

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11

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THQ INC., *et al.*, : Case No. 12 - 13389 (MFW)

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Debtors.¹ : (Joint Administration Requested)

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NOTICE OF HEARING TO CONSIDER FIRST DAY PLEADINGS

PLEASE TAKE NOTICE that on December 19, 2012, THQ, Inc., THQ Digital Studios Phoenix, Inc., THQ Wireless, Inc., Volition, Inc., and Vigil Games, Inc., each a debtor and debtor in possession in the above-captioned cases, filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 – 1532 (the “Bankruptcy Code”) with the Clerk of the United States Bankruptcy Court for the District of Delaware. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that the Debtors will present the following pleadings on **December 20, 2012 at 3:30 p.m. (ET)** (the “Hearing”) before the Honorable Mary F. Walrath, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 5th Floor, Courtroom No. 4, Wilmington, Delaware 19801:

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.



MOTIONS AND APPLICATION

1. [**“Joint Administration”**] Debtors’ Motion for Order Authorizing the Joint Administration of Related Chapter 11 Cases [Docket No. 3, 12/19/12]
2. [**“KCC Retention”**] Application of Debtors for Authority to Retain and the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Pursuant to 28 U.S.C. § 156(c) and Local Rule 2002-1(f) [Docket No. 4, 12/19/12]
3. [**“Cash Management”**] Debtors’ Motion for Order Authorizing (A) Continued Use of Cash Management System; (B) Maintenance of Existing Bank Accounts; (C) Continued Use of Existing Business Forms; (D) Continued Performance of Intercompany Transactions in the Ordinary Course of Business; and (E) Limited Waiver of Section 345(b) Deposit and Investment Requirements [Docket No. 5, 12/19/12]
4. [**“Utilities”**] Debtors’ Motion for Interim and Final Orders Pursuant to Sections 105(a) and 366 of the Bankruptcy Code (A) Prohibiting Utilities From Altering, Refusing, or Discontinuing Services to, or Discriminating Against, the Debtors on Account of Prepetition Invoices; (B) Determining Adequate Assurance of Payment for Future Performance; and (C) Establishing Procedures for Resolving Requests for Additional Adequate Assurance of Payment [Docket No. 6, 12/19/12]
5. [**“Taxes”**] Debtors’ Motion for Order Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees [Docket No.7 12/19/12]
6. [**“Customer Programs”**] Debtor’s Motion for Interim and Final Orders Authorization to Honor Prepetition Obligations to Customers and Otherwise Continue Customer Programs in the Ordinary Course of Business [Docket No. 8, 12/19/12]
7. [**“Wages and Benefits”**] Debtors’ Motion for Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Employee Obligations and Maintain and Continue Employee Benefits and Programs and (ii) Authorizing and Directing Applicable Banks and Other Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations [Docket No. 9, 12/19/12]
8. [**“AR Sale”**] Debtors’ Motion for Entry of Interim and Final Orders Authorizing the Sale of Certain of THQ Inc.’s Accounts Receivable [Docket No. 10, 12/19/12]
9. [**“Shippers”**] Debtors’ Motion for Order Authorizing the Payment of Prepetition Claims of Shippers and Warehousemen [Docket No. 11, 12/19/12]
10. [**“Critical Vendors”**] Debtors’ Motion for Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors and Certain Administrative Claimholders and (II) Authorizing and Directing Banks and Other Financial Institutions to Honor and Process Related Checks and Transfers [Docket No. 12, 12/19/12]

11. **["DIP"]** Motion of the Debtors for Order (I) Authorizing Debtors to (A) Obtain Interim Postpetition Financing on a Superpriority, Secured and Priming Basis in Favor of Wells Fargo Capital Finance, LLC; (B) Turn Over Cash Collateral on an Interim Basis; (C) Provide Adequate Protection to Wells Fargo Capital Finance, LLC; (D) Modifying the Automatic Stay; and (E) Authorizing Debtors to Enter Into Postpetition Agreements With Wells Fargo Capital Finance, LLC; and (II) Scheduling, and Establishing Deadlines Relating to a Final Hearing and Order Authorizing the Debtors to Obtain Postpetition Financing And Use Of Cash Collateral [Docket No. 13, 12/19/12]

PLEASE TAKE FURTHER NOTICE that copies of the DIP Motion² and the proposed interim order are attached hereto.

PLEASE TAKE FURTHER NOTICE that copies of all motions and the application referenced above will be mailed to you subsequent to the Hearing and are currently available on the Court's website: www.deb.uscourts.gov. If you would like to receive copies of any of the motions or the application prior to the Hearing, please contact Michelle Smith, Paralegal, at (302) 576-2603 or msmith@ycst.com. All parties wishing to participate in the Hearing telephonically must make arrangements with Court Call ((888) 882-6878; www.courtcall.com).

Dated: December 19, 2012
Wilmington, Delaware

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² Exhibits to the DIP Motion are available upon request.

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*Proposed Counsel to the Debtors and
Debtors in Possession*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

THQ Inc. et al.,¹

Debtors.

Chapter 11

Case No. 12-13398 ()

(Joint Administration Requested)

MOTION OF THE DEBTORS FOR ORDER (I) AUTHORIZING DEBTORS TO (A) OBTAIN INTERIM POSTPETITION FINANCING ON A SUPERPRIORITY, SECURED AND PRIMING BASIS IN FAVOR OF WELLS FARGO CAPITAL FINANCE, LLC; (B) TURN OVER CASH COLLATERAL ON AN INTERIM BASIS; (C) PROVIDE ADEQUATE PROTECTION TO WELLS FARGO CAPITAL FINANCE, LLC; (D) MODIFYING THE AUTOMATIC STAY; AND (E) AUTHORIZING DEBTORS TO ENTER INTO POSTPETITION AGREEMENTS WITH WELLS FARGO CAPITAL FINANCE, LLC; AND (II) SCHEDULING, AND ESTABLISHING DEADLINES RELATING TO A FINAL HEARING AND ORDER AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING AND USE OF CASH COLLATERAL

THQ, Inc. (“**THQI**”), THQ Digital Studios Phoenix, Inc., THQ Wireless, Inc., Volition, Inc., and Vigil Games, Inc. in their capacity as debtors and debtors in possession (collectively, the “**Debtors**”), submit this motion (the “**Financing Motion**”), pursuant to sections 105, 361, 363(c) and (e), 364(c)(1) and (2), 364(d), and 364(e) of the title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an interim order in the form attached hereto as **Exhibit B** (the “**Interim Financing Order**”) and a final order (the “**Final Financing Order**”): (1) authorizing the Debtors (a) to obtain interim postpetition financing pursuant to the terms and conditions of the Credit Agreement (Debtor In Possession) to be dated on or after the entry date of the Interim Financing Order (the “**DIP Credit Agreement**”)

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: 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.

among THQI, the lenders party thereto (the "**DIP Lenders**"), and Wells Fargo Capital Finance, LLC, as Administrative Agent (a substantially final form of which is attached hereto as **Exhibit A**) in the amount of up to \$6.5 million, and (b) to turn over all cash collateral arising from the collection of Pre-Petition Collateral (as defined below) to Wells Fargo Capital Finance, LLC ("**Wells Fargo**") to be applied against its "Pre-Petition Lender Debt" (as defined below),² and (2) scheduling, and establishing deadlines relating to a final hearing and order authorizing the Debtors to obtain postpetition financing and continuing turn over of cash collateral. In further support of this Financing Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion 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 matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are sections 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(b), 4001(c), 6004, and 9014, and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**").

² Wells Fargo contends that the surrender to it of all cash collateral is necessary to adequately protect its security interest in the cash collateral.

BACKGROUND

3. On the date hereof (the “**Petition Date**”), the Debtors commenced the above-captioned chapter 11 cases by filing voluntary petitions under chapter 11 of the Bankruptcy Code.

4. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their respective businesses and manage their respective financial affairs as debtors in possession.

A. The Debtors and their Non-Debtor Subsidiaries

5. The Debtors are leading developers and publishers of interactive entertainment software for all popular gaming systems, including home video game consoles, hand-held platforms, wireless devices, and personal computers, including games played online. The Debtors also develop and publish titles for digital distribution and offer certain content through online download stores and services, including Amazon. The Debtors have created, licensed, and acquired interests in numerous well-known brands in the gaming industry, including *Saints Row*, *Company of Heroes*, *Homefront*, *Darksiders*, *Metro: Last Light*, *Warhammer 40,000*, *Game Workshop*, and *World Wrestling Entertainment*.³ Additionally, the Debtors are currently developing and licensing new intellectual property, including a game based on the *South Park universe*, which is scheduled for release in calendar year 2013.

6. THQI is a Delaware corporation. Its principal offices are located in Agoura Hills, California. THQI owns 100% of the equity in (1) Volition, a Delaware corporation that operates a development studio in Champaign, Illinois; (2) THQ Phoenix, an Arizona corporation that previously operated a development studio in Phoenix, Arizona, that was

³ The Debtors own the rights to each of these franchises except *World Wrestling Entertainment* (“WWE”), which the Debtors license from World Wrestling Entertainment, Inc., *Warhammer: 40,000*, which the Debtors license from Games Workshop PLC and *Metro: Last Light*, which the Debtors license from 4A Games, Limited.

closed in August of 2011, and limited remaining operations that are being terminated during December, 2102; (3) THQ Wireless, a Delaware corporation that has no current operations; and (4) Vigil, a Texas corporation, which operates development studios in Austin, Texas.

7. THQI also owns the equity in THQ Canada, Inc., dba Relic Entertainment (“**Relic**”), THQ Montreal Inc. (“**THQ Montreal**”), and THQ International GmbH, a Swiss company (“**TIG**”). Relic operates a development studio in Vancouver, British Columbia, and THQ Montreal operates a development studio in Montreal, Quebec. Both studios develop games for THQI.

8. TIG is a holding company that owns the equity in subsidiaries that operate in various jurisdictions outside of the United States, including the following: (1) THQ (UK) Ltd., which now distributes THQ’s games in the United Kingdom, and is the contracting party for distribution agreements in other territories around the world, including Australia Scandinavia, Spain, Italy, the Middle East, and Africa (“**THQ UK**”);⁴ and (2) THQ (Holdings), Ltd., a United Kingdom corporation (“**THQ Holdings**”), which owns the equity in (a) THQ Entertainment GmbH, a German corporation (“**THQ Germany**”), and (b) THQ France S.a.r.l., a French corporation (“**THQ France**”). THQ Germany distributes THQ’s games in Germany, Austria and Switzerland. THQ France distributes those games in France. THQ France also markets product in the Netherlands, through a division commonly referred to as “**THQ Benelux.**” TIG coordinates the cash management of these European subsidiaries on a consolidated basis through a “cash-pooling” arrangement.

⁴ The Debtors have closed or are in the process of winding down European Subsidiaries that previously distributed product in Spain, Italy, Australia, Japan, and Korea.

9. TIG also owns the equity in THQ Software Development (Shanghai) (“**THQ Shanghai**”), which provides development services to THQI. THQ Shanghai is based in Shanghai, China.

10. TIG also owns the equity in a number of corporations that have been or are currently being liquidated, which previously distributed the Debtors’ games in other countries. The operations in these other countries have either been completely terminated or have been reduced to such a level that they are not material to the Debtors’ ongoing sales or operations. TIG and its subsidiaries, including THQ UK, THQ France, and THQ Germany, are collectively referred to as the “**European Subsidiaries.**” The European Subsidiaries, Relic and THQ Montreal are not debtors in these chapter 11 cases.

B. The Debtors’ Operations

11. In North America, the Debtors’ products are primarily sold directly by THQI to mass merchandisers, consumer electronics stores, discount warehouses and national retail chain stores. These products are also sold to smaller, regional retailers, as well as distributors who, in turn, sell the Debtors’ products to retailers that the Debtors do not service directly, such as grocery and drug stores. The Debtors’ North American sales activities are conducted by THQI sales representatives throughout the United States, Canada and Mexico.

12. The international publishing activities for the Debtors’ games are conducted via the European Subsidiaries’ offices throughout Europe, including international offices in the United Kingdom, Germany, France, and the Netherlands, which market and distribute to direct-to-retail customers and through distributors in both their home territories and collectively, to over 80 territories outside of the United States.

13. The Debtors also globally distribute games and content digitally via the Internet through Sony Computer Entertainment's PlayStation Network ("PSN") Microsoft's Xbox Live and Xbox Live Arcade Services ("Xbox Live" and "XBLA", respectively), and digital distribution services including Amazon, Electronic Arts' Origin, and Valve Software's Steam Services, and through smartphone devices, such as the Apple iPhone, iPod, and iPad.

