

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11
 :
 THQ INC., *et al.*, : Case No. 12 - _____ ()
 :
 Debtors.¹ : (Joint Administration Requested)
 :
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**DEBTORS' MOTION FOR ORDER AUTHORIZING THE PAYMENT OF
PREPETITION CLAIMS OF SHIPPERS AND WAREHOUSEMEN**

THQ Inc. ("THQI") and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**"), hereby move this Court (the "**Motion**") for entry of an order, substantially in the form annexed hereto as **Exhibit A**, pursuant to sections 105(a) and 363 of title 11 of the United States Code (the "**Bankruptcy Code**") authorizing, but not directing, the Debtors to pay certain prepetition claims of shipping vendors and warehousemen in the ordinary course of business. In support of the Motion, the Debtors rely upon and incorporate by reference the *Declaration of Brian Farrell in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* (the "**Farrell First Day Declaration**"), which was filed with the Court concurrently herewith. In further support of this Motion, the Debtors respectfully represent:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, 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

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors' principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.



proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code.

BACKGROUND

2. On the date hereof (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession.

3. Contemporaneously herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases (the “**Chapter 11 Cases**”) pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”). No trustee, examiner, or official committee of unsecured creditors has been appointed in these cases.

4. Information regarding the Debtors’ history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of these Chapter 11 Cases can be found in the Farrell First Day Declaration.

THE DEBTORS’ SHIPPERS AND WAREHOUSEMEN

5. The Debtors’ supply and delivery system depends upon the use of reputable common carriers, dedicated carriers, rail carriers, barge operators, less-than-truckload carriers, freight-forwarders, parcel carriers, and non-asset based carriers (brokers) (collectively, the “**Shippers**”), as well as a network of third-party warehousemen and fuel terminal operators who store goods in transit on behalf of the Debtors (the “**Warehousemen**”). The Debtors also

use certain customs and other brokers as well as agents to facilitate the manufacturing and delivery of raw materials and distribution of products (collectively, the “**Brokers and Agents**”). References to the Shippers and Warehousemen herein shall also include such Brokers and Agents, and the Debtors request that the relief granted pursuant to this Motion extend to the claims of the Brokers and Agents.

6. The Debtors use the Shippers and Warehousemen to provide replication and assembly, distribution, order processing and return processing services to the Debtors to facilitate the delivery of the Debtors’ interactive entertainment software products to their customers. Generally, the Debtors’ products are developed and sold as follows: (a) interactive entertainment software products are developed by the Debtors, a non-debtor affiliate or other third party on behalf of THQI; (b) upon completion of the development of the interactive entertainment software products, in certain circumstances the products are sent to platform entities (such as Microsoft Licensing, Inc., Sony Disc Manufacturing or Nintendo of America Inc.) for approval; (c) upon approval if applicable, the interactive entertainment software products are manufactured and/or replicated by a third party, which may be the platform entities or an authorized third-party disk replicator such as Technicolor, and packaged; (d) most of the replicated and assembled products, to the extent not already in the possession of Technicolor, are then delivered to a Technicolor warehouse in Michigan;² (e) Technicolor manages the Debtors’ inventory and reviews, fulfills, packages and distributes orders; and (f) Technicolor manages all returns from the customers.

7. Certain of the Debtors’ interactive entertainment software product may remain stored at the Technicolor warehouse and other third-party facilities for weeks and

² Technicolor serves as a warehouseman, shipper and replicator for the Debtors, but the Debtors are not seeking authority to pay Technicolor in this Motion. Rather, the Debtors seek authority to pay Technicolor under the Critical Vendor motion filed concurrently herewith.

sometimes months. The Debtors' business operations depend in large part on the efficient and timely delivery of their product to their customers. It is critical to the Debtors' operations and efforts to maximize value of their estates that they maintain a reliable and efficient transport system, which will require the continued and uninterrupted services of disk manufacturers, Warehousemen, which includes Technicolor and Sony/DADC, and Shippers utilized in the process. The Warehousemen and Shippers utilized by the Debtors include the following:

