

Introduction and Summary of Argument

1. The Debtors employ approximately 186 employees in connection with their designing, manufacturing, marketing, servicing, selling, and renting of automatic taping and finishing (“ATF”) tools throughout the United States. The employees assist with every aspect of the Debtors’ businesses. Their knowledge, expertise, and experience are essential to maintaining the value of the Debtors’ businesses for the benefit of creditors in these chapter 11 cases. Indeed, without these employees’ continued commitment to the Debtors’ business operations, the Debtors may not be able to operate their businesses or continue their efforts to reorganize their affairs. Accordingly, by this Motion, the Debtors seek authorization to pay, in their sole discretion, certain outstanding pre-petition employee compensation and benefit obligations, up to \$10,950 per employee. Specifically, pursuant to sections 105(a), 363(b), 507(a)(4), 507(a)(5) and 507(a)(8) of the Bankruptcy Code, the Debtors request entry of the Wages Order authorizing, but not directing, the Debtors to pay:

- (a) The Employees’ pre-petition accrued wages, including (i) wages, (ii) reimbursement of expenses, (iii) overtime, (iv) amounts any Debtor withheld, or is obligated to withhold, from the Employees’ pre-petition compensation for employee benefit plans, such as premiums for health, dental, life insurance and short and long-term disability insurance benefits, (v) employment related taxes that any Debtor withheld, or is obligated to withhold from the Employees’ pre-petition compensation, and (vi) any garnishment and state-law mandated child support payments that any Debtor withheld, or is obligated to withhold, from the Employees’ pre-petition compensation;
- (b) Each Debtor’s contributions to employee benefit plans that accrued pre-petition, including premiums for health, dental, life insurance and short and long-term disability benefits that such Debtor is obligated to pay; and

- (c) Each Debtor's shares of accrued pre-petition taxes related to the Employees within the meaning of section 507(a)(8)(D) of the Bankruptcy Code.

The relief requested in this Motion is essential to ensure a seamless transition into chapter 11 by maintaining employee morale and productivity and allowing the Debtors to continue their business operations in an economic and efficient manner without disruption.

Parties, Jurisdiction and Venue

2. On December 14, 2009 (the "Petition Date"), the Debtors each filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committee has been appointed or designated.

3. A description of the Debtors' businesses, the reasons for filing these chapter 11 cases and the relief sought from this Court to allow for a smooth transition into operations under chapter 11 are set forth in the Garner Declaration.

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

5. Venue is proper in this core proceeding pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

6. The Debtors are the leading designers, manufacturers, marketers and distributors of "automatic taping and finishing" ("ATF") tools used to increase productivity in interior drywall finishing. These ATF tools, invented by Ames beginning in 1939, enable interior

finishing contractors to finish drywall joints substantially faster than less productive hand finishing methods.

7. Axia is a wholly-owned subsidiary of Ames Holding, and Ames and TapeTech are wholly-owned subsidiaries of Axia. Axia manufactures the ATF tools and then either sells or rents these tools to Ames and TapeTech. Axia also provides administrative services to Ames and TapeTech, including accounting services, information technology support, marketing, human resources, and customer service, for which Ames and TapeTech pay a specified fee per month. TapeTech is engaged in the business of selling ATF tools wholesale through a network of independent tool dealers and distributors in the U.S. and internationally. These tools are purchased from Axia and sold under the brand name "TapeTech." Ames is engaged primarily in the business of renting ATF tools directly to interior finishing contractors to finish drywall joints prior to painting, wallpapering or other forms of final treatment. Ames offers these ATF tools through two avenues: (i) stores leased by Ames and (ii) franchises granted principally to drywall suppliers.

8. Prior to the Petition Date, to obtain the funds necessary to operate their respective businesses, Axia entered into that certain Amended and Restated Credit Agreement (the "Credit Agreement") dated as of April 1, 2008, with a group of lenders party thereto, pursuant to which the lenders agreed to extend certain term loans and a revolving line of credit to Axia. Ames Holding, TapeTech and Ames jointly and severally guaranteed full payment of the indebtedness owing by Axia under the Credit Agreement. To secure this indebtedness, each of the Debtors granted the lenders security interests in and liens upon all or substantially all of their personal property of every kind and nature. As of the Petition Date, the principal balance of the Debtors'

indebtedness under the Credit Agreement totaled approximately \$161,000,000. Additional details regarding the Debtors' secured obligations are set forth in the Garner Declaration.

9. The financial viability of the Debtors has been severely impacted by the dramatic decline in commercial and residential construction in the United States, particularly as a result of declines in construction in late 2007. By late 2007, a widespread and dramatic downturn in the commercial and residential markets in the United States was occurring. Commercial and residential construction levels plummeted as a result. This downturn was followed by a severe crisis in United States and global credit markets. This precipitous fall in the commercial and residential construction in the United States led to a significant decrease in the demand for and use of ATF tools and other products sold and rented by the Debtors and has, therefore, materially and adversely impacted the Debtors' revenue streams.

10. Faced with such substantially diminished revenues from sales and rentals of the ATF tools throughout the Debtors' regional markets, the Debtors were unable to generate the funds necessary to cover operating and maintenance costs, including amounts needed to service their secured indebtedness. Confronted by this rapid and dramatic decline in commercial and residential construction and the significantly reduced demand for the Debtors' products, beginning in late 2007, the Debtors pursued a number of actions to reduce fixed costs, including (i) reducing significantly the number of employees and the amount of wages and (ii) closing a number of the Ames' leased locations and negotiating lower monthly rental payments with the landlords for other Ames' locations.

11. Although through these efforts the Debtors were able to reduce their costs significantly, with insufficient revenues, quickly decreasing liquidity and no source of additional

financing, the Debtors had no realistic choice but to file the Petitions to enable them to reorganize their affairs and to preserve the value of their business operations. The Debtors hope to achieve as soft a landing as possible by attempting to manage an orderly transition to a purchaser, through a section 363 sale within the first 90 days of bankruptcy, that is willing and able to purchase substantially all the Debtors' assets. The Debtors intend to file a motion early in these chapter 11 cases to establish and seek approval of bid procedures for a sale of substantially all of their assets in cooperation with the Lenders.

Relief Requested and Basis for Relief Requested

A. The Debtors' Workforce

12. As set forth in the Garner Declaration, the Debtors currently employ approximately 186 employees (the "Employees") across approximately 76 locations in the United States. The Debtors' workforce consists of both hourly and salaried Employees. The Debtors pay approximately 125 Employees on an hourly basis and pay approximately 61 Employees on a salaried basis. All Employees are full-time Employees, and none of the Employees is covered by a collective bargaining agreement.

13. The Debtors' full-time Employees include Executives, Vice Presidents, directors, regional managers, store managers, assistant managers, field specialists, sales managers, sales support associates, repair/production technicians, engineers and other corporate office employees. Exempt employees include: Executives, Vice Presidents, Directors, Dept. Managers, Engineers, IT staff, Sales Account Managers, Field Specialists, Regional Managers and others who meet the FLSA definition of "exempt." Employees not meeting the FLSA exempt criteria are paid on an hourly basis.

14. The Debtors' gross average payroll for all Employees is approximately \$854,000 per month. Less than 10% of the Debtors' average monthly payroll costs represent compensation paid to "Senior Executives."² There are six individuals that are owed pre-petition compensation by the Debtors in excess of the \$10,950 per employee priority claim limit imposed by section 507(a)(4) of the Bankruptcy Code. However, the Debtors are not requesting and do not propose to pay any Employee pre-petition compensation above the \$10,950 limit pursuant to this Motion.

15. Just as the Debtors depend on the Employees to operate their businesses, the Employees depend on the Debtors for their livelihood. The Employees will be exposed to significant financial difficulties if the Court does not permit the Debtors to pay fully unpaid compensation and benefits and to reimburse expenses in the normal course of business. Therefore, to maintain morale and stability in the Debtors' workforce during this critical time and to minimize the personal hardship that the Employees would suffer if pre-petition Employee-related obligations are not paid when due or as expected, the Debtors, by this Motion, seek authority, to be exercised in their sole discretion, to pay and honor certain pre-petition claims for, among other things, wages, salaries, bonuses and other compensation, federal and state withholding taxes and other amounts withheld (including garnishments, child support orders, Employees' share of insurance premiums, taxes and 401(k) contributions), health benefits, insurance benefits, vacation time, sick leave, life and accidental death and dismemberment

² Solely for the purposes of the Motion, a "Senior Executive" is defined as an employee (i) whose base compensation is equal to or in excess of \$140,000 in annual base salary and (ii) with a title of "Vice President" or higher. The Debtor estimate that, as of the Petition Date, there are approximately five (5) Senior Executives. The Debtors have only two (2) corporate officers (the "Officers"). The Officers collectively represent 2.6% of the Debtors' average monthly payroll expense.

insurance, long-term disability and short-term coverage, and all other benefits that the Debtors have historically provided in the ordinary course of business (collectively, and as more fully described below, the “Employee Wages and Benefits”), and to pay all costs incident to the foregoing. The Debtors also seek authority, to be exercised in their sole discretion, to continue to reimburse Employees for business-related expenses they incur in the ordinary course of business. In addition, the Debtors request the right to modify, change, and discontinue any of the Employee Wages and Benefits, and the policy related to reimbursable business expenses, and to implement new Employee Wages and Benefits in the ordinary course of business during these chapter 11 cases in their sole discretion without the need for further Court approval.

B. Employee Wages and Related Expenses

1. Unpaid Compensation

16. In the ordinary course of business, the Debtors pay Employees on a bi-weekly basis in arrears. The Debtors’ weekly payroll obligations generally include wages (including overtime) and salaries, as applicable, as well as bonuses awarded for sales productivity and goal attainment.

17. ADP Totalsource, Inc. (“ADP”) provides payroll administration services for the Debtors. The Debtors are parties to contracts with ADP, which provides human resources, payroll management and related services to the Debtors. ADP uses funds from a zero-balance payroll account maintained by the Debtors at Bank of America (the “Payroll Account”) to pay payroll. Once funds are debited by ADP from the Payroll Account, thereby creating a negative balance, a concentration account maintained at Bank of America by the Debtors automatically transfers the funds necessary for the payroll payment to the Payroll Account. Consistent with

past practices, but without in any way assuming any contracts with ADP, the Debtors would intend to pay pre-petition amounts authorized by the Court using ADP. On average, the Debtors have gross payroll expenses totaling \$393,000 per pay period.