14. The core value of the Debtors is the combination of their intellectual property and the required talent to exploit that intellectual property. The Debtors' owned intellectual property and right to develop certain games, includes *Company of Heroes 2*, *Saints Row 4*, *Homefront 2*, and a new as yet untitled game from Patrice Desilets, the creator of the successful *Assassin's Creed* series of games. The Debtors employ a core group of development teams comprised of highly skilled individuals with the knowledge and experience to develop successful games, including multiple games that are currently in development. The Debtors are also currently developing several new free to play ("FTP") games which allow consumers to "sample" a game before paying for it. These FTP games have developed a rapid following in Asia over the past decade and have begun to make inroads in the markets in the United States and in Europe.

15. THQI develops products using both internal and external development teams. On each game development team, internal resources consist of producers, game designers, software engineers, artists, animators and game testers. Each team may also use external development resources that consist of third-party software developers and other independent resources such as artists, motion-capture facilities, sound effects and mixing, voice-over acting and music and sound composition.

16. THQI makes the decision as to which development resources to use based upon the creative and technical challenges of the product, including whether the intellectual property being developed into a game is licensed, an original concept that they created, or an original concept created by a third-party developer. Once THQI determines where a product will be developed, the Debtors' product development team oversees the internal or external resources in its design, technical assessment and construction and progression of each game.

17. Most of the members of the Debtors' internal development teams are employed by THQI's subsidiaries, Volition, Relic, Vigil, and THQ Montreal. THQI pays these subsidiaries for their services developing games and owns the games that these subsidiaries develop.

18. Vigil operates a development studio in Austin, Texas. The team has been the developer of the *Darksiders*' series of game, including the recently released *Darksiders II*. The team at Vigil is now developing a game with the working title *Crawler*.

19. Volition operates a development studio in Champaign, Illinois. The team of developers at Volition is responsible for the *Saint's Row* series of games, and is currently developing a new installment of the game with the working title *Saints Row 4*, which is scheduled for release in calendar year 2013.

20. The Canadian subsidiaries, Relic and THQ Montreal, are not debtors in these chapter 11 cases, but develop games for THQI and are dependent on THQI to fund the development costs for the services these subsidiaries provide. Relic operates a development studio in Vancouver, British Columbia, Canada. The Relic studio was acquired by THQI in April, 2004. The teams at Relic are responsible for developing multiple games in the real-time strategy genre, including *Warhammer: 40,000: Dawn of War*, and the *Company of Heroes* series

of games. Relic is currently developing *Company of Heroes 2* for a calendar year 2013 release and a new game with the working title “*Atlas*” for release in calendar year 2014. THQ Montreal operates a development studio in Montreal, Quebec, Canada. The team of developers at THQ Montreal is developing the yet-as-untitled Patrice Desilets game.

21. The expertise and continuity of the teams at Vigil, Volition, Relic, and THQ Montreal are critical to maximizing the value of the Debtors’ assets. There are fewer than one hundred game development teams worldwide that have the skills to develop “AAA” core console games, like those developed by the Debtors. Retaining the key members of these teams intact is critical to realizing value from the Debtors’ ongoing development business

22. Game development is a unique hybrid of sophisticated programming skills, creative design in developing unique “gameplay hooks” which make the game fun, and artistic talent to create a visual aesthetic which appeals to the core audience. Successful game development teams are ones that can continually recruit, satisfy, and retain very highly skilled personnel and compete with other skilled technology businesses for the best employees.

23. Game development is primarily an apprenticeship business where game developers learn and hone their craft over multiple game development cycles. With an “AAA” core game taking eighteen (18) to thirty-six (36) months to develop, each team member works closely with each other under intense deadlines to make and perfect each game under strict budget and time deadlines. Recruiting new development talent is an expensive and time consuming process, and the Debtors strive to maximize retention of their game development employees using mechanisms such as performance bonuses, regular management reviews and market salary adjustments and employee perquisites.

24. In addition to developing games in-house, the Debtors have key contracts with outside developers. These developers include (1) Obsidian, which is participating in the development of the *South Park* game, (2) Crytek UK, which is the outside developer of *HomeFront 2*, (3) 4A Games, which is which is developing of *Metro: Last Light*, and (4) Turtle Rock Studios, which is developing a co-op multiplayer action game. Continuity of these contractual relationships is also critical to maintaining the maximum value of the Debtors. Each of the respective studios has specific talent and expertise in both the game genre and the specific intellectual property, and once a project is started with a development team, it is nearly impossible to transition the development to a new team, as each team develops and uses a proprietary set of tools and techniques to develop the game.

C. Assets and Liabilities

25. As of the Petition Date, on a consolidated basis, the Debtors had liabilities of approximately \$150 million, excluding contingent liabilities that might arise from the rejection of executory contracts. This does not include the liabilities of TIG or the European Subsidiaries.

26. Approximately \$20 million of the Debtors' prepetition liabilities arose under that certain Credit Agreement and the related Security Agreement (together, as amended, the "**Credit Facility**") among THQI, as "Borrower," and Wells Fargo Capital Finance, LLC, as the sole lender and agent thereunder ("**Wells Fargo**" or the "**Prepetition Lender**"). The Credit Facility (a) is an asset-based revolving credit facility providing for up to \$50 million in aggregate loans and other financing accommodations, but limited by a borrowing base calculation, (b) allows for up to \$10 million of availability to be used as a letter of credit sub-facility, and (c) is secured by a first priority security interest and lien on most of the Debtors' assets, subject only to

the liens permitted under the Credit Facility. The balance owing to Wells Fargo as of the Petition Date was approximately \$20 million. Volition, Vigil and THQ Wireless have guaranteed the debt under the Credit Facility and pledged substantially all of their assets to secure that guarantee.

The Prepetition Lender declared a covenant default under the Credit Facility, on November 7, 2012. The Debtors and the Prepetition Lender thereafter negotiated a forbearance agreement, pursuant to which Wells Fargo has continued to fund the Debtors' working capital needs based on a borrowing base formula calculation. The Prepetition Lender, together with Clearlake Capital Group, L.P. (or an affiliate thereof), have agreed to provide debtor in possession financing on the terms set forth in the DIP Credit Agreement chart, below.

THQI also issued \$100 million of 5% convertible unsecured senior notes due August 2014 (the "**Unsecured Notes**"). The bulk of the Unsecured Notes are held by a relatively small number of sophisticated investors (the "**Noteholders**"). No official creditors committee has yet been appointed in these chapter 11 cases, but prior to the Petition Date the Debtors engaged in discussions with an ad hoc committee consisting of eight (8) Noteholders. The Debtors understand that the members of that ad hoc prepetition committee own collectively approximately 85% of the issued and outstanding Unsecured Notes.

27. The extent of other unsecured claims against the Debtors will depend to a great extent on what executory contracts are assumed or rejected in these chapter 11 cases and what critical obligations the successful bidder for the Debtors' assets will assume. The Debtors best estimate is that their unsecured claims in addition to the claims of the Noteholders will likely be in the range of \$30 million to \$225 million, which includes intercompany claims by the European Subsidiaries of anywhere from no such claims to approximately \$115 million. This

wide range will depend primarily on whether the Debtors are able to find parties willing to accept assignments of various executory contracts and the enforceability of penalty provisions in several agreements.

D. Events Leading Up to Chapter 11 Cases and Cost Reduction Efforts

28. The Debtors suffered operating losses during each of the last five fiscal years.⁵ During that time, the market for the Debtors' traditional children's and movie based licensed games was in steep decline, and as the Debtors focused more on the market for core games its ratio of "hits" to games released was low, resulting in operating losses. During November 2010, the Debtors introduced a new product to the market, the *uDraw* Game Tablet, a drawing peripheral device for use with the Nintendo Wii. Based on the initial success of that device for the Nintendo Wii, the Debtors introduced a version of the *uDraw* peripheral for the PlayStation 3 and Xbox 360 in November, 2011. Unit volumes and pricing for these versions fell far short of expectations, resulting in substantially reduced net sales, operating income, and cash flow.

29. Unlike the software products typically developed by the company, the *uDraw* was a hardware device which had a "Bill of Materials" (the cost of the raw materials plus assembly) substantially higher than a typical software product. While the company was eventually able to sell the majority of its *uDraw* peripheral units in 2012, it did so at a net sales price which was, on average, substantially lower than the cost to manufacture the device, resulting in significant cash drain on the company.

30. The Debtors have discontinued *UDraw* and negotiated out of all of their related obligations.

⁵ The Debtors operate on a fiscal year that ends on March 31, of each year.

31. In Fiscal Year 2012, the Debtors (1) exited from the development of traditional children's and movie-based licensed console games, (2) modified their strategy to focus on the Debtors' premium core franchises and to expand digital revenues, and (3) implemented a comprehensive operational restructuring plan across all business segments designed to simplify and rationalize its cost structure and reposition the Debtors to focus on growth in emerging segments.

32. In June of 2012, the Debtors hired Jason Rubin as President and Jason Kay as Chief Strategy Officer. Prior to joining the Debtors, Jason Rubin co-founded Naughty Dog, the developer of *Crash Bandicoot* and *Jak and Daxter* franchises. While Jason Rubin was at Naughty Dog, its games sold more than 40 million units, grossing over \$1 billion. In 2004, Mr. Rubin co-founded Flektor, a media mash-up company. Jason Kay co-founded Flektor with Jason Rubin. Prior to co-founding Flektor, Mr. Kay had more than 15 years of experience in the media and technology industry, including extensive experience at Activision, HBO, and News Corporation. The Debtors have also begun to bring in additional key personnel.

33. During calendar year 2012, all corporate functions were realigned to the Debtor's new strategy and revenue expectations. As of December of 2011, the Debtors and their non-debtor subsidiaries employed approximately 1,400 individuals. By June of 2012, they had reduced their combined workforce to fewer than 850 employees. As part of the Debtors' transition, the Debtors have begun the process of winding down European Subsidiaries in Spain, Italy, Japan, Australia, and Korea, each of which previously distributed the Debtors' products in these jurisdictions.

E. Pre-Petition Marketing Process

34. Prior to the Petition Date, THQ engaged Centerview Partners LLC (“**Centerview**”) to assist it in evaluating strategic and financial alternatives to improve liquidity and to help address the amount owing on the Notes.⁶ The efforts of the Debtors and Centerview to raise new capital are described at length in the Sale Motion and the *Declaration of Sam Greene in support of Emergency Sale Motion and Financing Motion* (the “**Greene Declaration**”) filed concurrently herewith.

35. As a result of these efforts, in October 2012, Clearlake Capital Group, L.P. (“**Clearlake**”) submitted to THQI a non-binding initial indication of interest regarding a potential financing by Clearlake of THQI. Based on the subsequent events and further negotiations the proposed financing transaction evolved into an asset sale proposal. Clearlake and the Debtors entered into the Asset Purchase Agreement on December 19, 2012, shortly before the commencement of the Debtors’ chapter 11 cases. The Asset Purchase Agreement provides that Clearlake will serve as a stalking horse bidder and provides for an orderly, though expedited, auction process at which other parties can submit competing proposals.

36. Wells Fargo and Clearlake have agreed to provide debtor in possession financing on the terms set forth in this Financing Motion.

F. DIP Financing and Cash Collateral Background

37. The Debtors are unable to continue their business operations absent debtor in possession financing. The Debtors’ cash collections consist primarily of collection of accounts receivable from customers, which accounts receivable are part of the Prepetition

⁶ The Debtors had previously employed Citibank to raise additional capital and Houlihan Lokey to renegotiate the terms and maturity of company’s Unsecured Notes. The efforts of Citibank were not successful, and the Houlihan relationship was terminated by the Company in July 2012. The Centerview marketing process, coupled with the prior efforts by the Debtors working with Citibank, have thoroughly and fairly tested the market.

Lender's collateral. Wells Fargo objects to the Debtors' use of that cash collateral for any purpose other than paying down the Pre-Petition Debt owed to it. Even if the Debtors obtained the right to use such cash collateral to fund their operations, their projected cash receipts are insufficient to pay the Debtors' projected operating expenses. Accordingly, the Debtors need debtor in possession financing if they are to continue operating long enough to complete a sale as a going concern.

38. The DIP Credit Facility will be comprised of (1) an asset based revolving credit facility providing for up to \$27.5 million aggregate principal amount of revolving loans and other financial accommodations, the provision of which will be governed by a borrowing base formula consistent with the pre-petition credit facility provided by the Prepetition Lender, plus up to \$10 million of over-advances and (2) a term loan facility providing a \$10.0 million term loan, the proceeds of which will be applied to reduce the Debtor's prepetition debts to the Prepetition Lender thereby inducing creating additional availability under the revolving facility established by the DIP Credit Facility. The Prepetition Lender will be the sole lender under the asset based revolving credit facility and Clearlake will be the sole lender under the term loan facility. The Prepetition Lender will make periodic advances pursuant to the terms and conditions of the DIP Credit Facility Loan Documents and the Interim Financing Order (and later the Final Financing Order). The DIP Credit Facility will be secured by a first-priority lien on most of the Debtors' assets (but excluding Avoidance Actions,⁷ which are defined to exclude causes of action under Bankruptcy Code § 549), subject to the Carve-Out, and the DIP Lender will receive a superpriority administrative expense claim for any unpaid obligations under the DIP Credit Facility, subject to the Carve-Out. The DIP Credit Facility will bear interest at two

⁷ The DIP Lenders may seek a lien on avoidance actions at the final hearing, but the Debtors are not seeking the grant of such a lien at the interim hearing and will work with the DIP Lenders and any Committee appointed in these cases to address this issue prior to the final hearing.

different rates. The revolving credit facility component of the DIP Credit Facility will bear interest at the Debtors' option at a per annum rate equal to either LIBOR plus 400 basis points or the Prepetition Lenders' Base Rate plus 250 basis points. The term loan facility component of the DIP Credit Facility will bear interest at a per annum rate equal to 15.0%, all paid-in-kind. The DIP Credit Facility is due on January 18, 2013, unless otherwise extended or shortened under certain circumstances.