CONTRACTORS	SERVICES PROVIDED	AVERAGE MONTHLY COST	APPROXIMATE AMOUNT DUE AS OF THE PETITION DATE
TECHNICOLOR GLOBAL LOGISITICS	Shipper of product from China.	\$ ³	\$-
ANDLAUER TRANSPORTATION SERVICES	Shipper of Canadian freight.	\$10,000	\$4,263.00
HANKYU HANSHIN EXPRESS (USA) INC	Shipper of Asian freight and supply agent.	\$10,000	\$-
LIVINGSTON INTERNATIONAL, INC.	Freight broker (Canada) and return freight broker (Mexico)	\$5,000	\$-
CINLAT LOGISTICS, S.A. DE C.V.	Warehouseman (Mexico)	\$4,000	\$-
APPROXIMATE TOTAL:		\$29,000	\$4,263.00

8. As such, the Debtors' business model is heavily dependent on various service providers along the Debtors' supply chain. The Debtors utilize the above-listed five (5) third parties to ensure that their supply-chain system runs smoothly. The average monthly amount paid by the Debtors to Shippers and Warehousemen is approximately \$29,000. The estimated amount due as of the Petition Date to certain Warehousemen and Shippers based on invoices received from such Warehousemen and Shippers is \$4,263.00. The Debtors engage

³ The average annual cost of services provided by Technicolor Global Logistics is approximately \$30,000.

Shippers to transport, store and deliver goods to the Debtors' customers. The Debtors contract with Warehousemen to store goods at various points along the supply chain between the Debtors' suppliers and the ultimate end-users of the Debtors' products.

9. As a result, in the ordinary course of business, Shippers and Warehousemen regularly have possession of goods and supplies being provided to the Debtors as well as goods intended for delivery to the Debtors' customers. The Debtors expect that, as of the Petition Date, certain of the Shippers and Warehousemen will have outstanding invoices as estimated above for goods that were delivered to the Debtors and the Debtors' customers prior to the Petition Date.

10. Under most state laws, a Shipper or a Warehouseman may have a lien⁴ on the goods in its possession, which lien secures the charges or expenses incurred in connection with the transportation or storage of such goods.⁵ Additionally, pursuant to section 363(e) of the Bankruptcy Code, the Shippers or Warehousemen, as bailees, may be entitled to adequate protection in the form of a possessory lien. As a result, certain Shippers and Warehousemen may refuse to deliver or release goods in their possession or control, as applicable, before the prepetition amounts owed to them by the Debtors (collectively, the "**Shipping and Warehousing Claims**") have been satisfied and their liens redeemed.

11. The Debtors' business is necessarily freight intensive and dependent upon the timely delivery of their products to customers and receipt of raw materials and goods. Any disruption in this system would have deleterious effects on the Debtors' business. The Debtors

⁴ By this Motion, 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, and perfection of all such liens, and/or to seek avoidance thereof.

⁵ 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 for charges subsequent to the date of its 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(1) (2003).

believe that the value of the Debtors' products in the possession of the Shippers and Warehousemen, and the potential injury to the Debtors if they are not timely released, is likely to substantially exceed the amount of Shipping and Warehousing Claims asserted by such parties. Indeed, even if the Shippers and Warehousemen did not have valid liens under applicable state law, their possession (and retention) of the Debtors' products would severely disrupt, and potentially cripple, the Debtors' relationship with their customers. For these reasons, the Debtors therefore believe that it is necessary and essential to their chapter 11 efforts and the enhancement and preservation of the value of their estates that they be permitted to make payments on account of certain Shipping and Warehousing Claims.

RELIEF REQUESTED

12. By this Motion, the Debtors seek authority to pay certain prepetition claims held by Shippers and Warehousemen in amounts the Debtors determine necessary or appropriate to (i) obtain releases of critical or valuable goods that may be subject to liens, (ii) maintain a reliable, efficient and smooth distribution system, and/or (iii) induce critical Shippers and Warehousemen to continue to carry goods and make timely deliveries thereof. The Debtors propose to pay such claims when, in the Debtors' discretion and business judgment, a creditor's exercise of its rights under applicable state law would unduly disrupt the Debtors' business operations, and hereby seek immediate authority to pay and discharge, on a case-by-case basis and in their discretion, the Shipping and Warehousing Claims, as of the Petition Date, in an amount not to exceed \$33,350 the ("**Shippers-Warehousemen Claims Cap**").⁶ The Shippers-Warehousemen Claims Cap represents the Debtors' best estimate as to the maximum amount the

⁶ The Debtors' current estimate is based on payables information available through December, 17 2012. In calculating the amounts owed to Critical Vendors and setting the Critical Vendor Claims Cap the Debtors have added about 15% to current Shippers and Warehousemen payables to take into account outstanding pre-petition invoices that have not yet been received and/or processed.

Debtors must pay to Shippers and Warehousemen (although, as described in the table above, the Debtors estimate the amount to pay might be less).

13. The Debtors will, in their discretion, attempt to condition any payment on account of a Shipping or Warehousing Claim on the written acknowledgement from the applicable Shipper or Warehouseman that they will continue to provide their services to the Debtors on trade terms that, at a minimum, such Shipper or Warehouseman provided to the Debtors six months prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtors as those in effect prior to the Petition Date. Furthermore, the Debtors reserve the right to negotiate more favorable trade terms with any Shipper or Warehouseman as a condition to payment of any such prepetition claim.

14. The Debtors will only pay the Shipping and Warehousing Claims that the Debtors believe, in their business judgment, to be necessary and appropriate. In determining whether such payments are necessary and appropriate, the Debtors will consider (i) whether the benefits to the Debtors' estates and creditors that would result from such payments would exceed (a) the costs that the Debtors would incur by bringing actions to compel the turnover of raw materials and goods, and (b) the delays associated with such actions; and (ii) whether the additional expenses the Debtors would incur (in the form of premium shipping and storage costs) to replace the Shippers and Warehousemen would exceed the amount of unpaid prepetition claims.

15. The Debtors believe that the total amount to be paid to the Shippers and Warehousemen on account of their prepetition claims is necessary and appropriate in light of the importance and necessity of the Shippers and Warehousemen to the Debtors' and their business operations, and the direct and indirect losses that the Debtors would suffer as a consequence of a

Shipper's refusal to deliver raw materials and goods to the Debtors or their customers.

Moreover, the Debtors do not believe that there are viable and timely alternatives to the Shippers and Warehousemen that the Debtors have used prior to the Petition Date.

16. The Debtors' ability to make timely deliveries depends on a successful and efficient system for the delivery, receipt and shipment of products. It is essential for the Debtors' business operations and efforts to maximize the value of their assets that the Debtors maintain a reliable and efficient supply and distribution network. Because the Debtors rely primarily on third parties for the receipt of raw materials and the delivery of products to their customers, it is essential that their bankruptcy cases not be a reason or excuse for any such party to cease timely performing services or to retain goods in their possession on account of unpaid prepetition claims. If the customers are unable to receive deliveries on a timely and uninterrupted basis, the Debtors will likely suffer, at a minimum, a significant loss of customer goodwill as well as revenue, thereby causing substantial and potentially irreparable harm to their businesses and efforts to maximize the value of their assets for the benefit of stakeholders.

17. The Motion further seeks authorization for the applicable banks asked to process, honor and pay any and all checks on account of claims with respect to Shippers and Warehousemen to rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

BASIS FOR RELIEF REQUESTED

18. The Court may authorize the Debtors to pay the Shipping and Warehousing Claims under section 363(b) of the Bankruptcy Code. That section provides 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 Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of prepetition claims where the debtors articulate “some business justification, other than the mere appeasement of major creditors”); *see also In re James A. Phillips, Inc.*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (authorizing, pursuant to section 363, a contractor to pay prepetition claims of some suppliers who were potential lien claimants, because the payments were necessary for the general contractors to release funds owed to the debtors).

19. As discussed above, the Debtors’ request to pay the prepetition claims of the Shippers and Warehousemen easily meets this standard because the failure to satisfy the Shipping and Warehousing Claims could have a material adverse effect on the Debtors’ day-to-day business operations and relationships with their customers, as well as on the Debtors’ efforts to preserve and maximize the value of their assets for the benefit of all stakeholders.