18. The Debtors intend to make payments of pre-petition obligations to or for the benefit of some Employees who qualify as “insiders” under the Bankruptcy Code but only as to those insider Employees who are critical to the administration of these bankruptcy cases, including R. Andrew Garner, the current Vice President and Chief Financial Officer of the Debtors.

19. The Employees are generally paid in arrears on a bi-weekly schedule with payments disbursed on Fridays, with the first post-petition payment being due on December 18, 2009. Because the Debtors pay Employees in arrears, as of the Petition Date, the Debtors owe pre-petition wages (including overtime) for the period between December 5, 2009, and the Petition Date. As of the Petition Date, the Debtors estimate that approximately \$207,000 is due and owing to their Employees on account of accrued wages (including overtime), salaries and other compensation earned prior to the Petition Date (the “Unpaid Compensation”). Such amounts will come due in the ordinary course on December 18, 2009 (January 1, 2010, for some of the overtime wages). Consequently, the Debtors seek authority to pay up to \$207,000 in Unpaid Compensation pursuant to this Motion. The Debtors are not seeking to pay any Employee’s pre-petition claim for Unpaid Compensation and other benefits described in this Motion in excess of the \$10,950 priority claim cap under section 507(a)(4) of the Bankruptcy Code.

2. Deductions and Withholdings

20. During each applicable pay period, certain amounts are deducted from Employees' paychecks, including, without limitation, (a) garnishments, child support and similar deductions, and other pre-and after-tax deductions payable pursuant to certain of the employee benefit plans discussed in this Motion (such as an Employee's share of health care benefits and insurance premiums, contributions under flexible spending plans, 401(k) contributions, legally ordered deductions and miscellaneous deductions) (collectively, the "Non-Tax Deductions") The Debtors effect these deductions in accordance with information provided by the Employees and forward the amount of the Non-Tax Deductions to the appropriate third-party recipients. On average, approximately \$38,000 is deducted from Employees' paychecks every pay cycle, and certain of the Non-Tax Deductions may not have been included in the most recent pre-petition funding on account of those obligations. Accordingly, the Debtors seek authority to continue to forward these pre-petition Non-Tax Deductions to the applicable third-party recipients on a post-petition basis, in the ordinary course of business, as routinely done prior to the Petition Date.

21. Federal and state laws require the Debtors to withhold amounts related to federal, state and local income taxes, as well as Social Security and Medicare taxes, for remittance to the appropriate federal, state or local taxing authority (collectively, the "Withheld Amounts"). In the aggregate, the Withheld Amounts total approximately \$84,000 every pay cycle. The Debtors must then provide additional amounts for federal and state unemployment insurance (the "Employer Payroll Taxes") and together with the Withheld Amounts, the "Payroll Taxes"). In the aggregate, the Payroll Taxes, including both the employee and employers portions, total approximately \$110,000 every pay cycle. Prior to the Petition Date, the Debtors, through ADP,

withheld the appropriate amounts from Employees' earnings for the Withheld Amounts, but such funds may not have been forwarded to the appropriate taxing authorities. Accordingly, the Debtors seek authority to continue to forward these pre-petition Payroll Taxes (to the extent there are any that have not been forwarded by ADP) to the applicable third-party recipients on a post-petition basis, in the ordinary course of business, as routinely done prior to the Petition Date

3. Honoring Checks for, and Payment of, Reimbursable Expenses

22. In the ordinary course of business, the Debtors reimburse Employees for certain expenses incurred in the scope of their employment and on behalf of the Debtors (the "Reimbursable Expenses"). Employees incur, on average, approximately \$60,000 monthly in Reimbursable Expenses such as business-related travel and relocation costs (e.g., meal, hotel and rental car costs) with the understanding that they will be reimbursed.

23. In addition to traditional expense-based reimbursement for out-of-pocket expenses incurred by the Employees on the Debtors' behalf, sixteen (16) of the Employees also have company credit cards (each, a "Company Credit Card" and collectively, the "Company Credit Cards"). All of the Company Credits Cards are issued by American Express ("American Express"). The Company Credit Cards are issued in the name of the eligible Employee and feature both the Employee's name as well as that of one of the Debtors, Ames Taping Tools, on the face of the card. Prior to receiving a Company Credit Card, any Employee to whom a Company Credit Card will be issued must sign a Receipt of Credit Card Agreement pursuant to which the Employee acknowledges that the Employee is required to submit documented expense reimbursement reports in conjunction with any charge made on a Company Credit Card. The Employees are personally liable for all charges made on the Company Credit Cards and enter

into a card member agreement with American Express before the Company Credit Card is issued. The Debtors are guarantors on all of the Company Credit Cards. The Employees receive physical credit card statements from American Express and are responsible for making all payments to American Express. All Company Credit Card balances must be paid in full each month. Once an Employee is terminated, the Debtors take prompt action to ensure that the terminated Employee's Company Credit Card is cancelled and that the outstanding balance is paid.

24. In addition to reimbursing the Employees for traditional expenses incurred by the Employees and for use of the Company Credit Cards, the Debtors also provide an automobile allowance to twenty-one (21) Employees.

25. The Debtors estimate that, as of the Petition Date, Reimbursable Expenses in the approximate amount of \$34,000 remain outstanding. Consequently, the Debtors seek authority to pay up to \$34,000 in pre-petition Reimbursable Expenses.