39. The proceeds of accounts receivable and any proceeds from the sale of inventory, all constitute "cash collateral" of the Prepetition Lender, as defined in Bankruptcy Code § 363(b). The cash collateral secures the Prepetition Lender's Pre-Petition Debt. Under the proposed DIP Credit Facility, all cash proceeds that are received from the Pre-Petition Collateral will be paid to Wells Fargo to be applied to the Pre-Petition Debt. This will adequately protect the interests of the Prepetition Lender. The Prepetition Lender will advance new administrative credit against new accounts receivable and inventory, together with the value of the Debtor's intellectual property, based on the Debtors' Approved Budget (as defined in the DIP Credit Facility).

40. The proceeds of the DIP Credit Facility (other than proceeds under the term loan facility) will be used to operate the Debtors' business. The proposed DIP Facility increases the availability above the existing borrowing basis formula by \$10 million, through the application of the term loan proceeds as described above. Even with this additional liquidity the Debtors are projected to exhaust their liquidity by January 18, 2013. The Debtors' normal business cycle includes periods of negative cash flow, while the Debtors are developing and marketing a game prior to its actual release date, followed by periods of very positive cash flow after the release of a new game. The Debtors are not scheduled to release any new games until

March, 2013 and they will require additional cash to pay current operating expenses from the Petition Date through the release of their next game. The Debtors had anticipated that at least part of the cash required to address the negative cash flow during the current development cycle would be received from the European Subsidiaries. The reaction of the European subsidiaries to Wells Fargo's declaration of default and short term forbearance agreement generated a much larger and more immediate cash short fall than had been projected. The Debtors' current projections demonstrate that the \$10 million term loan to be provided by the DIP Credit Facility will fund operations through January 18, 2013, but not beyond that date.

DIP CREDIT FACILITY

41. Pursuant to Bankruptcy Rule 4001, the Debtors set forth significant elements of the DIP Credit Facility to be provided under the Credit Agreement (Debtor in Possession) dated as of December 19, 2012 (the “**DIP Credit Agreement**”), as follows:⁸

Material Provision	Brief Summary
Borrowers	THQI.
Guarantors	THQ Phoenix, THQ Wireless, Volition, and Vigil
DIP Lender	Wells Fargo Capital Finance, LLC and Clearlake Capital, LLC
Interest Rate	Interest on the revolving credit component of the DIP Credit Facility will be payable in cash at a per annum rate equal to LIBOR plus 400 basis points or Base Rate plus 250 basis points. Interest on the term loan component of the DIP Credit Facility will be payable-in-kind at a per annum rate equal to 15.0%.
Fees And Expenses	Commitment fee of 1.5% of the revolver commitment (\$27.5 million) plus 2.5% of the term loan (\$10 million), and a .5% per annum of the unused line fee; and certain expense reimbursements.

⁸ This summary is provided in accordance with Bankruptcy Rule 4001(c)(1)(B) and Local Rule 4001-2. For a complete description of the terms and conditions of the DIP Credit Facility, reference should be made to the DIP Credit Agreement and the Interim Financing Order. The summary herein is qualified in its entirety by reference to such documents and such order. Interested parties are strongly encouraged to read the operative documents and such order. This is a summary only – the terms of the DIP Credit Agreement and the Interim Financing Order, as applicable, shall control in all respects.

Material Provision	Brief Summary
Maturity	January 18, 2013, subject to shortening as a result of the occurrence of any Event of Default
Liens, Collateral, And Priority Bankruptcy Rule 4001(c)(1)(B)(i), (vii) & (xi)	<p>Subject to the Carve-Out, DIP Lenders will receive a fully perfected, first-priority security interest in and lien on all pre-petition and post-petition assets of each Debtor (the “<u>Collateral</u>”), other than the Avoidance Actions (as defined in the DIP Credit Agreement, which excludes from the definition causes of action arising under Bankruptcy Code § 549, which will be included in the Collateral). The DIP Lender’s security interests shall be senior to the liens and security interests of the Prepetition Lender. “<u>Collateral</u>” shall also include any and all proceeds, rents, issues, products, offspring, and profits generated by any item of Collateral. A super-priority administrative expense claim (the “<u>Superpriority Claim</u>”) over all other costs and expenses of administration, subject to the Carve-Out. 11 U.S.C. § 364(c)(1).</p> <p>The obligations of the Debtors under the DIP Credit Facility shall be joint and several. All the above-described pledges, security interests, and mortgages shall be deemed created and fully perfected and effective upon entry of the Interim Financing Order (and later the Final Financing Order), without the need for any additional documentation.</p>
Events of Default	Section 8 of the Credit Agreement sets forth the events of default, including failure to comply with the approved budget and failure to pay the balance due
Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	The automatic stay is terminated effective immediately if there is a declaration of an event of default under the DIP Credit Facility after 5 days notice the Debtors, the Committee and the United States Trustee. See Interim Order at ¶ 30.
Limitation On Use Of Proceeds Bankruptcy Rule 4001(c)(1)(B)(viii)	Paragraph 19 of the Interim Order allows the Committee to use of \$50,000 to investigate claims against Wells Fargo. No collateral or loan proceeds can be used to prosecute any such claims.
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	Each Debtor shall indemnify and hold harmless, and provide limitations of liability to the DIP Lender and Clearlake, and their representatives and affiliates, subject to customary limitations for gross negligence and willful misconduct.

42. In accordance with Local Rule 4001-2(a)(i), the following provisions of the DIP Credit Agreement are highlighted below:

- a. ***Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors.***

There is no cross-collateralization.

- b. ***Provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order and the Creditors' Committee, if formed, at least sixty (60) days from the date of its formation to investigate such matters.***

The recitals in paragraphs E(1), E(2), E(5), E(7), E(8), E(9), E(10) and E(11) of the proposed Interim Order provide stipulations by the Debtors to the validity and priority of Wells Fargo's liens securing the Pre-Petition Debt and the amount of the Pre-Petition Debt. Paragraph 33 provides that these stipulations shall be binding on the Debtors' estates and all parties in interest, including, without limitation, all Committees, unless (a) any Committee, or another party in interest (other than the Debtor) with standing and requisite authority, commences a contested matter or adversary proceeding (subject to the limitations set forth in paragraph 19 hereof) (a "**Challenge**") challenging the amount, validity or enforceability of the Prepetition Debt, or the perfection or priority of the Prepetition Liens, no later than the earlier of the date that is (i) seventy-five (75) days after the Commencement Date or (ii) sixty (60) days after the appointment of any Committee, and (b) to the extent the Court rules in favor of the plaintiff in any such timely and properly filed Challenge.

- c. ***Provisions that waive rights of the Debtors' estates under section 506(c).***

There is no waiver of the provisions of section 506(c) prior to the Final Hearing. Upon the entry of a Final Order, the Debtors will waive any surcharge claim under sections 105, 326, 327, 330, 331, 503(b), 506(c), 507(a) or the "equity exception" in section 552(b), section 726 of the Bankruptcy Code or otherwise for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by collateral.

- d. ***Provisions that immediately grant prepetition secured creditors liens on the Debtors' claims and causes of action arising under sections 544, 547, 548, and 549 of the Bankruptcy Code.***

A lien is granted on claims arising under Bankruptcy Code § 549, but not on the other Avoidance Actions.

- e. ***Provisions that deem prepetition secured debt to be postpetition debt or prepetition loans from a prepetition secured lender used to pay part or all of that secured creditor's prepetition debt.***

The DIP Credit Facility does not provide for new borrowings to pay down the pre-petition credit facility. Cash received from collection of pre-petition accounts receivable will, however, be applied to reduce Wells Fargo's Pre-Petition Debt.

- f. ***Provisions that provide disparate treatment for the Creditors' Committee's retained professionals with respect to professional fee carve out.***

Pursuant to paragraph 18 of the Interim Order, each professional employed by the Debtors and the Committee will be entitled to the same Carve-Out protections up to the amount set forth in the budget for that professional

- g. ***Provisions that prime any secured lien absent consent of the affected lienor.***

The lien securing the DIP Credit Facility will prime Wells Fargo's pre-petition liens, but Wells Fargo has consented to this priority.

43. The provisions of the DIP Credit Agreement and the Interim Financing Order were extensively negotiated and the most favorable that the Debtors were able to negotiate. The DIP Credit Agreement enables the Debtors to obtain the financing necessary to maintain their operations, pursue reorganization, and maximize the value of their estates.

AUTHORIZATION TO USE CASH COLLATERAL

44. By this Financing Motion, the Debtors seek to turn over to Wells Fargo 100% of all Cash Collateral on an interim and final basis to be applied against Wells Fargo's Pre-Petition Debt, without prejudice to the right to seek to recover such payments under the Challenge Provisions (as defined below). During the interim period and subject to this Court

entering the Interim Financing Order, the Debtors will operate using the funds provided by the interim DIP Credit Facility.

RELIEF REQUESTED

45. By this Financing Motion, the Debtors request entry of the Interim Financing Order and the Final Financing Order: (1) authorizing the Debtors (a) to obtain interim postpetition financing pursuant to the terms and conditions of the DIP Credit Agreement in the amount of up to \$6.5 million, and (b) to turn over all cash collateral arising from the collection of Pre-Petition Collateral to Wells Fargo and (2) scheduling, and establishing deadlines relating to a final hearing and order authorizing the Debtors to obtain postpetition financing and continuing turn over of cash collateral.

BASIS FOR RELIEF REQUESTED

A. Approving the DIP Credit Agreement Is Appropriate Under Section 364 of the Bankruptcy Code.

46. The Debtors are authorized to operate their businesses under Bankruptcy Code section 1108. As part of that operation, the debtor in possession may incur unsecured debt in the ordinary course of business. 11 U.S.C. § 364(a). The Bankruptcy Code offers a debtor in possession additional flexibility to the extent it needs additional credit, but cannot obtain such credit on unsecured terms. Bankruptcy Code section 364 provides a progression of various protections to induce a postpetition lender to extend credit to a debtor in possession.

47. The business necessity for obtaining the DIP Credit Facility has been fully described above. The Debtors will not have the cash needed to pay their current operating expenses absent the DIP Credit Facility. Even if the Debtors could obtain this Court's authorization to use every dollar of cash collateral generated from the Debtors' assets, this cash would be insufficient to fund current operating expenses from now until March 2013, when the

Debtors are scheduled to release their next game. Over the next month the Debtors' current operating expenses will exceed their cash collections. They can operate only with new financing.

48. Wells Fargo and Clearlake have combined to propose the needed financing. Wells Fargo is willing to continue advancing on the same borrowing base formula that it advanced under the Prepetition Credit Facility, so long as the Debtors agree to the terms of the proposed DIP Credit Facility and agree to apply the collections form Prepetition Collateral to the Prepetition Debt.

49. As a condition to extending the amount of credit that the Debtors need, the proposed DIP Lender, requires the protections contained in Subsections 364 of the Bankruptcy Code, which the facts in these cases support. The DIP Credit Agreement provides for a first-priority, valid, perfected, and non-avoidable security interest in and lien on most of the Debtors' assets to secure the obligations under the DIP Credit Facility, subject to the Carve-Out. The lien will not attach to Avoidance Actions, but Avoidance Actions are defined to exclude causes of action under Bankruptcy Code § 549, so the lien will attach to actions under Section 549, but not actions under Sections 544, 545, 547 or 548.

50. Bankruptcy Code section 364 does not impose upon a debtor in possession the onerous duty to seek credit from every possible lender before concluding that such credit is not available. See Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co., Inc.), 789 F.2d 1085, 1088 (4th Cir. 1986). This is true especially when time is of the essence. See e.g., id.; In re Reading Tube Indus., 72 B.R. 329, 333 (Bankr. E.D. Pa. 1987); In re Stacy Farms, 78 B.R. 494, 498 (Bankr. S.D. Ohio 1987). Here, the Debtors have obtained post-petition financing from the most likely sources, Wells Fargo and Clearlake, and they demanded a priming lien to

secure the DIP Credit Facility. That lien primes the Prepetition Lender Debt of Wells Fargo, which does not object to such priming.⁹

51. The arrangement with Wells Fargo and Clearlake provides the funding needed to get to a sale of substantially all of the Debtors' operating assets. Without the DIP Credit Facility the Debtors would be required to terminate operations, which would destroy the going concern value of the Debtors' operations. Courts and commentators agree that the need to protect collateral against sharp declines in value is a crucial factor to consider in making the "adequate protection" determination. See, e.g., Norton, et al., 2 Norton Bankruptcy Law and Practice 2d, § 38:7, p.38-17 (1994) (addressing the § 364(d)(2) determination, "Factors influencing a court's decision will be the viability of the debtor's business and the need to protect assets against a sharp decline in value"; Snowshoe, 789 F.2d at 1087 (§ 364(d) order affirmed on appeal where "the trustee reported that the resort [the collateral] would lose from 50% to 90% of its fair market value if it ceased operations"); 495 Central Park Ave., 136 B.R. at 631 (funds from lender given "priming" lien used to improve collateral is transferred into value. "This value will serve as adequate protection. . . ."); In re Hubbard Power & Light, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996); In re Devlin, 185 B.R. 376, 378 (Bankr. M.D. Fla. 1995) (chapter 11 debtor-motel operator authorized to incur debt with superpriority status to replace air-conditioning unit, boiler, and hot water heaters because such expenses were necessary to preserve value and maintain operations).

⁹ The Debtors also sought debtor in possession financing proposals from (1) Wells Fargo, without a participation by Clearlake, (2) the Noteholders, and (3) other lending sources that reached out to the Debtors or Centerview. Wells Fargo was unwilling to provide the required term loan component of the DIP Credit Facility. The Noteholders indicated that they might be willing to provide debtor in possession financing, but they did not offer to fund enough cash to preserve the Debtors' going concern operations. They proposed to lend the Debtors only enough to pay for a cessation of operations an immediate liquidation. In the end the Noteholders did not make a concrete binding financing proposal. The only proposal received from a third

52. The only party with a right to adequate protection in these Chapter 11 Cases is Wells Fargo, and it has consented to the priming lien to preserve the going concern value of its Prepetition Collateral.

B. Approval of the DIP Credit Facility Is Supported by the Exercise of Sound Business Judgment.

53. Generally, courts give broad deference to business decisions of a debtor in possession. See, e.g., Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, a bankruptcy court generally will respect a debtor in possession's business judgment regarding the need for and the proposed use of funds. As the court noted in In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y 1990):

A court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party in interest.

54. The power of the debtor in possession to incur secured debt follows necessarily from the general power of the debtor in possession to operate its business in the exercise of its business judgment. 11 U.S.C. § 1108. Without the ability to incur secured debt, the debtor in possession would be placed at a competitive disadvantage and its efforts to reorganize could be seriously impaired.

55. In the present case, the Debtors' decision to obtain the DIP Credit Facility represents an exercise of sound business judgment in the continued effort to maximize the value of their operating business. Without such credit the Debtors would be unable to operate and the value of their business as a going concern would be destroyed.

C. The Court Should Authorize the Turn Over of Cash Collateral to Be Applied to Wells Fargo's Pre-Petition Debt.

56. A debtor's use of estate property is governed by Bankruptcy Code section 363. Section 363(c)(2) of the Bankruptcy Code permits a debtor to use, sell, or lease cash collateral only if the entity with an interest in the cash collateral consents or the Court authorizes such use. 11 U.S.C. § 363(c)(1)-(2). As a condition to providing new advances based on new accounts receivable, Wells Fargo has required the Debtors to turn over to Wells Fargo the Cash Collateral.

57. The turnover of cash collateral is without prejudice to the rights of the Committee to seek to recover such transfers if the Committee successfully challenges the validity of Wells Fargo's prepetition liens on the Debtors' assets. The Debtors agree not to prosecute such objections but preserve the right of the Committee to do so, as described in Paragraph 44(b), above. These provisions are consistent with Local Rule 4001-2.

58. The alternative to the DIP Credit Facility, with its \$10 million in additional capacity, would be an immediate cessation of operations and liquidation, which would destroy the going concern value that would otherwise be available to pay creditors. The Debtors' continued operation of their business pending the proposed sale, will preserve the value of the Collateral and maximize the recovery by other creditors. See Snowshoe, 789 F.2d at 1087 (bankruptcy court's approval of Bankruptcy Code section 364(d) priming loan affirmed on appeal where "the trustee reported that the resort [the collateral] would lose from 50% to 90% of its fair market value if it ceased operations"). The Debtors should have a reasonable opportunity to preserve their operations pending the proposed sale to Clearlake or successful overbidder.

**REQUEST FOR IMMEDIATE RELIEF AND WAIVER
OF STAY TO AVOID IMMEDIATE AND IRREPARABLE HARM**

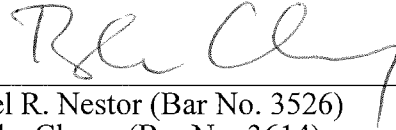
59. By this Financing Motion, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). For the reasons set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h).

NOTICE

60. Notice of this Financing Motion has been given to the following parties: (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; (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; and (f) the Securities and Exchange Commission. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully move the Court for entry of an order in the form of the Interim Financing Order (and later the Final Financing Order) and to provide such other and further relief as this Court deems just and necessary.

Dated: Wilmington, Delaware
December 19, 2012



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*Proposed Counsel for the
Debtors and Debtors in Possession*

EXHIBIT B

Interim Order

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

In re:)	
)	Case No. 12-13398 (___)
THQ INC.,)	Chapter 11
Debtor.)	RE: Docket No. ___
)	
)	

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN
POSTPETITION SENIOR SECURED SUPERPRIORITY FINANCING
PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e) AND
507 AND (B) UTILIZE CASH COLLATERAL OF CERTAIN PREPETITION SECURED
PARTIES, (II) AUTHORIZING THE REPAYMENT IN FULL OF AMOUNTS OWED
UNDER THE PREPETITION SENIOR SECURED REVOLVING CREDIT FACILITY,
(III) GRANTING PRIMING LIENS, PRIORITY LIENS AND SUPERPRIORITY
CLAIMS TO THE DIP LENDERS, (IV) GRANTING ADEQUATE PROTECTION
TO CERTAIN PREPETITION SECURED PARTIES, (V) SCHEDULING A FINAL
HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c) AND
(VI) GRANTING RELATED RELIEF**

Upon the motion dated December 19, 2012 (the "Motion") of THQ Inc. (the "Debtor") in the above-referenced chapter 11 case (the "Case"), for entry of an interim order (this "Interim Order") and a final order ("Final Order"), under sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and Rule 4001-2 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), seeking, *inter alia*:

- (i) authorization for the Debtor to obtain senior secured postpetition financing in an aggregate principal amount not to exceed \$34,500,000 (the "DIP Credit Facility"), pursuant to section 364 of the Bankruptcy Code, and authorization for the Debtor's existing and subsequently acquired or formed direct and indirect domestic subsidiaries (collectively, the "Guarantors") to guarantee unconditionally, on a joint and several basis, the

Debtor's obligations under the DIP Credit Facility, from Wells Fargo Capital Finance, LLC ("WFCF"), for itself as a DIP Lender (as defined below), and as administrative agent and collateral agent for itself and certain other financial institutions (in such capacities, the "DIP Agent"), Clearlake Capital Group, L.P. ("Clearlake") and the other lenders from time to time parties thereto (individually each a "DIP Lender" and (collectively with WFCF, and Clearlake, the "DIP Lenders"), pursuant to the terms of this Interim Order, a Final Order and that certain Credit Agreement (Debtor-in-Possession), by and among, *inter alia*, the Debtor, the Guarantors, the DIP Agent and the DIP Lenders, in substantially the form attached hereto as Exhibit A (as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and this Interim Order, the "DIP Credit Agreement"), and any related documents required to be delivered by or in connection with the DIP Credit Agreement (collectively, the "DIP Credit Documents");

(ii) authorization for the Debtor to execute and enter into the DIP Credit Documents and to perform such other and further acts as may be required in connection with the DIP Credit Documents;

(iii) authorization for the Debtor to grant security interests, liens and superpriority claims (including a superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) to the DIP Agent, for the benefit of itself and the DIP Lenders, to secure the repayment of all obligations of the Debtor under and with respect to the DIP Credit Facility;

(iv) authorization for the Debtor's use of cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code) (as so defined, "Cash Collateral" (which includes all cash on hand held by the Debtor as of the Commencement Date)), on the terms and conditions set forth in this Interim Order, and in the DIP Credit Agreement;

(v) adequate protection of the liens and security interests (such liens and security interests, the "Prepetition Liens") of the lenders (such lenders in such capacities, the

“Prepetition Lenders”) under that certain Credit Agreement, dated as of September 23, 2011 (as amended, restated, supplemented or otherwise modified from time to time, the “Prepetition Credit Agreement”), among the Debtor, certain other persons designated as “Loan Parties” thereunder, the Prepetition Lenders and WFCF as agent (in such capacity, the “Prepetition Agent”) and as a Prepetition Lender, which Prepetition Liens are being primed by the liens securing the repayment of the DIP Credit Facility, in accordance with this Interim Order;

(vi) authorization for the Debtor to use a portion of the proceeds from the DIP Credit Facility upon entry of this Interim Order, (a) if necessary, to repay or provide cash collateral for the repayment of the Debtor’s and/or the Guarantors’ obligations under or with respect to letters of credit issued and outstanding on the Commencement Date (as defined hereinafter) under the Prepetition Credit Agreement (the “Prepetition Letters of Credit”) in an amount equal to 105% of the face amount of such Prepetition Letters of Credit (the “Prepetition Letter of Credit Obligations”), (b) to pay and reimburse the Prepetition Agent (including, without limitation, in its capacity as “Collateral Agent” under that certain Security Agreement, dated as of September 23, 2011, and entered into by and among the Prepetition Agent, for the benefit of itself and the Prepetition Lenders, Debtor and each other party signatory thereto (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Prepetition Security Agreement”) for unpaid fees, costs and expenses incurred by the Prepetition Agent under the Prepetition Credit Agreement and/or the Prepetition Security Agreement, whether incurred prior or subsequent to the Commencement Date, at the time and in the manner due under the Prepetition Credit Agreement or the Prepetition Security Agreement, as applicable, and to pay the Prepetition Agent for such indemnification rights or claims that it has or may have under the Prepetition Credit Agreement and/or the Prepetition Security Agreement, whether incurred prior or subsequent to the Commencement Date, at the time and in the manner due under the Prepetition Credit Agreement or the Prepetition Security Agreement, as applicable (all such fees, costs, expenses and indemnification rights or claims of the

Prepetition Agent, the “Prepetition Agreement Expenses”) and (c) such other uses as are approved under this Interim Order;

(vii) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the Debtor, the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Lenders to implement the terms of this Interim Order;

(viii) an emergency interim hearing (the “Interim Hearing”) on the Motion for the Court to consider entry of this Interim Order, which authorizes the Debtor to borrow or obtain letters of credit under the DIP Credit Documents, on an interim basis, up to an aggregate principal or face amount not to exceed \$____,000,000;

(ix) the scheduling of a final hearing (the “Final Hearing”) on the Motion no later than January __, 2013, to consider entry of a Final Order authorizing the borrowings and letter of credit issuances under the DIP Credit Documents on a final basis and approval of notice procedures with respect thereto; and

(x) the granting of certain related relief.

The Interim Hearing having been held by this Court on December __, 2012; and the Court having considered the Motion and all pleadings related thereto, including the record made at the Interim Hearing; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:¹

A. On December 19, 2012 (the “Commencement Date”), Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is

¹ The findings and conclusions set forth in this Interim Order constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

continuing to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The Debtor has provided notice of the Motion and the Interim Hearing by facsimile, electronic mail or overnight mail to: (i) the United States Trustee for Region 3, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane M. Leamy, Esq.; (ii) the Internal Revenue Service, Centralized Insolvency Operations, 11601 Roosevelt Boulevard, Mail Drop N781, Philadelphia, Pennsylvania 19255; (iii) all relevant state and local taxing authorities; (iv) the United States Attorney General, US Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530; (v) the Securities Exchange Commission, Attn: Michael Berman, General Counsel, 100 F Street NE, Washington, DC 20549; (vi) the parties listed in the consolidated list of forty (40) largest unsecured creditors filed by the Debtor in the Case (collectively, the "Top 40 Creditors"); (vii) counsel to WFCF, the DIP Agent and the Prepetition Agent, Buchalter Nemer, 1000 Wilshire Boulevard, Suite 1500, Los Angeles, California 90017, Attn: William Brody, and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: John Knight; (viii) counsel to Clearlake, DLA Piper LLP (US) at (a) 1251 Avenue of the Americas, New York, New York 10020, Attn: Gregg M. Galardi and (b) 203 North LaSalle Street, Suite 1900, Chicago, IL 60601, Attn: Matt Murphy; (ix) all entities known or reasonably believed to have asserted a security interest or lien against the Debtor; and (x) all parties having filed requests for notice in the Case ((i) through (x), collectively, the "Notice Parties"). Given the nature of the relief sought in the Motion, the Court concludes that no further notice is necessary for entry of this Interim Order.

D. No official committee of unsecured creditors (upon the appointment thereof, the “Committee”), as provided for under section 1102 of the Bankruptcy Code, has been appointed in the Case as of the date of the Interim Hearing.

E. Subject to paragraph 33 below, the Debtor hereby admits, stipulates and agrees that:

(1) Pursuant to the Prepetition Credit Agreement, the Prepetition Lenders agreed to extend a revolving credit facility to, and issue letters of credit for, the Debtor from time to time, including, *inter alia*, advances, loans and other financial accommodations in an aggregate principal committed amount of up to \$50,000,000 (the “Prepetition Revolving Loans”). The Prepetition Credit Agreement, along with any other agreements, instruments, notes, guaranties and other documents executed in connection therewith, in each case as the same may be amended, modified and/or supplemented from time to time in accordance with the terms thereof, are collectively referred to herein as the “Prepetition Credit Documents” and are available upon request from counsel to the Debtor or counsel to the Prepetition Agent. All obligations of the Debtor arising under the Prepetition Credit Agreement or any other Prepetition Credit Document, including all loans, advances, debts, liabilities, principal, accrued or hereafter accruing interest, fees, costs, charges, expenses (including any and all attorneys’, accountants’, appraisers’ and financial advisors’ fees and expenses that are chargeable, reimbursable or otherwise payable under the Prepetition Credit Documents) and obligations for the performance of covenants, tasks or duties, or for the payment of monetary amounts owing to the Prepetition Agent or Prepetition Lenders by the Debtor, of any kind or nature, whether or not evidenced by any note, agreement or other instrument, and specifically including the Prepetition Agreement Expenses, shall hereinafter be referred to as the “Prepetition Obligations.”

(2) Pursuant to certain Prepetition Credit Documents (the “Prepetition Collateral Documents”), including the Prepetition Security Agreement), the Debtor granted to the Prepetition Agent, for the benefit of itself and the Prepetition Lenders, to secure such Debtor’s obligations under the Prepetition Credit Documents, a security interest in and

continuing lien on substantially all of such Debtor's assets, including, but not limited to, all of such Debtor's accounts, chattel paper, documents, general intangibles, goods (including, without limitation, inventory, equipment and fixtures), instruments, intellectual property (including, without limitation, trademarks, copyrights and patents), investment property, deposit accounts, money, cash or cash equivalents, supporting obligations and letter of credit rights, commercial tort claims, a pledge of one hundred percent (100%) of the capital stock of each of its domestic subsidiaries and sixty-five percent (65%) of the capital stock of each of its foreign subsidiaries, and all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing, in each case whether then owned or existing or thereafter acquired or arising. All collateral granted or pledged by the Debtor pursuant to the Prepetition Collateral Documents shall be referred to herein as the "Prepetition Collateral."

(3) All Prepetition Credit Documents executed and delivered by the Debtor to the Prepetition Agent are valid and enforceable by the Prepetition Agent and the Prepetition Lenders against the Debtor. To the extent contemplated by the Prepetition Credit Documents, the Prepetition Agent duly perfected its liens upon and security interests in the Prepetition Collateral by, among other things, filing financing statements, mortgages, U.S. copyright and patent office filings and fixture filings, entering into deposit account control agreements and, where necessary, possession of relevant instruments, certificates or other property. All of such financing statements, mortgages, copyright filings, patent filings and fixture filings were validly executed by authorized representatives of the Debtor. Pursuant to the Prepetition Credit Documents, the Prepetition Agent, for the benefit of the Prepetition Lenders, has perfected security interests in and liens on all of the Prepetition Collateral, including all Cash Collateral (as such term is defined in section 363(a) of the Bankruptcy Code), such security interests and liens being subject and junior to only those liens permitted by the Prepetition Credit Documents.

(4) The liens and security interests of the Prepetition Agent in the Prepetition Collateral, including all Cash Collateral, as security for the Prepetition Obligations, constitute valid, binding, enforceable and (to the extent contemplated by the Prepetition Credit Documents)

perfected liens and security interests and are not subject to avoidance, disallowance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (except insofar as such liens are subordinated to the DIP Liens and the Carve-Out (each term as defined hereinafter)) in accordance with the provisions of this Interim Order. The Debtor further admits, acknowledges and agrees that (a) the Prepetition Obligations constitute legal, valid and binding obligations of the Debtor, (b) no offsets, defenses or counterclaims to the Prepetition Obligations exist, and (c) no portion of the Prepetition Obligations is subject to avoidance, disallowance, reduction, objection, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

(5) The Debtor has no valid claims (as such term is defined in section 101(5) of the Bankruptcy Code) or causes of action against the Prepetition Agent or any Prepetition Lender with respect to the Prepetition Credit Agreement or any other Prepetition Credit Documents, whether arising at law or at equity, including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510, 541 or 542 through 553, inclusive, of the Bankruptcy Code.

(6) As of the Commencement Date, the Prepetition Obligations for which the Debtor was truly and justly indebted to the Prepetition Lenders, without defense, counterclaim, recoupment or offset of any kind, aggregated not less than approximately \$_____, plus all other Prepetition Obligations.

(7) The aggregate value of the Prepetition Collateral granted or pledged to the Prepetition Agent, for the benefit of itself and the Prepetition Lenders, pursuant to the Prepetition Credit Documents, and the aggregate value of the Prepetition Collateral, is equal to or greater than the aggregate amount of the Prepetition Obligations.

F. The Debtor has an immediate and critical need to obtain postpetition financing under the DIP Credit Facility and to use Cash Collateral in order to, among other reasons, finance the ordinary costs of its operations, maintain business relationships with vendors, suppliers and customers, make payroll, satisfy other working capital and operational needs, and

fund the administration and prosecution of the Case. The Debtor's access to sufficient working capital and liquidity through the incurrence of postpetition financing under the DIP Credit Facility and the use of Cash Collateral under the terms of this Interim Order is vital to the preservation and maintenance of the going concern value of the Debtor's estate, the orderly operation of the Debtor's business and, ultimately, the success of the Case. Consequently, without access to the DIP Credit Facility and the continued use of Cash Collateral, to the extent authorized pursuant to this Interim Order, the Debtor and its estate would suffer immediate and irreparable harm.

G. The Debtor is unable to obtain (i) adequate unsecured credit allowable either (a) under sections 364(b) and 503(b)(1) of the Bankruptcy Code or (b) under section 364(c)(1) of the Bankruptcy Code, (ii) adequate credit secured by (x) a senior lien on unencumbered assets of its estate under section 364(c)(2) of the Bankruptcy Code, and (y) a junior lien on encumbered assets of its estate under section 364(c)(3) of the Bankruptcy Code, or (iii) secured credit under section 364(d)(1) of the Bankruptcy Code from sources other than the DIP Agent and the DIP Lenders on terms more favorable than the terms of the DIP Credit Facility. The only available source of secured credit available to the Debtor, other than the use of Cash Collateral, is the DIP Credit Facility. The Debtor requires both financing under the DIP Credit Facility and the continued use of Cash Collateral under the terms of this Interim Order in order to satisfy its postpetition liquidity needs.

H. The DIP Agent and the DIP Lenders have indicated a willingness to provide the Debtor with certain financing commitments, but solely on the terms and conditions set forth in this Interim Order and in the DIP Credit Documents. After considering all of its alternatives, the Debtor has concluded, in an exercise of its sound business judgment, that the financing to be provided by the DIP Lenders pursuant to the terms of this Interim Order and the DIP Credit Documents represents the best financing presently available to the Debtor.

I. Solely on the terms and conditions set forth in this Interim Order and in the DIP Credit Documents, the Prepetition Agent and the Prepetition Lenders are prepared to consent to:

(i) the imposition of certain liens under section 364(d)(1) of the Bankruptcy Code in favor of the DIP Agent, for the benefit of itself and the DIP Lenders, which liens will prime the Primed Liens (as defined hereinafter) and (ii) the Debtor's use of the Prepetition Collateral (including the Cash Collateral), provided that the Court authorizes the Debtor, pursuant to sections 361, 363 and 364(d) of the Bankruptcy Code, to grant to the Prepetition Agent, for the benefit of itself and the Prepetition Lenders, as and for adequate protection, but subject only to the Carve-Out as provided in this Interim Order, (1) a replacement security interest in and lien upon the DIP Collateral (as defined hereinafter) in favor of the Prepetition Agent and the Prepetition Lenders, which shall be of equal priority with the DIP Liens (the "Replacement Lien") and (2) superpriority administrative expense claims under section 507(b) of the Bankruptcy Code (collectively, the "Adequate Protection Priority Claims"). The Replacement Lien and the Adequate Protection Priority Claims shall secure the payment of the Prepetition Obligations in an amount equal to the diminution in the value of the Prepetition Lenders' interests in the Prepetition Collateral from and after the Commencement Date including, without limitation, any such diminution resulting from: (A) the use by the Debtor of such collateral and cash constituting proceeds of such collateral, (B) the imposition of those liens granted to the DIP Lenders which will prime the Primed Liens, (C) the Carve-Out, (D) the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, and/or (E) any other reason (the "Adequate Protection Obligations"). As additional adequate protection, the Prepetition Agent shall be entitled to the ongoing payment of the Prepetition Agreement Expenses, including, but not limited to, the fees and expenses of legal counsel and other professionals retained by the Prepetition Agent, as and when due and payable under the Prepetition Credit Documents (without giving effect to any acceleration provision therein).

J. The consent of the Prepetition Agent and the Prepetition Lenders to the priming of their liens by the DIP Liens is limited to the DIP Credit Facility presently before the Court, with WFCF as DIP Agent, and shall not extend to any other postpetition financing or to any modified version of the DIP Credit Facility with any party other than WFCF as DIP Agent.

Furthermore, the consent of the Prepetition Agent and the Prepetition Lenders to the priming of their liens by the DIP Liens does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Prepetition Agent and the Prepetition Lenders that their interests in the Prepetition Collateral are adequately protected pursuant to this Interim Order or otherwise.

K. The security interests and liens granted pursuant to this Interim Order to the DIP Agent, for the benefit of itself and the DIP Lenders, are appropriate under section 364(d) of the Bankruptcy Code because, among other things: (i) such security interests and liens do not impair the interests of any holder of a valid, perfected, prepetition security interest or lien in the property of the Debtor's estate; and/or (ii) the holders of such valid, perfected, prepetition security interests and liens have consented to the security interests and priming liens granted pursuant to this Interim Order to the DIP Agent for the benefit of itself and the DIP Lenders; and/or (iii) the interests of any holder of a valid, perfected, prepetition security interest or lien are otherwise adequately protected.

L. Good cause has been shown for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Rule 4001-2. In particular, the authorization granted herein for the Debtor to execute the DIP Credit Documents, to continue using Cash Collateral and to obtain interim financing, including on a priming lien basis, is necessary to avoid immediate and irreparable harm to the Debtor and its estate. Entry of this Interim Order is in the best interest of the Debtor, its estate and creditors. The terms of the DIP Credit Documents (including the Debtor's continued use of Cash Collateral) are fair and reasonable under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties and are supported by reasonably equivalent value and fair consideration.

M. The Debtor, the DIP Agent and the Prepetition Agent have negotiated the terms and conditions of the DIP Credit Documents (including the Debtor's continued use of Cash Collateral) and this Interim Order in good faith and at arm's-length, and any credit extended and loans made to the Debtor pursuant to this Interim Order shall be, and hereby are, deemed to have

been extended, issued or made, as the case may be, in “good faith” within the meaning of section 364(e) of the Bankruptcy Code.

N. The DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Lenders will request a waiver of the provisions of section 506(c) and application of certain other sections of the Bankruptcy Code in connection with the DIP Facility at the Final Hearing. This Court specifically does not approve such section 506(c) and related waivers at this time; this Court will consider the issue further at the Final Hearing.

O. Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Approval of Motion. The Motion is granted on the terms and conditions set forth in this Interim Order. Any objections or responses to the relief requested in the Motion that have not been previously resolved or withdrawn, waived or settled are hereby overruled on the merits and denied or, to the extent applicable, deferred until the Final Hearing. The rights of all parties in interest to object to entry of a Final Order are reserved. This Interim Order shall become effective immediately upon its entry. To the extent that the terms of the DIP Credit Documents differ from the terms of this Interim Order, this Interim Order shall control.

2. Authority to Enter Into DIP Credit Agreement, Authority Thereunder. The Debtor is hereby authorized to enter into the DIP Credit Documents, including the DIP Credit Agreement, and such additional documents, instruments and agreements as may be reasonably required by the DIP Agent to implement the terms or effectuate the purposes of this Interim Order. The Debtor is hereby authorized to borrow money and obtain letters of credit under the DIP Credit Agreement, on an interim basis, up to an aggregate principal or face amount not to exceed \$____,000,000 at any one time outstanding (inclusive of interest and fees, charges and expenses payable under the DIP Credit Documents) and the Guarantors are hereby authorized to guaranty such borrowings and the Debtor’s obligations with respect to such letters of credit, all

in accordance with the terms of this Interim Order, the DIP Credit Agreement and the other DIP Credit Documents.

3. Use of Cash Collateral and DIP Loans. The Debtor is hereby authorized to use the Cash Collateral and proceeds of DIP Loans (as defined hereinafter) solely in accordance with the Budget (as defined hereinafter) and the financial covenants, availability formulae and other terms and conditions set forth in the DIP Credit Agreement and this Interim Order.

4. Payment of DIP Fees and Expenses. The Debtor is hereby authorized to pay on demand all fees, expenses and other amounts payable under the terms of the DIP Credit Agreement, including, without limitation, all of the fees specified in the Fee Letter (as such term is defined in the DIP Credit Agreement), all reasonable out-of-pocket costs and expenses of the DIP Agent and the DIP Lenders in accordance with the terms of the DIP Credit Agreement (including, without limitation, the prepetition and postpetition fees and disbursements of legal counsel, financial advisors and third-party appraisers and consultants advising the DIP Agent and the DIP Lenders) (collectively, the "DIP Agreement Expenses"). None of such costs, fees and expenses shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Court; provided, however, that the DIP Agent and the DIP Lenders shall submit copies of its professional fee invoices to the Debtor, and the Debtor shall send copies of such invoices to the U.S. Trustee and any Committee within five (5) business days of their receipt thereof, and the U.S. Trustee and any Committee shall have five (5) business days from receipt thereof to object in writing to the reasonableness of such invoices; to the extent that the U.S. Trustee or any Committee so objects to any such invoices, payment of the allegedly unreasonable portion of such invoices will be subject to review by the Court; provided further, however, that such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product or any other confidential information, and the provision of such invoices shall not constitute any waiver of the

attorney-client privilege or any benefits of the attorney work product doctrine (the “DIP Agent and DIP Lenders Fee Review Procedure”). In addition, the Debtor is hereby authorized to indemnify the DIP Agent and the DIP Lenders against any liability arising in connection with the DIP Credit Documents to the extent set forth in the DIP Credit Documents. All such unpaid fees, expenses and indemnities of the DIP Agent and the DIP Lenders shall constitute DIP Obligations (as defined hereinafter) and the repayment thereof shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Interim Order and the DIP Credit Documents. To the extent the Debtor fails to reimburse any of the parties entitled to reimbursement in this paragraph for any such fees and expenses that are not subject to objection as provided herein, the applicable professionals shall be permitted to apply any amounts held in escrow or retainer (whether obtained prior to, on, or after, the Commencement Date) against such unpaid fees and expenses without the need to file any application with the Court.

5. Validity of DIP Credit Documents. Upon execution and delivery of the DIP Credit Documents, the DIP Credit Documents shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor and each other DIP Lender thereto, in accordance with the terms thereof. No obligation, payment, transfer or grant of security under the DIP Credit Documents as approved under this Interim Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

6. DIP Loans. All advances, loans, letters of credit and other financial accommodations made to or for the benefit of the Debtor on or after the Commencement Date under the DIP Credit Documents, including the Prepetition Letters of Credit which shall be and hereby are deemed re-issued under the DIP Credit Documents (collectively, the “DIP Loans”), all interest thereon and all fees, costs, expenses, indemnification obligations and other liabilities owing by the Debtor to the DIP Agent and the DIP Lenders under the DIP Credit Documents and this Interim Order shall hereinafter be referred to as the “DIP Obligations.” The DIP Loans: (a)

shall be evidenced by the books and records of the DIP Agent or the DIP Lenders; (b) shall bear interest payable at the rates set forth in the DIP Credit Agreement; (c) shall be secured in the manner specified in paragraph 14 below; (d) shall be payable in accordance with the terms of the DIP Credit Documents; and (e) shall otherwise be governed by the terms set forth in this Interim Order and the DIP Credit Documents.

7. Structure of DIP Credit Facility. The DIP Credit Facility shall be comprised of (a) a revolving credit facility (the "Revolving Credit Facility"), consisting of a senior secured revolving credit tranche of \$27,500,000, which shall include (I) a letter of credit reimbursement undertaking in the amount of \$10,000,000 with respect to letters of credit provided by an Issuing Lender or Underlying Issuer (as defined in the DIP Credit Agreement) and (II) swing line loans of up to \$5,000,000 in the aggregate provided by the DIP Agent, and (b) a term loan in the amount of \$10,000,000, to be provided in two installments of [\$4,000,000 on the closing date, \$3,000,000 on December 28, 2012, and up to \$3,000,000 on January 7, 2013]; provided, however, that the available amount of the DIP Credit Facility shall be reduced by such reserves as the DIP Agent may establish pursuant to the terms of the DIP Credit Agreement. The aggregate amount of the DIP Loans available under the DIP Revolving Credit Facility shall not exceed \$27,500,000 (the "Maximum Amount"); provided, however, that the aggregate amount of the DIP Loans available under the DIP Credit Facility from time to time prior to the Termination Date (as defined hereinafter) shall be subject to the Borrowing Base (as such term is defined in the DIP Credit Agreement) limitations, availability criteria and other terms (including in respect of a letter of credit reimbursement undertaking and swing line loans as noted above), all as set forth in the DIP Credit Agreement.

8. Continuing Payment of Prepetition Agreement Expenses. The Debtor shall use the necessary proceeds of the DIP Credit Facility to pay and reimburse the Prepetition Agent for the Prepetition Agreement Expenses as and when due under the terms of the Prepetition Credit Documents and the DIP Agent and the DIP Lenders for the DIP Agreement

Expenses as and when due under the terms of the DIP Credit Documents (subject to the DIP Agent and DIP Lenders Fee Review Procedure).

9. Other Use of DIP Loans and Cash Collateral. Subject to the terms and conditions set forth in this Interim Order and in the DIP Credit Documents, the Debtor may use the DIP Loans and the Cash Collateral, in accordance with the Budget, to: (a) pay interest, fees and expenses associated with the DIP Credit Facility, as provided in the DIP Credit Documents; (b) pay (I) the quarterly fees of the U.S. Trustee, and (II) all fees and expenses of professionals retained by the Debtor or the Committee (if any) that accrue prior to and up to the issuance of a Carve-Out Trigger Notice (as defined herein), regardless of when such fees are billed, awarded by the Bankruptcy Court or authorized to be paid, subject to the Carve-Out and the Professionals Carve-Out Cap; (c) fund any adequate assurance deposits for the Debtor's and/or the Guarantors' utility providers pursuant to section 366 of the Bankruptcy Code (collectively, the "Adequate Assurance Deposits"); and (d) fund general, ordinary course corporate purposes and working capital requirements of the Debtor and Guarantors and pay administrative expenses for goods and services received by the Debtor after the Commencement Date in the ordinary course of business (other than fees and expenses of professional persons, which fees and expenses are addressed in clause (b) above).

10. Conformity with Budget. Subject to and in accordance with the terms of the DIP Credit Agreement, the Debtor shall from time to time prepare and provide to the DIP Agent and the DIP Lenders detailed budgets, each in form and substance acceptable to the DIP Agent and the DIP Lenders, substantially in the form of the initial budget attached hereto as Exhibit B (each, as applicable, the "Budget"). The Debtor may use the proceeds of the DIP Loans and the Cash Collateral solely for the purposes and up to the amounts set forth in the Budget, subject to the permitted variances, if any, and other terms and conditions set forth in the DIP Credit Agreement and this Interim Order. Payment by the Debtor of expenses other than for the items and in the amounts (subject to permitted variances, if any) set forth in the Budget (and pursuant to the terms and conditions in the DIP Credit Agreement) shall constitute an Event of

Default (as defined hereinafter) unless the DIP Agent and the DIP Lenders consent to such non-conforming payments in writing.

11. Application of Proceeds. All proceeds of Prepetition Collateral (including Cash Collateral), collected on and after the Commencement Date, shall be applied first to pay and satisfy the Prepetition Obligations until the Prepetition Obligations are paid and satisfied in full, and then shall be applied to pay and satisfy the DIP Obligations, in the manner set forth in the DIP Credit Agreement. All proceeds of Postpetition Collateral shall be applied first to satisfy the DIP Obligations until paid in full and then shall be applied to pay and satisfy the Prepetition Obligations until paid in full. The foregoing notwithstanding, to the extent authorized by a Final Order, upon entry of such Final Order, any Prepetition Obligations outstanding as of that time shall be paid and satisfied in full by a DIP Loan deemed made under the DIP Loan Facility

12. Mandatory and Voluntary Prepayments. The Debtor shall make mandatory prepayments and may make voluntary prepayments of the DIP Loans as and when provided in, and for application in accordance with, the DIP Credit Agreement.

13. Continuation of Prepetition Liens and Prepetition Liens Securing DIP Obligations. Until (a) the Debtor and the Guarantors have indefeasibly paid in full all DIP Obligations and all Prepetition Obligations, (b) the DIP Lenders' commitments under the DIP Credit Facility have terminated, (c) all objections and challenges to (i) the liens and security interests of the Prepetition Agent (including, without limitation, liens granted for adequate protection purposes) and (ii) the Prepetition Obligations have been waived, denied or barred, and (d) all of the Debtor's admissions in paragraph E above have become binding upon its estate and all parties in interest in accordance with paragraph 33 below, all liens and security interests of the Prepetition Agent and the Prepetition Lenders (including, without limitation, liens granted for adequate protection purposes) shall remain valid and enforceable with the same continuing priority as described herein. Without limiting the foregoing, notwithstanding any payment of all or any portion of the Prepetition Obligations, the Prepetition Liens shall continue in full force and effect and shall, and shall be deemed to, secure the full and timely payment of the DIP

Obligations (separate from and in addition to the DIP Liens granted to the DIP Agent and the DIP Lenders in paragraph 14 below) until the payment in full of all of the DIP Obligations and the termination of the DIP Lenders' commitments under the DIP Credit Facility.

14. DIP Liens and DIP Collateral. As security for the full and timely payment of the DIP Obligations, the DIP Agent, for the benefit of the DIP Agent and the DIP Lenders, is hereby granted, pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code, valid, enforceable, unavoidable and fully perfected security interests in and liens and mortgages (collectively, the "DIP Liens") upon all existing and after-acquired tangible and intangible personal and real property and assets of the Debtor, including, without limitation, accounts receivable, inventory, equipment, fee and leasehold interests in real property, general intangibles (including, without limitation, trademarks, copyrights and patents), contract rights, intercompany notes, cash, deposit accounts, rights, claims and causes of action, proceeds of causes of action under section 549 of the Bankruptcy Code, commercial tort claims, one hundred percent (100%) of the outstanding equity interests in their subsidiaries that are not Foreign Subsidiaries (as defined in the DIP Credit Agreement) and sixty-six percent (66%) of the outstanding equity or other ownership interests in the Debtor's respective first-tier Foreign Subsidiaries and all products and proceeds of the foregoing (collectively, the "DIP Collateral"); provided that this Interim Order does not grant, and shall not be deemed to grant, any security interests in or liens on claims and causes of action arising solely under chapter 5 of the Bankruptcy Code and similar laws, and any proceeds thereof and property received thereby whether by judgment, settlement or otherwise (collectively, the "Avoidance Actions"; provided, however, that Avoidance Actions shall not include any claims and causes of action under section 549 of the Bankruptcy Code and any proceeds thereof and property received on account thereof whether by judgment, settlement or otherwise—all such claims, causes of action, proceeds and property shall constitute DIP Collateral). The DIP Collateral shall also include the Prepetition Collateral.

15. Priority of DIP Liens. The DIP Liens (1) shall constitute first-priority security interests in and liens upon all DIP Collateral and is not otherwise subject to any valid, perfected, enforceable and non-avoidable lien in existence as of the Commencement Date, pursuant to section 364(c)(2) of the Bankruptcy Code; (2) shall be senior to and prime (a) the Prepetition Liens, pursuant to section 364(d)(1) of the Bankruptcy Code, and (b) any and all other claims or rights against the Debtor in existence as of the Commencement Date (including, without limitation, any reclamation claims or rights), that are junior in right or priority, or otherwise subject, to the Prepetition Liens ((a) and (b) above, collectively, the “Primed Liens”), pursuant to section 364(d)(1) of the Bankruptcy Code; (3) shall be *pari passu* in priority to the Replacement Lien (the “Pari Passu Lien”) pursuant to section 364(d)(1) of the Bankruptcy Code; (4) shall be immediately junior in priority to any and all other valid, perfected, enforceable and non-avoidable liens (if any) in existence as of the Commencement Date that are senior in priority to the Prepetition Liens (collectively, the “Non-Primed Liens”), pursuant to section 364(c)(3) of the Bankruptcy Code (provided, however, that the DIP Liens shall be junior to the Non-Primed Liens only with respect to the collateral specifically and validly encumbered by any such Non-Primed Liens).

16. Automatic Effectiveness of Liens. Except as expressly set forth herein, the liens granted pursuant to this Interim Order shall not be (a) subject to any lien that is avoided and preserved for the benefit of the Debtor’s estate under section 551 of the Bankruptcy Code, or (b) subordinated to or made *pari passu* with any other lien under sections 363 and 364 of the Bankruptcy Code other than as explicitly provided herein. The DIP Liens and the Pari Passu Liens shall not be subject to challenge and shall attach and become valid, perfected, enforceable, non-avoidable and effective by operation of law as of the Commencement Date without any further action by the Debtor, the DIP Agent, the DIP Lenders, the Prepetition Agent or the Prepetition Lenders, and without the necessity of execution by the Debtor, or the filing or recordation, of any financing statements, security agreements, vehicle lien applications, mortgages, filings with the U.S. Patent and Trademark Office or the U.S. Copyright Office, or

other documents or the taking of any other actions. All DIP Collateral shall be free and clear of other liens, claims and encumbrances, except the Primed Liens, the Pari Passu Liens, the Non-Primed Liens and other permitted liens and encumbrances as provided in the DIP Credit Agreement. If the DIP Agent hereafter requests that the Debtor execute and deliver to the DIP Agent financing statements, security agreements, collateral assignments, mortgages or other instruments and documents considered by the DIP Agent to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens, the Debtor is hereby authorized to execute and deliver such financing statements, security agreements, mortgages, collateral assignments, instruments and documents, and the DIP Agent is hereby authorized to file or record such documents in its discretion, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Interim Order. With respect to (a) all unearned premiums, dividends and loss payments (collectively, the “Unearned Premiums”) related to certain insurance policies (the “Financed Policies”) financed by the Debtor through premium financing arrangements and held by a premium financing lender to secure the Debtor’s annual premiums and other obligations arising under the Financed Policies (but only to the extent that premium financing lender has a properly perfected lien against and security interest in such Unearned Premiums) and (b) the Adequate Assurance Deposits, any lien granted under this Interim Order shall not extend to such Unearned Premiums or the Adequate Assurance Deposits, but only to the Debtor’s reversionary rights, if any, in such funds.

17. DIP Lenders’ Superpriority Claims. In addition to the liens and security interests granted to the DIP Agent pursuant to this Interim Order, subject to the Carve-Out and in accordance with sections 364(c)(1), 503 and 507 of the Bankruptcy Code, all of the DIP Obligations (including, without limitation, all DIP Loans) shall constitute allowed superpriority administrative expense claims (the “DIP Superpriority Claims”) with priority over any and all administrative expenses of the Debtor, whether heretofore or hereafter incurred, of the kind specified in, or ordered pursuant to, sections 105, 326, 327, 328, 330, 331, 364, 365, 503(b), (subject to entry of a Final Order) 506(c), 507(a), 507(b), 546(c), 726, 1103, 1104, 1113, 1114 or

any other provisions of the Bankruptcy Code, which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtor, including, but not limited to, the proceeds of Avoidance Actions, and all proceeds thereof.

18. Carve Out. The DIP Collateral, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Priority Claims, the Primed Liens and the Pari Passu Liens shall be subject to the Carve-Out, unless and until the Carve-Out Reserve Fund (as defined herein) is funded in full as provided herein. For purposes of this Order, the “Carve-Out” shall mean, collectively: (a) fees pursuant to 28 U.S.C. § 1930(a)(6) and 28 U.S.C. § 156(c) (“U.S. Trustee Fees”); and (b) unpaid professional fees and expenses of the Debtor (excluding any incurred and unpaid professional fees and expenses of any of the agents or lenders payable pursuant to this Interim Order) and any Committee (collectively, the “Professionals”), incurred and accruing prior to or on the date upon which the DIP Agent issues a Carve-Out Trigger Notice, but only to the extent such unpaid fees and expenses are set forth in the Budget and are allowed by the Court and (c) unpaid Professionals’ fees and expenses incurred and accruing after the date upon which the DIP Agent issues a Carve-Out Trigger Notice, provided the unpaid fees and expenses pursuant to clauses (b) and (c) shall not exceed an aggregate amount of \$500,000 (the “Professionals’ Carve-Out Cap”) to the extent such fees and expenses are allowed by the Court (clauses (b) and (c), collectively, the “Professionals’ Carve-Out”); provided, however, that the DIP Agent shall be entitled to reduce, from time to time, the Availability (as such term is defined in the DIP Credit Agreement) under the DIP Credit Agreement by the amount of the Professionals’ Carve-Out that would exist if a Carve-Out Trigger Notice were issued at such time. Upon full satisfaction of all Prepetition Obligations and DIP Obligations, DIP Agent shall be permitted to establish a cash reserve equal to the full amount of the Carve Out secured by cash collateral or a DIP Loan in an amount equal to the Carve Out (the “Carve Out Reserve Fund”), and may assign the Carve Out and Carve Out Reserve Fund to Debtor at which point the DIP Agent and DIP Lenders shall have no further liability relating to the Carve Out. Notwithstanding the foregoing, so long as a Carve-Out Trigger Notice has not been issued, the Debtor shall be

permitted to pay fees to estate professionals and reimburse expenses incurred by estate professionals to the extent set forth in the Budget and that are allowed and payable under sections 328, 330 and 331 of the Bankruptcy Code and compensation procedures approved by the Court, as the same may be due and payable, and the same shall not reduce the Professionals' Carve-Out Cap. In any event, the DIP Agent, the DIP Lenders and the Prepetition Agent reserve the right to review and object to any fee statement, interim application or monthly application issued or filed by estate professionals. Notwithstanding any provision (including, without limitation, any "variance" or similar provision) of this Interim Order or the DIP Credit Agreement to the contrary, aggregate cumulative expenditures for restructuring professional fees of the Debtor or any Committee shall not exceed one hundred percent (100%) of the amount with respect thereto set forth in the Budget.

19. Investigation of Prepetition Liens. The Debtor shall not assert or prosecute, and no portion of the DIP Credit Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, or the Carve-Out, and no disbursements set forth in the Budget, shall be used for the payment of professional fees, disbursements, costs or expenses incurred in connection with (a) asserting or prosecuting any claims or causes of action against the Prepetition Agent, the Prepetition Lenders, the DIP Agent or the DIP Lenders, or (b) challenging or raising any defenses to the Prepetition Obligations or the DIP Obligations, or the liens of the Prepetition Agent, the Prepetition Lenders, the DIP Agent or the DIP Lenders. Notwithstanding the foregoing, (i) the Debtor shall be permitted to contest the occurrence and/or continuance of an Event of Default in accordance with the terms and conditions of this Interim Order, and (ii) no more than \$[50,000] of the proceeds of the DIP Credit Facility or the DIP Collateral may be used by any Committee to investigate the prepetition liens and claims of the Prepetition Agent and the Prepetition Lenders.

20. Cash Management System. The cash management system described in the DIP Credit Agreement (the "Cash Management System") and all accounts established in connection therewith shall be used for the purposes and on the terms and conditions set forth in

the DIP Credit Agreement and the other DIP Credit Documents. The Debtor is further authorized to enter into any additional agreements providing for the establishment of lock boxes, blocked accounts or similar arrangements in favor of the DIP Agent for purposes of facilitating cash collections from the Debtor in accordance with the terms of the DIP Credit Agreement. Except to the extent otherwise expressly set forth in the DIP Credit Agreement, the Debtor shall remit to the DIP Agent all Cash Collateral in or that comes into the Debtor's possession for application to the DIP Obligations in accordance with the terms of the DIP Credit Agreement.

21. Shared Control Between Prepetition Agent and DIP Agent; Access; Insurance. The Prepetition Agent shall immediately share dominion and control with the DIP Agent with respect to each depository account of the Debtor or other third party that was subject to a deposit account control agreement with the Prepetition Agent as of the Commencement Date, and each of such deposit account control agreements shall hereafter be enforceable by the DIP Agent against, and binding upon, each depository institution party thereto until the DIP Obligations have been paid in full in cash and the DIP Credit Agreement shall have been terminated, after which such deposit account control agreements shall again be solely enforceable by the Prepetition Agent. Nothing herein shall require the DIP Agent to assume any lease as a condition to the rights afforded to the DIP Agent in this paragraph 21. Upon entry of this Interim Order, the Prepetition Agent and the DIP Agent shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees on each insurance policy maintained by the Debtor which in any way relates to the DIP Collateral. Any insurance proceeds or other receipts from any source (excluding other authorized payments provided for herein) paid to any of the Prepetition Agent, the Prepetition Lenders, the DIP Agent or the DIP Lenders shall be immediately delivered to the Debtor and shall be subject to the DIP Liens and provisions of the DIP Credit Agreement. Upon the entry of a Final Order, notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Agent, for the ratable benefit of the DIP Lenders, contained in this Interim Order or the DIP Credit Documents, or otherwise available at law or in equity, and

subject to the terms of the DIP Credit Agreement and this Interim Order, upon reasonable prior written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing under the DIP Credit Documents, the DIP Agent may, subject to any separate agreement by and between such landlord and the Prepetition Agent and applicable non-bankruptcy law (each, a "Separate Agreement"), enter upon any leased premises of the Debtor for the purpose of exercising any remedy (in accordance with the terms of the DIP Credit Agreement and this Interim Order) with respect to the DIP Collateral located thereon and, subject to such Separate Agreement, shall be entitled to all of the Debtor's rights and privileges as lessee under such lease without interference from the landlord(s) thereunder; provided that, subject to such Separate Agreement, the DIP Agent shall only pay rent of the Debtor that first accrues after the DIP Agent's written notice referenced above and that is payable during the period of such occupancy by the DIP Agent, calculated on a per diem basis.

22. Adequate Protection for Prepetition Lenders.

A. As adequate protection for the payment of the Adequate Protection Obligations, subject to the Carve-Out, the Prepetition Agent, for the benefit of itself and the Prepetition Lenders, shall be, and hereby is, granted the Replacement Lien and the Adequate Protection Priority Claims (each as defined in paragraph I, above). With respect to adequate protection claims arising from any diminution in the value of the Prepetition Lenders' interests in the Prepetition Collateral, the Adequate Protection Priority Claims shall be equal in priority to the DIP Superpriority Claims and senior in priority to all other adequate protection claims;

B. As additional adequate protection, (i) the Prepetition Agent shall be entitled to the ongoing payment of the Prepetition Agreement Expenses, including the fees and expenses of legal counsel and other professionals retained by the Prepetition Agent, as and when due and payable under the Prepetition Credit Documents (without giving effect to any acceleration provision therein), and (ii) except for the security interests, liens, mortgages, claims and other interests granted pursuant to this Interim Order (including, without limitation, the Carve-Out), it will constitute an Event of Default if the Debtor incur or request authority to incur

additional indebtedness with claim status or with priority over the Prepetition Obligations or liens equal to or senior in priority to the Prepetition Liens; provided that the Debtor may incur liens which constitute Permitted Liens (as such term is defined in the DIP Credit Agreement).

23. 506(c) Waiver. Upon the entry of a Final Order, the Debtor (on behalf of itself and its estate) shall irrevocably waive, and shall be prohibited from asserting, any surcharge claim under sections 105, 326, 327, 330, 331, 503(b), 506(c), 507(a) or the “equity exception” in section 552(b), section 726 of the Bankruptcy Code or otherwise for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Agent, the DIP Lenders, the Prepetition Agent or the Prepetition Lenders upon, the DIP Collateral and the Prepetition Collateral. In no event shall the DIP Agent or the DIP Lenders be subject to the equitable doctrine of marshaling or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral.

24. Restrictions on Granting Post-Petition Liens. Except for the Carve-Out, Permitted Liens, liens and claims otherwise permitted pursuant in the DIP Credit Agreement or as expressly set forth in this Interim Order, it shall constitute an Event of Default if the Debtor incurs or requests authority to incur a claim or grants a lien (or a claim or lien is allowed) having a priority superior to or *pari passu* with those granted pursuant to this Interim Order to the DIP Agent and the DIP Lenders, or the Prepetition Agent and the Prepetition Lenders, respectively, at any time during which any portion of the DIP Credit Facility (or any refinancing thereof), the Revolver Commitments (as such term is defined in the DIP Credit Agreement) thereunder, the Term Loan Commitment (as such term is defined in the DIP Credit Agreement) thereunder, the DIP Obligations or the Adequate Protection Obligations remains outstanding.

25. Binding Nature of Order. The provisions of this Interim Order shall be binding upon the Debtor and its respective successors and assigns (including, without limitation, any trustee or other fiduciary hereafter elected or appointed for or on behalf of any Debtor’s estate or with respect to its property).

26. Survival of Order. The provisions of this Interim Order and any actions taken pursuant thereto (a) shall survive the entry of any order: (i) confirming any plan of reorganization in the Case; (ii) converting the Case to a case under chapter 7 of the Bankruptcy Code; or (iii) dismissing the Case; and (b) shall continue in full force and effect notwithstanding the entry of any such order, and the claims, liens and security interests granted pursuant to this Interim Order shall maintain their priority as provided by this Interim Order until all of the DIP Obligations are indefeasibly paid in full and discharged in accordance with the terms of the DIP Credit Agreement. The DIP Obligations shall not be discharged by the entry of any order confirming any plan of reorganization in the Case, and the Debtor shall, and shall be deemed to, waive any such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

27. Access to the Debtor. In accordance with the provisions of access in the DIP Credit Documents, the Debtor shall permit representatives, agents, and employees of the DIP Agent and the DIP Lenders to have reasonable access to the Debtor's premises and records during normal business hours (without unreasonable interference with the proper operation of the Debtor's business) and shall cooperate, consult with, and provide to such representatives, agents, and/or employees all such information as is reasonably requested.

28. Protection under Section 364(e) of the Bankruptcy Code. If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity of any DIP Obligations or Adequate Protection Obligations owing to the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Lenders incurred prior to the actual receipt by the DIP Agent or the Prepetition Agent, as applicable, of written notice of the effective date of such reversal, modification, vacation or stay, or (ii) the validity or enforceability of any claim, lien, security interest or priority authorized or created hereby or pursuant to the DIP Credit Documents with respect to any DIP Obligations or Adequate Protection Obligations owing to the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Lenders. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral or the incurrence of DIP

Obligations or Adequate Protection Obligations owing to the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Lenders prior to the actual receipt by the DIP Agent or the Prepetition Agent, as applicable, of written notice of the effective date of such reversal, modification, vacation or stay, shall be governed in all respects by the provisions of this Interim Order, and the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Lenders shall be entitled to all of the rights, remedies, protections and benefits granted under section 364(e) of the Bankruptcy Code, this Interim Order and the DIP Credit Documents with respect to all uses of Cash Collateral and the incurrence of DIP Obligations and Adequate Protection Obligations.

29. Events of Default. Except as otherwise provided in this Interim Order or to the extent the DIP Agent may otherwise agree in writing, any violation of any of the terms of this Interim Order or any occurrence of an “Event of Default” pursuant to section 8 of the DIP Credit Agreement shall constitute an event of default (each, an “Event of Default”).

30. Modification of Stay. The automatic stay provisions of section 362 of the Bankruptcy Code shall be automatically vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default and, in each case, after the provision by the DIP Agent to the Debtor of five (5) days’ prior written notice of such Event of Default (such five (5) day period, the “Remedies Notice Period”), which written notice shall be served by the DIP Agent via electronic mail or facsimile on the Debtor, counsel to any Committee (and in the event no Committee has been appointed to the Top 30 Creditors) and the U.S. Trustee and filed with the Bankruptcy Court by counsel to the DIP Agent, all rights and remedies provided for in the DIP Credit Documents, and to take any or all of the following actions without further order of or application to this Court: (a) immediately terminate the Debtor’s use of Cash Collateral and cease making any DIP Loans to the Debtor; (b) immediately declare all DIP Obligations to be immediately due and payable and require the Debtor to cash collateralize all Prepetition Letter of Credit Obligations and Postpetition Letter of Credit Obligations (as defined in the DIP Credit

Agreement) as provided in the DIP Credit Agreement; (c) immediately terminate the Revolver Commitments; (d) immediately set off any and all amounts in accounts maintained by the Debtor with the DIP Agent or any of the DIP Lenders against the DIP Obligations, or otherwise enforce rights against the DIP Collateral in the possession of any of the DIP Lenders for application towards the DIP Obligations; and (e) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the DIP Credit Documents or applicable law to effect the repayment of the DIP Obligations. The automatic stay under section 362(a) of the Bankruptcy Code shall be automatically vacated and modified as provided above, unless and until, during the Remedies Notice Period, the Court has determined that an Event of Default has not occurred and/or is not continuing. For the avoidance of doubt, neither the DIP Agent nor any of the DIP Lenders shall exercise any such rights and remedies on account of an Event of Default until after expiration of the Remedies Notice Period. Any party in interest's sole recourse with respect to opposing such modification of the automatic stay under section 362(a) of the Bankruptcy Code shall be to contest the occurrence and/or continuance of an Event of Default. During the Remedies Notice Period, the Debtor shall (x) have no right to use any proceeds of the DIP Facility or the Cash Collateral, or any right to request advances under the DIP Facility, other than to (i) satisfy payroll obligations in a manner consistent with the Budget, and (ii) fund the Carve-Out (but only to the extent claims giving rise to the Carve-Out are incurred during the Remedies Notice Period). The rights and remedies of the DIP Agent and the DIP Lenders specified herein are cumulative and not exclusive of any rights or remedies that the DIP Agent and the DIP Lenders may have under the DIP Credit Documents or otherwise. The Debtor shall cooperate fully with the DIP Agent and the DIP Lenders in their exercise of rights and remedies, whether against the DIP Collateral or otherwise.

31. Limitations on Borrowings. It shall constitute an Event of Default if the Debtor, the Committee or any of its members seeks authorization for the Debtor or its estate to borrow money from any person other than the DIP Lenders to the extent that the repayment of such borrowings is to be secured pursuant to section 364(d)(1) of the Bankruptcy Code by a

security interest, lien or mortgage that is senior or equal to any of the security interests, liens or mortgages held by the Prepetition Agent (for the ratable benefit of the Prepetition Lenders), including the Replacement Liens, or the security interest, liens or mortgages held by the DIP Agent, unless in connection with such borrowings the DIP Obligations, the Prepetition Agreement Expenses and any remaining Prepetition Obligations are indefeasibly paid in full in cash as a condition to the closing of such borrowings.

32. Modifications of DIP Credit Agreement and Budget. The Debtor is hereby authorized, without further order of this Court, to enter into agreements with the DIP Agent and the DIP Lenders providing for any non-material modifications to the Budget or the DIP Credit Agreement, or of any other modifications to the DIP Credit Agreement necessary to conform the DIP Credit Agreement to this Interim Order; provided, however, that the Debtor shall provide notice of any material modification or amendment to the Budget or the DIP Credit Agreement to counsel to any Committee and the U.S. Trustee, each of whom shall have five (5) days from the date of such notice within which to object in writing to such modification or amendment. If any Committee or the U.S. Trustee timely objects to any such material modification or amendment to the Budget or the DIP Credit Agreement, such modification or amendment shall only be permitted pursuant to an order of this Court.

33. Stipulations Regarding Prepetition Obligations and Prepetition Liens Binding on Parties in Interest. The stipulations and admissions contained in this Interim Order, including, without limitation, in recital paragraphs E(1), E(2), E(5), E(7), E(8), E(9), E(10) and E(11) of this Interim Order, shall be binding on the Debtor's estate and all parties in interest, including, without limitation, all Committees, unless (a) any Committee, or another party in interest (other than the Debtor) with standing and requisite authority, has timely commenced a contested matter or adversary proceeding (subject to the limitations set forth in paragraph 19 hereof) (a "Challenge") challenging the amount, validity or enforceability of the Prepetition Obligations, or the perfection or priority of the Prepetition Liens, or otherwise asserting any objections, claims or causes of action on behalf of the Debtor's estate against the Prepetition

Agent or Prepetition Lenders relating to the Prepetition Obligations or the Prepetition Liens no later than the earlier of the date that is (X) seventy-five (75) days after the Commencement Date or (Y) sixty (60) days after the appointment of any Committee, and (b) to the extent the Court rules in favor of the plaintiff in any such timely and properly filed Challenge. If no such Challenge is timely commenced as of such date then, without further order of the Court, (x) the claims, liens and security interests of the Prepetition Agent and the Prepetition Lenders shall, without further order of the Court, be deemed to be finally allowed for all purposes in the Case and any subsequent chapter 7 case and shall not be subject to challenge or objection by any party in interest as to validity, priority, amount or otherwise, and (y) without further order of the Court, the Debtor and its estate shall be deemed to have released any and all claims or causes of action against the Prepetition Agent and the Prepetition Lenders with respect to the Prepetition Credit Documents or any related transactions. Notwithstanding anything to the contrary herein, if no Challenge is timely commenced, the stipulations contained in paragraphs E(1), E(2), E(5), E(7), E(8), E(9), E(10) and E(11) of this Interim Order shall be binding on the Debtor's estate, any Committee and all parties in interest. If a Challenge is timely commenced, the stipulation contained in paragraphs E(1), E(2), E(5), E(7), E(8), E(9), E(10) and E(11) of this Interim Order shall be binding on the Debtor's estate and all parties in interest except to the extent such stipulations are specifically challenged in such Challenge as and when originally filed (ignoring any relation back principles). To the extent a Challenge is withdrawn, denied or overruled, the stipulations specifically challenged in such Challenge also shall be binding on the Debtor's estate and all parties in interest.

34. Findings of Fact and Conclusions of Law. This Interim Order constitutes findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Commencement Date immediately upon the entry thereof.

35. Termination of Commitments. The commitment of the DIP Lenders shall terminate and all amounts owing under the DIP Credit Facility shall be due and payable (and, as to letters of credit then outstanding, the Debtor shall be obligated to deposit with the DIP Agent

cash in an amount equal to 105% of the face amount of such letters of credit), on the earliest to occur of the following (the "Termination Date"): (a) January 15, 2013, (b) the effective date of a confirmed plan of reorganization in the Case, in form and substance acceptable to the DIP Agent and (in the event the exclusivity period under section 1121 of the Bankruptcy Code has not expired or been terminated) the Debtor, (c) subject to the Remedies Notice Period and other terms and conditions of this Interim Order, the Debtor's receipt of written notice (which notice may be delivered by facsimile or other electronic transmission and may be delivered to the chief financial officer of the Debtor) of the occurrence of an Event of Default hereunder or under the DIP Credit Documents and a determination by the DIP Agent or the DIP Lenders to terminate the commitments and to terminate the DIP Lenders' consent to the Debtor's and the Guarantors' use of the Cash Collateral (such notice, a "Carve-Out Trigger Notice"), (d) the date on which the Debtor consummates a Strategic Transaction (as such term is defined in the DIP Credit Agreement) acceptable in form and substance to the DIP Agent, and (e) the payment in full in cash (or, as applicable cash collateralization at 105%) of all obligations under the DIP Credit Facility and the payment in full in cash (or, as applicable cash collateralization at 105%) of all Prepetition Obligations.

36. Master Proof of Claim. The Prepetition Agent shall be authorized (but not required) to file a master proof of claim against the Debtor (the "Master Proof of Claim") on behalf of itself and the Prepetition Lenders on account of their prepetition claims arising under the Prepetition Credit Documents, and the Prepetition Agent shall not be required to file a verified statement pursuant to Bankruptcy Rule 2019. If the Prepetition Agent so files a Master Proof of Claim against the Debtor, the Prepetition Agent and each Prepetition Lender, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against the Debtor arising under the Prepetition Credit Documents, and the claims of the Prepetition Agent and each Prepetition Lender (and their respective successors and assigns) named in the Master Proof of Claim shall be allowed or disallowed as if such entity had filed a separate proof of claim in the

Case or any successor case in the amount set forth opposite each name listed in the Master Proof of Claim. The Prepetition Agent shall further be authorized to amend its respective Master Proof of Claim from time to time to, among other things, reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from any transfer of such claims. The provisions set forth in this paragraph 36 and any Master Proof of Claim filed pursuant to the terms hereof are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party in interest or their respective successors in interest, including, without limitation, the rights of the Prepetition Agent and each Prepetition Lender as the holder of a claim against the Debtor under applicable law and the numerosity requirements set forth in section 1126 of the Bankruptcy Code.

37. *Final Hearing.* The Final Hearing is scheduled for _____, 2013, at ___:00 ____m. (prevailing Eastern Time) before this Court. Any objections by creditors or other parties in interest to any provisions of this Interim Order shall be deemed waived unless timely filed and served in accordance with this paragraph 37. The Debtor shall promptly serve notice of entry of this Interim Order and the Final Hearing on the appropriate parties in interest in accordance with the Federal Rules of Bankruptcy Procedures and the Local Rules. Without limiting the foregoing, the Debtor shall promptly serve a notice of entry of this Interim Order and the Final Hearing, together with a copy of this Interim Order, by first class mail, postage prepaid, facsimile, electronic mail or overnight mail upon the Notice Parties. The notice of the entry of this Interim Order and the Final Hearing shall state that objections to the entry of a Final Order shall be filed with the United States Bankruptcy Court for the District of Delaware by no later than 5:00 p.m. (prevailing Eastern Time) on _____, 20__ (the “Objection Deadline”).

Dated: December __, 2012

UNITED STATES BANKRUPTCY JUDGE