20. In addition, section 105(a) empowers the Court to “issue any order, process, or judgment that is necessary 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 prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. Under section 105(a), the Court “can permit pre-plan payment of a prepetition 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 (D. Del. 1999).

21. Finally, the “necessity of payment” doctrine further supports the relief requested in this Motion. The “necessity of payment” doctrine “recognizes the existence of the

judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” *Ionosphere Clubs*, 98 B.R. at 176; *In re Chateaugay Corp.*, 80 B.R. 279 (S.D.N.Y. 1987). This rule is consistent with the paramount goal of chapter 11, *i.e.*, “facilitating the continued operation and rehabilitation of the debtor” *Ionosphere Clubs*, 98 B.R. at 176; *see also In re Just for Feet, Inc.*, 242 B.R. at 826 (“To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is critical to the debtor’s reorganization”).

22. Under the necessity of payment doctrine, a bankruptcy court may exercise its equitable power to authorize a debtor to pay the prepetition claims of creditors whose services are essential to the debtor’s reorganization efforts. *See In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 939 (Bankr. D. Del. 1992) (recognizing that “[i]f payment of a prepetition claim ‘is essential to the continued operation of [the debtor], payment may be authorized’”).

23. The Debtors strongly believe that (i) continuation of their positive relationships with the Shippers and Warehousemen is imperative to their continued business operations, and (ii) the payment of the Shipping and Warehousing Claims is essential to preserve and maximize the value of the Debtors’ estates. Therefore, the Court should exercise its equitable powers under section 105(a) of the Bankruptcy Code to grant the relief requested in this Motion.

24. Indeed, it is not uncommon for courts in this District to authorize the payment of prepetition claims of shippers, warehousemen and other lien claimants. *See e.g., In re Aventine Renewable Energy Holdings, Inc.*, Case No. 09-11214 (Bankr. D. Del. Apr. 9, 2009) (KG); *In re Midway Games, Inc.*, Case No. 09-10465 (Bankr. D. Del. Feb. 13, 2009) (KG); *In re Tribune Co.*, Case No. 08-13141 (Bankr. D. Del. Dec. 8, 2008) (KJC); *In re Buffets Holdings*,

Inc., Case No. 08-10141 (Bankr. D. Del. Feb. 13, 2008) (MFW); *In re Holliston Mills, Inc.*, Case No. 07-10687 (Bankr. D. Del. May 23, 2007) (MFW); *In re Adva-Lite, Inc.*, Case No. 07-10264 (Bankr. D. Del. March 2, 2007) (KJC); *In re Meridian Auto. Sys. – Composites Operations, Inc., et al.*, Case No. 05-11168 (Bankr. D. Del. Apr. 27, 2005) (MFW); *In re Ultimate Elec., Inc., et al.*, Case No. 05-10104 (Bankr. D. Del. Jan. 13, 2005) (PJW); *In re KB Toys, Inc.*, Case No. 04-10120 (Bankr. D. Del. Jan. 16, 2004) (PJW). The Debtors respectfully submit that similar relief is warranted in these chapter 11 cases.

25. Pursuant to Bankruptcy Rule 6003, the Court may authorize payment of a prepetition claim within 21 days after the Petition Date only if such relief is necessary to avoid immediate and irreparable harm. As described above, it is vital to the Debtors' reorganization efforts that they be authorized to pay the Shipping and Warehousing Claims to maintain the Debtors' operations and the confidence and goodwill of their customers. Failure to satisfy such claims in the first 21 days of these cases could lead to a disruption of the Debtors' operations and likely interruption of the Debtors' supply chain. Put simply, maintaining the timely receipt and delivery of the raw materials and goods is necessary for the Debtors' businesses to survive in the preliminary stages of these cases. For the foregoing reasons, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 and should be authorized, but not directed, to immediately pay the Shipping and Warehousing Claims.

Authorization for Banks

26. The Debtors request that this Court authorize and direct the Banks on which checks are drawn or electronic funds are transferred with respect to Shipping and Warehousing Charges or Mechanic's Lien Charges to receive, process, honor, and pay, to the extent of funds on deposit, any and all such checks or electronic transfers, whether such checks

or transfers were issued before or after the Petition Date, upon the receipt by each such bank of notice of such authorization without further order of the Court.

27. Further, the Debtors also request that the Court authorize and direct the Banks to rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors' instructions. Given, the necessity of paying the Shipping and Warehouseman Charges and the Mechanic's Lien Charges, the Debtors respectfully submit that this relief is necessary and warranted.

28. For all the reasons discussed herein, the Debtors submit that paying the Shipping and Warehousing Claims is critical to the Debtors' efforts to maximize the value of their assets and is in the best interests of their estates, and therefore should be approved.

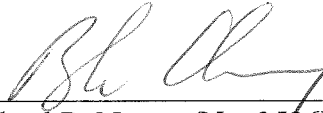
29. To the extent Bankruptcy Rule 6004(h) is applicable to this Motion, the Debtors also seek a waiver of the fourteen-day stay.

NOTICE

30. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors' forty (40) largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (c) counsel for Wells Fargo Capital Finance, LLC; (d) counsel to the ad hoc committee of Debtors' prepetition unsecured noteholders; (e) counsel to Clearlake Capital Group, L.P., the proposed "stalking horse" purchaser; (f) the Banks; and (g) the Warehousemen and Shippers. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: December 19, 2012
Wilmington, Delaware



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*Proposed Counsel to the Debtors and
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EXHIBIT A
PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----X
In re: : Chapter 11
: :
THQ INC., *et al.*, : Case No. 12 - _____ ()
: :
Debtors.¹ : Jointly Administered
: :
: RE: Docket No. __
-----X

**ORDER AUTHORIZING THE PAYMENT OF PREPETITION CLAIMS OF
SHIPPERS, WAREHOUSEMEN AND RELATED SERVICE PROVIDERS**

Upon the Motion² of THQ Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”), for entry of an order, pursuant to sections 105(a) and 363 of the Bankruptcy Code, authorizing the Debtors, in their discretion, to pay certain prepetition claims of Shippers and Warehousemen in the ordinary course of business; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, 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 it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and a hearing having been held to consider the relief requested in the Motion; and upon the record of the hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

the best interests of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. The Motion is GRANTED in its entirety.
2. The Debtors are authorized, but not directed, in the ordinary course of business, to pay the Shipping and Warehousing Claims in an aggregate amount not to exceed \$33,350 without further order of the Court.
3. As a condition to receiving any payment pursuant to this Order, the Shippers and Warehousemen shall waive and release any previously asserted lien on the assets of the Debtors.
4. The Debtors, in their discretion, shall undertake appropriate efforts to cause the Shippers and Warehousemen to acknowledge in writing that payment of their prepetition claims is conditioned upon the applicable Shipper or Warehouseman continuing to supply services to the Debtors on trade terms that, at a minimum, such Shipper or Warehouseman provided to the Debtors within the six months prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtors as those in effect prior to the Petition Date, and the Debtors reserve the right to negotiate more favorable trade terms with any Shipper or Warehouseman as a condition to payment of any such prepetition claim.
5. Nothing herein shall impair the Debtors' ability to contest, in their discretion, the validity and amounts of the Shipping and Warehousing Claims.
6. All applicable banks and other financial institutions are hereby authorized and directed to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts to be paid by the Debtors under this Order whether presented prior to or after the

Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order to the extent the Debtors have good funds standing to their credit with such bank or other financial institution without any duty of further inquiry and without liability for following the Debtors' instructions.

7. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall constitute, nor is intended to constitute, the assumption or adoption of any contract or agreement under 11 U.S.C. § 365.

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

9. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

10. Bankruptcy Rule 6003 has been met in that the relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

11. The fourteen-day stay under Bankruptcy Rule 6004(h) is hereby waived with respect to this Order, and the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made, or authorization contained hereunder, shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing, or budget in connection therewith, or any order regarding the use of cash collateral.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: December __, 2012
Wilmington, Delaware

United States Bankruptcy Judge