C. Employee Benefits

26. The Debtors offer their Employees the opportunity to participate in insurance and benefits programs, including, without limitation, medical benefits, dental benefits, a flexible spending plan, legal services, life insurance, accidental death and dismemberment insurance, business travel accident insurance, short-term and long-term disability insurance and a 401(k) capital accumulation plan (the "Employee Benefit Program").

1. Medical and Dental Plans

27. All full-time Employees are eligible to receive medical and dental benefits (the "Medical Plans"). Under the Medical Plans, the Debtors provide Employees with health

insurance benefits provided by Blue Cross Blue Shield (“BCBS”). In addition, the Debtors provide Employees with a dental benefits plan that is administered by Humana Dental (“Humana”). All of the Medical Plans are premium-based plans. Employee contributions to the Medical Plans vary depending upon the Employee’s salary and the number of dependents covered by the plan. The Debtors withhold the Employee’s contribution from their earnings, contribute the balance necessary to pay the premiums, and then periodically remit the total amount of the premiums to BCBS and Humana, as the case may be. Currently, the Debtors provide medical and dental benefits to approximately 160 Employees.³ Moreover, the Debtors’ Medical Plans provide health care coverage to approximately 300 dependents. The Medical Plans cost the Debtors approximately \$120,000 in the aggregate per month, inclusive of any administrative fees. The Debtors believe that, as of the Petition Date, there were no incurred, unpaid premium expenses related to the Medical Plans for the pre-petition period.

2. Employee Savings and Retirement Plans

28. The Debtors maintain one capital accumulation plan meeting the requirements of section 401(k) of the Internal Revenue Code for the benefit of the Employees (the “401(k) Plan”). All Employees are eligible to enroll in the Debtors’ 401(k) Plan. Through bi-weekly payroll contributions, Employees can contribute up to 50% of their earnings on a pre-tax basis, subject to regulations set by the Internal Revenue Service. Approximately 100 Employees, in addition to approximately 50 former Employees, currently participate in the 401(k) Plan, and the approximately bi-weekly amount withheld from such Employees’ paychecks for 401(k)

³ Inclusive of certain former Employees receiving medical and dental benefits pursuant to the Consolidated Omnibus Budget Reconciliation Act (“COBRA”)

contribution is \$17,000 for each pay cycle. The Debtors, in their discretion, can match the Employees' contributions to the 401(k) Plan. Further, the administrative fees for the 401(k) Plan are paid by the plan. As of the Petition Date, the Debtors have not incurred any unpaid obligations under the 401(k) Plan.

3. Insurance and Flexible Spending Plans

29. The Debtors provide each Employee with group life insurance coverage through ING (Reliastar). Depending on the Employee's position with the Debtors, this group life insurance provides Employees with up to two and half times their base salary, in all cases up to a maximum of \$500,000 in life insurance coverage (including any supplemental coverage that an Employee may purchase at his or her own election and expense).

30. In addition, the Debtors provide certain employees involved in business travel with accidental death and dismemberment coverage. This coverage is sponsored by the Debtors and is provided at no expense to the covered Employees.

31. The Debtors also offer each Employee the option to purchase supplemental and dependent life insurance at the employee's own and exclusive expense through ING. This additional life insurance is guaranteed up to \$100,000, with no evidence of insurability required.

32. On average, the life insurance and accidental death and dismemberment coverage costs the Debtors approximately \$3,932 per month. The Debtors believe that, as of the Petition Date, there were no incurred, unpaid premium expenses related to the life insurance and accidental death insurance plans for the pre-petition period.

33. In addition, the Debtors provide employees with short-term and long-term disability coverage. The short-term disability coverage is self-funded and self-administered, and

long-term disability benefits are administered by ING (Reliastar). With respect to the short-term disability coverage, the benefits are provided by Debtors, with no Employee deduction or contribution. The Debtors' short-term disability coverage pays 100% of an eligible Employees' pre-injury earnings for up to thirteen (13) weeks of disability.⁴ Employees are not subject to any minimum or maximum benefits per week while disabled and receiving short-term disability benefits. The Debtors believe that, as of the Petition Date, there were no incurred, unpaid premium expenses related to the short-term disability plan for the pre-petition period.

34. The Debtors also provide the Employees with long-term disability insurance. Long-term disability benefits are provided to all full-time Employees after working for one full year. Long-term disability benefits pay eligible Employees up to 60% of their pre-injury earnings after 90 days of short-term disability and may continue up to age sixty-five (65) for qualified individuals. Employees are not subject to any minimum or maximum benefits per week while disabled and receiving long-term disability benefits. On average, long-term disability coverage costs the Debtors approximately \$3,250 per month. The Debtors believe that, as of the Petition Date, there were no incurred, unpaid premium expenses related to the long-term disability plan for the pre-petition period.

35. The Debtors also offer business travel accident insurance, provided through the accidental death and dismemberment insurance, to certain Employees who travel on the Debtors' behalf. This coverage cost is included in the accidental death and dismemberment coverage.

⁴ For Employees in California, the short-term disability benefits supplement the disability benefits provided by the State of California such that the cumulative benefit received by eligible Employees from the insurer and the State of California equals 100% of the respective Employee's pre-injury earnings

The Debtors do not believe that there have been any incurred, unpaid expenses in connection with the provision of business travel accident insurance as of the Petition Date.

36. The Debtors further offer Employees the ability to contribute a portion of their pre-tax compensation to flexible spending accounts to pay for eligible out-of-pocket health care and dependent care premiums and expenses (the “Flexible Spending Plan”) Currently, approximately 24 Employees participate in the Flexible Spending Plan The Debtors believe that there are no incurred and unpaid pre-petition expenses in connection with the Flexible Spending Plan.

4. Vacation and Sick Leave and Other Leaves of Absence

37. The Debtors provide paid vacation and sick leave to their full-time Employees. As for vacation benefits, these days accrue as the Employees work. One week of vacation accrues after 6 full months of employment; two weeks accrue after one full year; three weeks accrue after five full years; and four weeks accrue after fifteen years.⁵

38. If an employee subsequently leaves the Debtors’ employ, whether voluntarily or involuntarily, his or her vacation accrual will be calculated and cashed out in a final paycheck. The Debtors estimate that, as of the Petition Date, their obligation to Employees for earned, unused vacation time is approximately \$451,000.⁶

⁵ In addition to vacation and sick leave, all Employees are eligible to receive certain paid holidays each year. There are ten scheduled holidays per year. Employees working their last scheduled work day immediately before and after these recognized holidays are paid for that holiday.

⁶ This amount reflects the maximum amount that the Debtors would pay Employees for earned but unused vacation time, assuming every Employee’s employment was terminated and his or her vacation accrual cashed out in a final paycheck. The Debtors anticipate that the actual amount of earned and unused vacation that will be cashed out will be much lower.

39. The Debtors also allow their Employees to take certain other leaves of absence for personal reasons, many of which are required by law (the “Leaves of Absence”). Leaves of Absence include family medical leave, pregnancy disability leave, bereavement leave and military leave.

40. The Debtors anticipate that their Employees will utilize accrued vacation time, sick leave and Leaves of Absence in the ordinary course of business, which will not create any material cash flow requirements beyond the Debtors’ normal, ordinary course payroll obligations, and seek authority to honor such accrued benefits.

Relief Requested

41. By this Motion, the Debtors seek entry of an order, granting them authority to pay and honor, in the ordinary course of business and in their sole discretion, pre-petition claims and obligations related to: (a) Unpaid Compensation, (b) Reimbursable Expenses, (c) Deductions and Payroll Taxes, and (d) the Employee Benefit Programs, and to continue, modify, change or discontinue the Employee Wages and Benefits, and to implement new Employee Wages and Benefits, in the ordinary course of business during these chapter 11 cases in their sole discretion without the need for further Court approval.

42. Moreover, the Debtors request that the Court authorize and direct financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtors also request the Court to authorize applicable financial institutions to rely on the Debtors’ designation of any particular check or electronic payment request as appropriate pursuant to this Motion.

Basis for Relief

A. Ample Authority Exists to Support Payment of the Employee Obligations

43. Courts generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of pre-petition obligations in appropriate circumstances. See, e.g., In re Wickes Holdings, LLC, Case No. 08-10212 (KJC) (Bankr. D. Del. Feb. 5, 2008); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007); In re Pope & Talbot, Inc., Case No. 07-11738 (CSS) (Bankr. D. Del. Nov. 21, 2007); In re Hancock Fabrics, Inc., Case No. 07-10353 (BLS) (Bankr. D. Del. Mar. 22, 2007). In authorizing payments of certain pre-petition obligations, courts rely on several legal theories rooted in sections 1107(a), 1108, 363(b) and 105(a) of the Bankruptcy Code.

44. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, a debtor-in-possession is a fiduciary “holding the bankruptcy estate and operating the business for the benefit of its creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of any debtor-in-possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” Id. Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a pre-petition claim.” Id. The CoServ court specifically noted that the satisfaction of pre-petition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” Id.

45. Consistent with a debtor’s fiduciary duties, courts have also authorized payment of pre-petition obligations under section 363(b) of the Bankruptcy Code when a sound business

purpose exists for doing so. See, e.g., In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of pre-petition wages); see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to allow contractor to pay pre-petition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors).

46. In addition, the Court may authorize payment of pre-petition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a), which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may permit pre-plan payments of pre-petition obligations when essential to the continued operation of the debtor’s business. Specifically, the Court may use its power under section 105(a) to authorize payment of pre-petition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”).

47. The “doctrine of necessity” or the “necessity of payment” rule originated in railway cases and was first articulated by the United States Supreme Court in Miltenberger v. Logansport, C.&S.W.R. Co., 106 U.S. 286 (1882). The doctrine was expanded to include non-railroad debtors in the mid-century. See Dudley v. Mealey, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization case, that the court was not “helpless” to apply the rule to suppliers of non-railroad debtors where the alternative was the cessation of operations).

48. The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of pre-petition claims if such payment was essential to the continued operation of the debtor. Id. (stating that court may authorize payment of pre-petition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); see also In re Penn Central Transp. Co., 467 F.2d 100, 102 n1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); In re Just for Feet, Inc., 242 B.R. 821, 824-45 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay pre-petition claims that are essential to continued operation of business); In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

49. Today the rationale for the necessity of payment rule--the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” In re Ionosphere Clubs, Inc., 98 B.R. at 176; see also Just For Feet, 242 B.R. at 826 (finding that payment of pre-petition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); In re Quality Interiors, Inc., 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize

without such payment.”); In re: Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of pre-petition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.), 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation” is appropriate); Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of pre-petition workers’ compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”); 3 Collier on Bankruptcy ¶ 105.04[5][a] (15th ed. rev. 2004) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay pre-petition claims immediately).

50. Courts also have permitted post-petition payment of pre-petition claims pursuant to section 105(a) in other situations, such as if nonpayment of a pre-petition obligation would trigger a withholding of goods or services essential to the debtors’ business reorganization plan. See In re UNR Indus., 143 B.R. 516, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay pre-petition claims of suppliers or employees whose continued cooperation is essential to the debtors’ successful reorganization); Ionosphere Clubs, 98 B.R. at 167-77 (finding that section 105 empowers bankruptcy courts to authorize payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor).

51. This flexible approach is particularly critical when a pre-petition creditor provides vital goods or services to a debtor that would be unavailable if the debtors did not satisfy their

pre-petition obligations. In In re Structurlite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the bankruptcy court stated that “a bankruptcy court may exercise its equity powers under § 105(a) [of the Bankruptcy Code] to authorize payment of pre-petition claims where such payment is necessary to permit the greatest likelihood of survival of the debtors and payment of creditors in full or at least proportionately.” Id. The court explained that “a per se rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” Id. at 932.

B. Sufficient Cause Exists to Authorize the Debtors to Honor Employee Wage and Benefit Obligations

52. The majority of the pre-petition wages and other employee claims the Debtors seek to pay would be entitled in any event to priority treatment to the extent of \$10,950 for each individual under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for wages, salaries or commissions, including vacation, and sick leave pay earned by an individual, and for contributions to an employee benefit plan). Thus, granting the relief sought herein would only cause such employee claims to be paid at the outset of these chapter 11 cases, rather than waiting until the confirmation of any potential plan in these chapter 11 cases, to the extent that these claims constitute priority claims.

53. By this Motion, the Debtors seek authority to pay outstanding pre-petition obligations to their Employees in full. The Debtors do not believe that there are any Employees whose claims for pre-petition obligations may exceed the \$10,950 cap under sections 507(a)(4)

and 507(a)(5) of the Bankruptcy Code. As such, the Debtors are not seeking authority to pay any amounts to Employees in excess of the \$10,950 cap under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code pursuant to this Motion. However, to the extent the Debtors later determine that certain Employees' claims for pre-petition obligations do exceed \$10,950, the Debtors reserve the right to seek authority to pay these claims in full as well, following notice and a hearing. To the extent such claims exist, all pre-petition claims exceeding \$10,950 would have arisen in the ordinary course of the business of the Debtors and are reasonable in relation to the value of the services rendered. As discussed above, there are several provisions of the Bankruptcy Code that authorize a debtor to honor pre-petition obligations if the circumstances warrant and that, therefore, support the relief requested in this Motion. Such payments are justified by the critical nature of the services provided by such Employees.

54. The Debtors also seek authority to pay Deductions and Payroll Taxes to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain Deductions, including contributions to the Employee Benefit Programs and child support and alimony payments, are not the Debtors' property because these amounts have been withheld from Employees' paychecks on another party's behalf. See 11 U.S.C. § 541(b). Further, the Debtors and their officers are required by federal and state laws to make certain tax payments that have been withheld from its Employees' paychecks. See 26 U.S.C. § 6672 and 7501(a); see also City of Farrell v. Sharon Steel Corp., 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes);

In re DuCharmes & Co., 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Deductions and Payroll Taxes are not property of the Debtors' estates, these amounts are not subject to the normal bankruptcy prohibitions against payment. The Debtors, therefore, request that the Court confirm that such trust fund withholdings are not property of the Debtors' estates and that the Debtors may transmit the Payroll Taxes to the proper parties in the ordinary course of business.

55. As described above, the majority of the Debtors' Employees rely exclusively on their compensation, benefits or reimbursement of their expenses to satisfy their daily living expenses. Consequently, these Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid compensation, benefits and reimbursable expenses. Moreover, if the Debtors are unable to satisfy such obligations, Employee morale and loyalty will be jeopardized at a time when their support is critical.

56. Furthermore, if the Debtors are not authorized to honor their various obligations under their insurance programs, their Employees will not receive health coverage and may become obligated for the payment of health care claims in cases when insurance providers have not been paid by the Debtors. The loss of health care coverage will result in considerable anxiety for Employees at a time when the Debtors needs such Employees to perform their jobs at peak efficiency.

57. For all of the foregoing reasons, the payment of the Debtors' pre-petition wages and employee benefits will benefit the estates and their creditors by allowing the Debtors' business operations to continue without interruption. In the absence of such payments, the

Debtors' Employees may seek alternative employment opportunities. Such a development would deplete the Debtors' workforce, hindering the Debtors' ability to meet their customer obligations and likely diminishing creditor confidence in the Debtors. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a massive and costly distraction at a time when the Debtors should be focusing on stabilizing their operations. Accordingly, the Debtors must pursue all reasonable measures to retain their Employees by, among other things, continuing to honor all wages, benefits and related obligations, including those that accrued pre-petition.

58. The importance of a debtor's employees to its operations has been repeatedly recognized by courts in this district and other jurisdictions in granting relief similar to the relief requested in this Motion. See, e.g., In re Filene's Basement, Inc., Case No. 09-11525 (MFW) (Bankr. D. Del. May 5, 2009); In re Abitibowater Inc., Case No. 09-11296 (KJC) (Bankr. D. Del. Apr. 17, 2009); In re The Fairchild Corp., Case No. 09-10899 (CSS) (Bankr. D. Del. Apr. 15, 2009) (final order); In re Sportsman's Warehouse, Inc., Case No. 09-10990 (CSS) (Bankr. D. Del. Mar. 23, 2009); In re Masonite Corp., Case No. 09-10844 (PJW) (Bankr. D. Del. Apr. 14, 2009) (final order); In re Robbins Bros. Corp., Case No. 09-10708 (PJW) (Bankr. D. Del. Mar. 5, 2009); In re Nortel Networks Inc., Case No. 09-10138 (KG) (Bankr. D. Del. Jan. 15, 2009); In re Motor Coach Indus. Int'l, Inc., Case No. 08-12136 (BLS) (Bankr. D. Del. Oct. 7, 2008) (final order); In re Linens Holding Co., Case No. 08-10832 (CSS) (Bankr. D. Del. May 2, 2008); In re Wickes Holdings, LLC, Case No. 08-10212 (KJC) (Bankr. D. Del. Feb. 5, 2008); In re Pope & Talbot, Inc., Case No. 07-11738 (CSS) (Bankr. D. Del. Nov. 21, 2007); In re Delta Fin. Corp.,

Case No. 07-11880 (CSS) (Bankr. D. Del. Dec. 19, 2007); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PM) (Bankr. D. Del. June 13, 2007).

C. Failure to Honor Employee Obligations Within 20 Days of the Petition Date Would Cause Immediate and Irreparable Harm

59. Pursuant to the recently revised Rule 6003 of the Bankruptcy Rules, the Court may grant relief regarding a motion to pay all or part of a pre-petition claim within 21 days after the Petition Date if the relief is necessary to avoid immediate and irreparable harm.

60. As described above, the Debtors' Employees are integral to the Debtors' operations. Failure to satisfy obligations with respect to the Employees in the ordinary course of business during the first 21 days of these chapter 11 cases will jeopardize their loyalty and trust, causing Employees to leave the Debtors' employ and severely disrupting the Debtors' operations at this critical juncture.

61. Moreover, the Debtors' Employees rely on their compensation, benefits and reimbursement of expenses to pay their living expenses, and the effect could be financially ruinous if the Debtors cannot pay them in the ordinary course of business. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of their Employee obligations.

D. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers

62. The Debtors represent they have sufficient availability of funds to pay the amounts described in this Motion in the ordinary course of business by virtue of cash reserves and use of cash collateral. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an

authorized payment in respect of Employee obligations. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that the Court should authorize all applicable financial institutions (collectively, the “Cash Management Banks”), when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Employee obligations.

63. For all of the foregoing reasons, the Debtors believe that granting the relief requested in this Motion is appropriate and in the best interests of all parties in interest.

Debtors’ Reservation of Rights

64. Nothing contained herein is intended to or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors’ rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any invoice of an Employee under applicable non-bankruptcy law. Likewise, if this Court grants the relief sought in this Motion, any payment made pursuant to the Court’s Order is not intended to be, and should not be construed as, an admission of the validity of any claim or a waiver of the Debtors’ rights to dispute such claim subsequently.

Notice

65. The Debtors will serve notice of this Motion on: (i) counsel to the Debtors’ prepetition secured lenders; (ii) the United States Trustee for the District of Delaware; (iii) those creditors holding the 20 largest unsecured claims against each Debtor’s estate; and (iv) the Internal Revenue Service. As this Motion is seeking first-day relief, notice of this Motion and

any order entered hereon will be served on all parties required by Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware. The Debtors submit that no other or further notice need be provided.

66. No previous request for the relief requested herein has been made to this or any other Court.

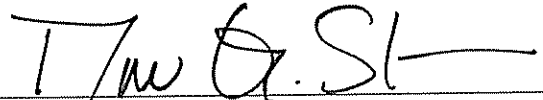
Waiver of Bankruptcy Rules 6004(a) and (h)

67. To implement the foregoing expeditiously and successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h), to the extent applicable.

WHEREFORE, the Debtors respectfully request that this Court enter an order substantially in the form annexed hereto as Exhibit A, and grant such other and further relief as this Court deems just and proper.

Dated: December 15, 2009
Wilmington, Delaware

Respectfully submitted,



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Proposed Counsel For the Debtors and Debtors-in-Possession

Exhibit A

Proposed Order

to grant the relief requested in the Motion immediately will cause immediate and irreparable harm to the Debtors; and it appearing that this Court has jurisdiction over this matter pursuant to 29 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2); and it appearing that venue of this proceeding and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of this Motion having been provided, and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED, that the Motion is GRANTED to the extent provided herein; and it is further

ORDERED, that the Debtors are authorized, but not directed, to pay Employees, in the ordinary course of business, amount related to Unpaid Compensation, Reimbursable Expenses and the Employee Benefits Programs as set forth in the Motion and subject to the any caps in this Order; and it is further

ORDERED, that the Debtors are authorized, but not directed, to pay Employees, in the ordinary course of business, amounts related to Unpaid Compensation, in an amount not to exceed \$207,000; and it is further

ORDERED, that the Debtors are authorized, but not directed, to pay or reimburse Employees, in the ordinary course of business, for amounts related to Reimbursable Expenses, in an amount not to exceed \$34,000; and it is further

ORDERED, that the Debtors are authorized, but not directed, to continue the Medical Plans in the ordinary course of business; and it is further

ORDERED, that the Debtors are authorized, but not directed, to forward any unpaid

amounts on account of Deductions or Payroll Taxes to any third-party recipients or taxing authority; and it is further

ORDERED, that the Debtors are authorized, but not directed, to issue post-petition checks, or to effect post-petition fund transfer requests, in replacement of any checks or fund transfer requests in respect of pre-petition amount owed to the Employees that are dishonored as a consequence of these chapter 11 cases and to the extent such pre-petition amounts are authorized to be paid pursuant to this Order; and it is further

ORDERED, that all applicable banks and other financial institutions are hereby authorized and directed to receive, process, honor and pay any and all checks evidencing amount paid by the Debtors pursuant to the Motion, whether presented prior to or after the Petition Date; and it is further

ORDERED, that each of the Debtors' Cash Management Banks are authorized, subject to the terms of this Order, to debit the Debtors' accounts in the ordinary course of business on account of the relief requested in the Motion without the need for further order of the Court for: (i) all checks drawn on the Debtors' accounts that are cashed at such Cash Management Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (ii) all checks or other items deposited in one of the Debtors' accounts with such Cash Management Bank prior to the Petition Date that have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors was responsible for such items prior to the Petition Date; and (iii) all undisputed pre-petition amounts outstanding as of the date hereof, if any, owed to any Cash Management Bank as service charges for the maintenance of the cash management systems; and it is further

ORDERED, that any Cash Management Bank may rely on the representation of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and such Cash Management Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein; and it is further

ORDERED, that except as provided under the Bankruptcy Code, nothing contained herein is intended or should be construed to create an administrative priority claim on account of obligations owing to the Employees or, conversely, to prejudice the Employee's right to assert claims against the Debtors or their estates that are not satisfied by payments made pursuant to this Order; and it is further

ORDERED, that the relief granted herein shall not constitute or be deemed an assumption of or an authorization to assume, pursuant to section 365 of the Bankruptcy Code, any of the employment or insurance agreements to which any of the Debtors are a party; and it is further

ORDERED, that the requirements set forth in Rule 6003(b) of the Bankruptcy Rules are satisfied by the contents of the Motion; and it is further

ORDERED, that notwithstanding the possible applicability of Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, the terms and condition of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED, that notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any order regarding the use of cash collateral and any budget in connection therewith; and it is further

ORDERED, that nothing in the Motion or this Order, nor as a result of the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any claim, or (c) an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED, that the Debtors are authorized and directed to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

ORDERED, that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2009
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Further Proposed Order

(II) Reimbursable Employee Expenses, and (III) Employee Medical and Similar Benefits; and (B) Authorizing and Directing Financial Institutions to Honor All Related Checks and Electronic Payment Requests [Docket No. _____], dated _____, 2009 (the “Initial Employee Wage Order”); and it appearing that the relief requested is in the best interest of the Debtors’ estates, their creditors and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 29 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2); and it appearing that venue of this proceeding and this Motion in this district is proper pursuant to 28U.S.C. §§ 1408 and 1409; and due and proper notice of this Motion having been provided, and the court having held an initial hearing on the Motion on _____, 2009 (the “Initial Hearing”); and upon the evidence presented at the Initial Hearing, this court having entered an order granting the majority of the relief requested in the Motion on a final basis pursuant to the Initial Employee Wage Order; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED, that the Motion is GRANTED as set forth in the Initial Employee Wage Order and herein; and it is further

ORDERED, that all applicable banks and other financial institutions are hereby authorized and directed to receive, process, honor and pay any and all checks evidencing amounts paid by the Debtors pursuant to the Motion, whether presented prior to or after the Petition Date; and it is further

ORDERED, that each of the Debtors’ Cash Management Banks are authorized, subject to the terms of this Order, to debit the Debtors’ accounts in the ordinary course of business on account to the relief requested in the Motion without the need for further order of the Court for:

(i) all checks drawn on the Debtors' accounts that are cashed as such Cash Management Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (ii) all checks or other items deposited in one of the Debtors' accounts with such Cash Management Bank shall not have any liability to any party for relying on such representation by the Debtors as provided for herein; and it is further

ORDERED, that except as provided under the Bankruptcy Code, nothing contained herein is intended or should be construed to create an administrative priority claim on account of obligations owing to the Employees; and it is further

ORDERED, that the relief granted herein shall not constitute or be deemed an assumption of or an authorization to assume, pursuant to section 365 of the Bankruptcy Code, any of the employment or insurance agreements to which the Debtors are a party; and it is further

ORDERED, that notwithstanding the possible applicability of Rules 6004(h), 7062 or 9014 of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED, that notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any order regarding the use of cash collateral and any budget in connection therewith; and it is further

ORDERED, that nothing in the Motion or this Order, nor as a result of the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtors, (b) a waiver of the Debtors' right to

dispute any claim, or (c) an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED, that the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

ORDERED, that to the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in this case, the terms of this Order shall govern; and it is further

ORDERED, that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2010
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE