the Debtors' first request to extend the Exclusive Periods. A proposed order is attached hereto as Exhibit A (the "Proposed Order").

### **Basis for Extending the Exclusive Period**

12. Section 1121(b) of the Bankruptcy Code provides for an initial period of one hundred and twenty (120) days after commencement of a chapter 11 case during which a

debtor has the exclusive right to propose and file a chapter 11 plan (the “Plan Period”). 11 U.S.C. § 1121(b). Section 1121(c)(3) provides that, if a debtor has not filed a plan that has been accepted before one hundred and eighty (180) days after commencement of a chapter 11 case by each class of claims or interests that is impaired under the plan (the “Solicitation Period” and together with the Plan Period, the “Exclusive Periods”), any part in interest may file a competing plan. 11 U.S.C. § 1121(c)(3).

13. A debtor’s Exclusive Periods are designed to afford a debtor a full and fair opportunity to propose a consensual plan and solicit acceptances of such plan, without disruption to the administration of the estate that may result from the filing of competing plans by non-debtor parties. To this end, where the Exclusive Periods prove to be unfeasible timeframes, section 1121(d) of the Bankruptcy Code allows the Court to extend such Exclusive Periods for cause. 11 U.S.C. § 1121(d).<sup>2</sup> Although the Bankruptcy Code does not define the term “cause,” the legislative history indicates it is intended to be a flexible standard to balance the competing interests of a debtor and its creditors. *See* H.R. REP. NO. 95–595, at 231–32 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6191 (noting that Congress intended to give bankruptcy courts flexibility to protect a debtor’s interests by allowing unimpeded opportunity to negotiate settlement of debts without interference from other parties in interest).

14. Congress built flexibility into section 1121 of the Bankruptcy Code to give the debtor sufficient opportunity to stabilize its business operations at the outset of its chapter 11 case and to negotiate an effective plan with its creditors. *In re Newark Airport/Hotel Ltd. P’ship*, 156 B.R. 444, 451 (Bankr. D. N.J.), *aff’d*, 155 B.R. 93 (D.N.J. 1993) (noting that Congress

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<sup>2</sup> Pursuant to section 1121(d)(1) of the Bankruptcy Code, the Plan Period may not be extended beyond a date that is eighteen (18) months after the commencement of a chapter 11 case. 11 U.S.C. § 1121(d)(1). Pursuant to section 1121(d)(2), the Solicitation Period may not be extended beyond a date that is twenty (20) months after the commencement of a chapter 11 case. 11 U.S.C. § 1121(d)(2).

designed chapter 11 provisions to enable a debtor to remain in control for some period of time, thereby making reorganization an attractive alternative to financially troubled companies); *Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 297–98 (W.D. Tenn. 1987) (Congress designed section 1121 to give the debtor time to reach an agreement with its creditors regarding a plan of reorganization).

15. In making the determination to affirm or deny a request to extend the Exclusive Periods for “cause”, courts have considered a variety of factors, including:

- (a) The size and complexity of the debtor’s case;
- (b) The necessity of sufficient time to negotiate and prepare adequate information;
- (c) The existence of good-faith progress towards reorganization;
- (d) Whether the debtor is paying its debts as they becomes due;
- (e) Whether the debtor has made progress negotiating with creditors;
- (f) The length of time a case has been pending;
- (g) Whether the debtor is seeking an extension to pressure creditors; and
- (h) Whether or not unresolved contingencies exist.

*In re Cent. Jersey Airport Servs., LLC*, 228 B.R. 176, 184 (Bankr. D. N.J. 2002) (citations omitted); *see also In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987) (citing to most of the factors listed above in determining whether to extend the exclusive periods); *In re United Press Int’l, Inc.*, 60 B.R. 265, 269 (Bankr. D. D.C. 1986) (holding that the debtor showed “cause” to extend its exclusive period based upon certain of above-quoted factors).

16. The facts and circumstances of these chapter 11 cases justify extending the Exclusive Periods to provide the Debtors with an unimpeded opportunity to confirm a plan of reorganization with minimal interference.

17. As the Court is aware, the Debtors and their advisors have worked diligently throughout these chapter 11 cases toward the expeditious confirmation of a plan of reorganization. In the four (4) months of these cases, the Debtors have, among other things, obtained postpetition financing, stabilized operations, restructured the Debtors' aircraft fleet and accompanying lease obligations, and persistently pursued a consensual plan of reorganization. Recent events, however, have delayed the Debtors' confirmation process and, as a result, the Debtors are unable to confirm their proposed plan of reorganization within the timeframe provided by the Bankruptcy Code. The Debtors have continued to move forward in their confirmation process, as demonstrated by the recently filed Second Amended Plan and Disclosure Statement.

18. Extending the Exclusive Periods will facilitate an orderly and cost-effective plan process for the benefit of all creditors by providing the Debtors with a meaningful opportunity to build on the progress that has been made in these chapter 11 cases without unnecessary interference from non-debtor parties. Termination of the Exclusive Periods, on the other hand, would give rise to the threat of competing plans, resulting in increased administrative expenses that would diminish the value of the Debtors' estates to the detriment of creditors. Termination of the Exclusive Periods could also meaningfully delay, if not completely undermine, the Debtors' ability to confirm any plan of reorganization.

19. Moreover, extending the Exclusive Periods will not harm or prejudice the Debtors' creditors or other parties in interest. On the contrary, as noted herein, the Debtors have consulted and coordinated with the Consenting Lenders, the Oak Hill Entities and the Creditors' Committee on the major economic issues in these cases. The Debtors submit that an extension of the Exclusive Periods at this time would benefit the Debtors and their estates by allowing for

the progress achieved in these chapter 11 cases thus far to culminate in the confirmation and consummation of a consensual plan of reorganization.

20. In light of the foregoing, the Debtors assert that ample cause exists to extend the Exclusive Periods.

**Notice**

21. Notice of this Motion has been provided to (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) Canadian Imperial Bank of Commerce, New York Agency ("CIBC"); (d) counsel to CIBC; (e) Oak Hill Capital Management ("Oak Hill"); (f) counsel to Oak Hill; and (g) each person or entity that has filed a notice of appearance and request for service of documents in these chapter 11 cases. The Debtors respectfully submit that such notice is sufficient under the circumstances.

**No Previous Request**

22. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: January 24, 2013  
Wilmington, Delaware

/s M. Blake Cleary  
M. Blake Cleary (No. 3614)  
Maris J. Kandestin (No. 5294)  
YOUNG CONAWAY  
STARGATT & TAYLOR, LLP  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

-and-

Brian S. Rosen, Esq.  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

*Attorneys for the Debtors  
and Debtors in Possession*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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: **Chapter 11**  
: **Case No. 12-12690 (CSS)**  
: **Jointly Administered**  
: **Hearing Date: Feb. 25, 2013 at 10:00 a.m. (ET)**  
: **Objection Deadline: February 7, 2013 at 4:00 p.m. (ET)**  
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*In re*  
**SOUTHERN AIR HOLDINGS, INC., et al.,**  
**Debtors.**<sup>1</sup>

**NOTICE OF MOTION**

TO: (A) THE U.S. TRUSTEE; (B) COUNSEL TO THE CREDITORS' COMMITTEE; (C) CANADIAN IMPERIAL BANK OF COMMERCE, NEW YORK AGENCY ("CIBC"); (D) COUNSEL TO CIBC; (E) OAK HILL CAPITAL MANAGEMENT ("OAK HILL"); (F) COUNSEL TO OAK HILL; AND (G) EACH PERSON OR ENTITY THAT HAS FILED A NOTICE OF APPEARANCE AND REQUEST FOR SERVICE OF DOCUMENTS IN THESE CHAPTER 11 CASES

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (the "Debtors") have filed the attached **Motion of Debtors for Entry of an Order Pursuant to Section 1121(d) of the Bankruptcy Code Extending the Exclusive Periods for the Filing of a Chapter 11 Plan and Solicitation of Acceptances Thereof** (the "Motion").

PLEASE TAKE FURTHER NOTICE that responses, if any, to the relief requested in the Motion must be filed with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 on or before **February 7, 2013 at 4:00 p.m. (ET)**. At the same time, you must serve a copy of your response upon the undersigned counsel.

**PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE RELIEF REQUESTED IN THE MOTION WILL BE HELD FEBRUARY 25, 2013 AT 10:00 A.M. (ET) BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, UNITED**

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: (i) Southern Air Holdings, Inc., 6605; (ii) Cargo 360, Inc., 4233; (iii) Southern Air Inc., 2187; (iv) Air Mobility Inc., 3824; (v) 21110 LLC, 3761; (vi) 21111 LLC, 8100; (vii) 21221 LLC, 1567; (viii) 21550 LLC, 8103; (ix) 21576 LLC, 6341; (x) 21590 LLC, 8105; (xi) 21787 LLC, 0617; (xii) 21832 LLC, 7893; (xiii) 23138 LLC, 7192; (xiv) 24067 LLC, 6360; (xv) 46914 LLC, 0322; (xvi) Aircraft 21255, LLC, 5500; (xvii) Aircraft 21380, LLC, 1753; and (xviii) CF6-50, LLC, 9733. The address for all of the Debtors is 117 Glover Avenue, Norwalk, Connecticut 06850.

**STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5TH FLOOR,  
COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.**

PLEASE TAKE FURTHER NOTICE IF YOU FAIL TO RESPOND TO THE  
MOTION IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE  
RELIEF REQUESTED THEREIN WITHOUT FURTHER NOTICE OR A HEARING.

Dated: January 24, 2013  
Wilmington, Delaware

/s/ M. Blake Cleary  
M. Blake Cleary (No. 3614)  
Maris J. Kandestin (No. 5294)  
Jaime Luton Chapman (No. 4936)  
YOUNG CONAWAY  
STARGATT & TAYLOR, LLP  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

-and-

Brian S. Rosen, Esq.  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

*Attorneys for the Debtors  
and Debtors in Possession*

**Exhibit A**  
**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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*In re* : **Chapter 11**  
:  
**SOUTHERN AIR** : **Case No. 12-12690 (CSS)**  
**HOLDINGS, INC., et al.,** :  
:  
**Debtors.**<sup>1</sup> : **Jointly Administered**  
:  
: **Re: Docket No. \_\_\_\_**  
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**ORDER PURSUANT TO PURSUANT TO  
SECTION 1121(d) OF THE BANKRUPTCY CODE  
EXTENDING THE EXCLUSIVE PERIODS FOR THE FILING OF  
A CHAPTER 11 PLAN AND SOLICITATION OF ACCEPTANCES THEREOF**

Upon the motion, dated January 24, 2013 (the "Motion"),<sup>2</sup> of Southern Air Holdings, Inc. ("Holdings") and its affiliated debtor entities, as debtors and debtors in possession (collectively, the "Debtors"), for entry of an order extending the Exclusive Periods for the filing of a chapter 11 plan and solicitation of acceptances thereto, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein,

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: (i) Southern Air Holdings, Inc., 6605; (ii) Cargo 360, Inc., 4233; (iii) Southern Air Inc., 2187; (iv) Air Mobility Inc., 3824; (v) 21110 LLC, 3761; (vi) 21111 LLC, 8100; (vii) 21221 LLC, 1567; (viii) 21550 LLC, 8103; (ix) 21576 LLC, 6341; (x) 21590 LLC, 8105; (xi) 21787 LLC, 0617; (xii) 21832 LLC, 7893; (xiii) 23138 LLC, 7192; (xiv) 24067 LLC, 6360; (xv) 46914 LLC, 0322; (xvi) Aircraft 21255, LLC, 5500; (xvii) Aircraft 21380, LLC, 1753; and (xviii) CF6-50, LLC, 9733. The address for all Debtors is 117 Glover Avenue, Norwalk, Connecticut 06850.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED, as set forth herein.
2. The Plan Period for each Debtor is extended through and including May 28, 2013 pursuant to section 1121(d) of the Bankruptcy Code.
3. The Solicitation Period for each Debtor is extended through and including July 25, 2013 pursuant to section 1121(d) of the Bankruptcy Code.
4. The relief granted herein shall not prejudice the Debtors from seeking further extensions made pursuant to section 1121(d) of the Bankruptcy Code.
5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: \_\_\_\_\_, 2013  
Wilmington, Delaware

\_\_\_\_\_  
CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE