

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below.



/S/ RUSS KENDIG

Russ Kendig
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:) Chapter 11
)
SCHWAB INDUSTRIES, INC., *et al.*,)
) Jointly Administered Under
) Case No. 10-60702-rk
)
Debtors.) Judge Russ Kendig

**AGREED ORDER AUTHORIZING
LIMITED USE OF CASH COLLATERAL**

This Agreed Order Authorizing Limited Use of Cash Collateral (the "Order") is made by and among Schwab Industries, Inc. and its affiliated debtors, as debtors in possession (collectively, the "Debtors"),¹ KeyBank National Association, as administrative agent and as a lender (the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: (i) Schwab Industries, Inc. (2467); (ii) Medina Cartage Co. (9373); (iii) Medina Supply Company (3995); (iv) Quality Block & Supply, Inc. (2186); (v) O.I.S. Tire, Inc. (7525); (vi) Twin Cities Concrete

"Agent" or "KeyBank"), The Huntington Bank ("Huntington"), and Bank of America, N.A. ("BofA" and together with KeyBank and Huntington, collectively, the "Pre-Petition Lenders", and together with the Debtors and Agent, collectively referred to hereinafter as the "Parties"). The Parties hereby stipulate and agree as follows:

A. On February 28, 2010 (the "Petition Date"), the Debtors filed voluntary petitions for relief with this Court under chapter 11 of the Bankruptcy Code (the "Cases"). The Debtors are in possession of their property, and are operating and managing their businesses as debtors in possession pursuant sections 1107 and 1108 of the Bankruptcy Code.

B. On March 9, 2010, the office of the United States Trustee appointed an official statutory committee (the "Committee") to represent the interests of unsecured creditors of the Debtors.

C. The Parties believe that the Pre-Petition Lenders and DIP Lender (defined below) are the only secured creditors of the Debtors having an interest in the Cash Collateral (defined below).

D. The Agent and Pre-Petition Lenders agree to allow the Debtors a limited use of their Cash Collateral, subject to certain terms and conditions set forth herein and upon the Debtors granting to the Agent, for the benefit of the Pre-Petition Lenders, postpetition security interests, liens, and superpriority administrative expense claims as adequate protection for use of their Cash Collateral.

E. Prior to the initiation of the above-captioned case, the Debtors became indebted to, and granted certain security interests to, Agent and the Pre-Petition Lenders pursuant to that certain Amended and Restated Credit and Security Agreement among the Debtors, Agent and

Company (9196); (vii) Schwab Ready-Mix, Inc. (8801); (viii) Schwab Materials, Inc. (8957); and (ix) Eastern Cement Corp. (7232).

Pre-Petition Lenders, dated as of October 18, 2007 (as amended, restated or otherwise modified, from time to time, the "Pre-Petition Credit Agreement") and all collateral, security, pledge and ancillary documents executed in connection therewith, including, without limitation, the Loan Documents and Related Writings (as such terms are defined in the Pre-Petition Credit Agreement), all of which shall hereinafter be collectively referred to as the "Pre-Petition Loan Documents").

F. Pursuant to the Pre-Petition Loan Documents, in consideration of the loans and other financial accommodations extended to the Debtors under such agreements and to secure the payment and performance of the Debtors' obligations under the Pre-Petition Loan Documents, the Debtors granted to the Agent, for the benefit of the Pre-Petition Lenders, security interests, liens, and mortgages in substantially all of their property and all proceeds thereof to the extent described in the Pre-Petition Loan Documents (collectively, the "Pre-Petition Collateral"), junior only to the Priming Lien (defined below).

G. The Agent, for the benefit of the Pre-Petition Lenders, duly perfected its security interests in and liens and mortgages upon the Pre-Petition Collateral by filing financing statements, recording mortgages, and taking certain other actions. The Agent, for the benefit of the Pre-Petition Lenders, has valid, perfected and enforceable first priority liens and mortgages upon and security interests in the Pre-Petition Collateral (collectively, the "Pre-Petition Security Interests").

H. As of the Petition Date, the Debtors were—and they remain—in default of their obligations under the Pre-Petition Loan Documents. The total due to the Pre-Petition Lenders under the Pre-Petition Loan Documents as of the Petition Date is approximately

\$57,000,000.00, plus interest, fees and costs that have accrued or may accrue (collectively, the "Pre-Petition Obligations").

I. Pursuant to the *Interim Order (I) Authorizing Post-Petition Secured Superpriority Financing Pursuant to Bankruptcy Code Sections 105, 361, 362, 363(C), 363(E), 364(C)(1), 364(C)(2), 364(C)(3), 364(D) and 364(E), (II) Granting Adequate Protection Pursuant to Sections 361, 363 and 364 of the Bankruptcy Code, (III) Modifying the Automatic Stay and (IV) Setting Final Hearing Pursuant to Bankruptcy Rule 4001* that was entered on March 3, 2010 (Docket No. 44) (the "Interim Order"), the Debtors were authorized to obtain superpriority financing from EFO Financial Group, LLC (the "DIP Lender") in a maximum amount not to exceed \$3,500,000 (the "DIP Loan"). As provided in the Interim Order, the Debtors' obligations to the DIP Lender under the DIP Loan (collectively, the "EFO DIP Loan Obligations") are secured by a first priority priming lien (the "Priming Lien") and security interest in the Pre-Petition Collateral and all other assets of the Debtors including, without limitation, any assets generated after the Petition Date, but excluding all avoidance actions under chapter 5 of the Bankruptcy Code (collectively, the "Collateral") and a superpriority administrative claim under section 364(c)(1) (the "EFO Superpriority Claim"). As further provided in the Interim Order, the Agent and Pre-Petition Lenders were granted superpriority claims and valid, binding and enforceable liens in all Collateral to secure an amount of the Pre-Petition Obligations owing that is equal to the sum of the aggregate diminution, subsequent to the Petition Date, in the value of the Pre-Petition Collateral.

J. Without prejudice to the rights of any other party, the Debtors acknowledge and agree that the Pre-Petition Obligations constitute valid and binding obligations of the Debtors and that all of the cash generated by the Debtors' operations and use of Pre-Petition Collateral

in the ordinary course constitute the DIP Lender's and Pre-Petition Lenders' cash collateral as defined in section 363(a) of the Bankruptcy Code (the "Cash Collateral"). The Debtors further acknowledge and agree that the Pre-Petition Lenders have valid and perfected security interests in, and liens on, all of the Debtors' Cash Collateral, with priority over all other security interests in and liens on the Cash Collateral, junior only to the Priming Lien.

K. The cash in the possession of the Debtors on the Petition Date or in accounts of the Debtors on such date, and all proceeds of any Collateral in existence on the Petition Date are claimed by the Agent, for the benefit of the Pre-Petition Lenders, to be proceeds from collection of accounts receivable or use of other Pre-Petition Collateral.

L. In order to provide adequate protection to the Agent and Pre-Petition Lenders for the Debtors' use of Cash Collateral as set forth in this Order, the Debtors hereby grant to the Agent, for the benefit of the Pre-Petition Lenders, to the extent of decrease or diminution in the value of the Collateral attributable to the Debtors' postpetition use of Cash Collateral as herein authorized: (i) valid, binding, enforceable, and perfected replacement liens, junior only to the Priming Lien, in all property acquired or created postpetition of the type included within the Collateral during the period when Debtors are authorized to use Cash Collateral pursuant to the Order herein provided and/or any modified and/or subsequent Orders; and (ii) administrative expense claims in accordance with section 507(b) of the Bankruptcy Code, with priority over every other claim allowable under section 507(a) of the Bankruptcy Code, junior only to the EFO Superpriority Claim, to the extent of any actual diminution in value of the Collateral from and after the Petition Date. Any additional Cash Collateral made available to the Debtors, if any, shall be on terms satisfactory to the Agent and Pre-Petition Lenders, in their sole and absolute discretion.

M. The ability of the Debtors to continue their businesses and preserve the value of their assets depends upon their ability to use the Cash Collateral. The Agent and Pre-Petition Lenders have indicated that they object to the use of Cash Collateral unless they are provided with adequate protection. The terms and conditions embodied in this Order under which the Agent and Pre-Petition Lenders are willing to consent to the Debtors' use of Cash Collateral represent an agreement among the Parties negotiated in good faith and at arm's length. The Agent and Pre-Petition Lenders have further indicated that their willingness to permit use of Cash Collateral does not constitute consent to the incurrence by the Debtors, their counsel, or any other party, person or entity of any of the costs, expenses or fees contemplated under section 506(c) of the Bankruptcy Code.

N. It is in the best interests of the Debtors and all of their creditors that the Debtors be permitted the use of Cash Collateral pursuant to the terms hereof. This Order is in the best interests of the Debtors, their creditors, and their estates. Without the use of Cash Collateral, the Debtors will be unable to maintain their assets, preserve existing value, or perform any of the tasks which the Debtors believe are necessary to maximize the value of their assets.

O. The Debtors are not presently able to obtain financing for their businesses on an unsecured basis pursuant to subsections (a) and (b) of section 364 of the Bankruptcy Code, nor are the Debtors able to obtain secured or priority financing on better terms than those agreed to by the Agent and Pre-Petition Lenders with respect to the use of Cash Collateral.

P. The Agent and Pre-Petition Lenders have acted in good faith in indicating a willingness to allow the use of the Cash Collateral under the terms and conditions set forth in this Order and subject to: (i) entry of this Order and the fulfillment of the conditions stated

herein; and (ii) the granting, regranting and continuing of the Pre-Petition Security Interests and Replacement Liens (defined below).

NOW THEREFORE, it is FOUND, DETERMINED, ORDERED and ADJUDGED as follows:

1. **Maintenance of Bank Accounts.** Any and all Cash Collateral now held or hereafter received by the Debtors shall be collected, received, maintained and segregated by the Debtors by depositing all cash, checks, or other forms of remittance evidencing same in the Debtors' existing bank accounts with the Pre-Petition Lenders. The Debtors are permitted to continue to use their existing bank accounts to continue funding payroll consistent with this Order.

2. **Maximum Amount.** Subject to the terms and conditions hereof, the Agent and Pre-Petition Lenders consent to and the Debtors are authorized to use, for the period beginning March 24, 2010 through March 26, 2010, the Cash Collateral in an amount not to exceed \$323,000, plus such additional amounts, if any, agreed to in writing by the Agent and Pre-Petition Lenders, in their sole and absolute discretion (the "Maximum Amount"). The Agent and Pre-Petition Lenders do not consent to the use of Cash Collateral by the Debtors except in strict compliance with the terms and conditions contained herein. After March 26, 2010, the Agent's and Pre-Petition Lenders' consent to an extension of the Debtors' authority to use Cash Collateral shall require a further proposed budget acceptable to the Agent and Pre-Petition Lenders.

3. **Permitted Uses.** For the period March 24, 2010 through March 26, 2010, the Debtors may use the cash and cash equivalents constituting the Cash Collateral, not to exceed the Maximum Amount at any time, for the expenses set forth on Exhibit 1 to this Order, which is attached hereto and incorporated in this Order (the "Approved Budget"). During the time period

covered by this Order, the Debtors may not expend any additional Cash Collateral without the Agent's and Pre-Petition Lenders' prior written consent. The Debtors shall not at any time use Cash Collateral derived from the sale, lease or other disposition of any other property of the Debtors or in which the Debtors have an interest, upon or against which the Agent, for the benefit of the Pre-Petition Lenders, has been granted security interests and/or liens (collectively the "Other Collateral"), unless the Debtors have obtained prior written consent from the Agent and Pre-Petition Lenders authorizing such use. Notwithstanding anything to the contrary in the Interim Order or this Order, the Debtors agree and they are directed that no Cash Collateral or proceeds of the DIP Loan shall be used to make transfers to insiders of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code, including, without limitation, payments of any wages, compensation or other benefits to any such insider.

4. **Replacement Liens.** In addition to the existing rights and interests of the Agent and the Pre-Petition Lenders in the Cash Collateral and the Collateral, the Debtors hereby grant, regrant, and continue to Agent, for the benefit of the Pre-Petition Lenders, as security for the repayment of the Pre-Petition Obligations and any other obligation of any one or more of the Debtors to the Agent and/or the Pre-Petition Lenders, to the extent of any actual diminution in value of the Collateral from and after the Petition Date: (i) valid, binding, enforceable, and perfected replacement liens in all property acquired or created postpetition of the type included within the Collateral during the time the Debtors are permitted to use Cash Collateral (collectively, the "Replacement Liens"); and (ii) administrative expense claims in accordance with section 507(b) of the Bankruptcy Code, with priority over every other claim allowable under section 507(a) of the Bankruptcy Code, junior only to the EFO Superpriority Claim (collectively, the "Superpriority Claims"). The Replacement Liens and the Superpriority Claims

shall be subject to the Carve-Out (defined below) and shall not be subordinated to any other lien under section 364(d) of the Bankruptcy Code or otherwise, except for the Priming Lien.

5. **Adequate Protection.** The value of the Collateral has continued to decline and erode with the Debtors' continued use of Cash Collateral and, as a result, the Agent and Pre-Petition Lenders are entitled to adequate protection of their interest in the Cash Collateral and other Collateral pursuant to section 363(e) of the Bankruptcy Code. As adequate protection of the Agent's and Pre-Petition Lenders' interest in the Cash Collateral and for the Debtors' use thereof, the Debtors shall: (a) maintain their existing bank accounts with the Pre-Petition Lenders; (b) grant the Agent, for the benefit of the Pre-Petition Lenders, Replacement Liens and Superpriority Claims pursuant to and in accordance with Paragraph 4 above; (c) allow the Agent and Pre-Petition Lenders access pursuant to Paragraph 8 below to the Debtors' business premises, during regular business hours, wherever located, for the purpose of examining the Debtors' books and records, inspecting the Collateral, monitoring the Debtors' business operations, or monitoring and verifying the Debtors' compliance with the terms of this Order; (d) maintain their current levels of loss and liability insurance coverage on all of the Debtors' assets; (e) provide the Agent and Pre-Petition Lenders with the financial information and business data required pursuant to Paragraph 8 below, and any other information or documentation which any of the foregoing shall reasonably request; and (f) make no increases in compensation, dividends, or benefits for any of their officers or employees. Without limiting the foregoing in any respect, the Agent and Pre-Petition Lenders may, at any time, request that the Court grant other protections for the benefit of the Agent and Pre-Petition Lenders as a condition to the continued use by the Debtors of the Cash Collateral. Moreover, nothing herein shall

prejudice the Agent's or Pre-Petition Lenders' right to seek relief from stay or a dismissal of the Debtors' bankruptcy case.

6. **Carve-Out**. Notwithstanding any other provision of this Order, but subject to the limitations on the use of Cash Collateral and other Collateral as set forth in this Order, the liens of and the Replacement Liens and Superpriority Claims granted to the Agent and Pre-Petition Lenders, including pursuant to the Pre-Petition Loan Documents and this Order, as applicable, shall be subject to a limited carve-out (the "Carve-Out") for (i) compensation for services rendered and reimbursement of expenses incurred prior to a Termination Event (as defined in Paragraph 7 below) that are permitted to be paid under sections 330 or 331 of the Bankruptcy Code to the Debtors' and Committee's professionals, provided that all such professionals are retained in the Debtors' chapter 11 case pursuant to an order of the Bankruptcy Court (collectively, the "Estate Professionals"), in an amount not to exceed an amount equal to \$250,000, which is deposited in the Professional Fee Escrow (as defined in the Interim Order) plus any pre-petition retainers; and provided further that no portion of the Cash Collateral or Collateral may be used to (a) investigate, prepare for, commence or prosecute any action, counterclaim or objection with respect to claims, liens or security interests of the Agent or Pre-Petition Lenders, or (b) investigate, prepare for, prosecute, defend or otherwise contest any claim (as defined in section 101(5) of the Bankruptcy Code) or action against or otherwise adverse to the Agent or Pre-Petition Lenders; provided, however, nothing contained herein, including sub-clauses (a) and (b), shall limit the award of any fees and expenses incurred by Estate Professionals prior to the date hereof, and payment from any Carve-Out; and provided further, that nothing herein shall be deemed as a consent to the allowance of such fees or expenses or a waiver of the rights of the Agent or Pre-Petition Lenders to object to any requests by the Estate

Professionals for allowance of any fees or expenses; and (ii) fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) or to the Clerk of the Bankruptcy Court.

7. **Termination.** The Debtors' authorization to use Cash Collateral, and any and all obligations of the Agent and Pre-Petition Lenders under this Order, as set forth above, shall immediately cease upon the earliest occurrence of any Termination Event. As used herein, "Termination Event" shall mean any of the following:

a. such time as any one or more Debtors make payments which are not authorized by this Order unless such unauthorized payment(s) is waived in writing by the Agent and Pre-Petition Lenders;

b. this case is converted to a case under chapter 7 of the Bankruptcy Code;

c. the entry of any order materially modifying, reversing, revoking, staying, rescinding, vacating or amending this Order without the express prior written consent of the Agent and Pre-Petition Lenders;

d. a trustee or examiner is appointed for the Debtors pursuant to section 1104 of the Bankruptcy Code;

e. 11:59 p.m. E.D.T. on March 26, 2010; or

f. upon 1 business day's written notice by the Agent to the Debtors, their counsel, counsel for the DIP Lender, counsel for the Committee and the United States Trustee, the occurrence of any of the following:

i. failure by the Debtors to deliver to the Agent any of the reporting requirements and financial information as set forth in Paragraph 8 below; or

ii. any other violation of this Order by any one or more of the Debtors.

The Agent, in its sole discretion, may agree to extend any deadline or waive any requirement contained in this Paragraph 7, without further order of this Court; provided that any such extension or waiver shall be not be effective unless in writing and executed by the Agent. Upon termination pursuant to this Paragraph 7 of the Debtors' authorization to use Cash Collateral, (A) the Debtors shall immediately cease use of Cash Collateral without the prior written consent of the Agent and Pre-Petition Lenders, and (B) upon 1 business day's written notice to the Debtors, their counsel, counsel for the DIP Lender, counsel for the Committee and the United States Trustee by the Agent, the automatic stay is hereby modified (unless the Court orders otherwise during such period) to permit the Agent, on behalf of the Pre-Petition Lenders, to exercise all remedies available to them with respect to the Collateral.

8. **Reporting and Inspection.** Upon reasonable notice, the Debtors shall provide the Agent, and its respective consultants, accountants, agents, representatives, employees, or attorneys access to: (a) all of the Debtors' books and records for the purpose of examining, inspecting, copying, and making extracts therefrom; (b) all of the Collateral for the purpose of inspecting same; (c) the Debtors' business premises for purposes of determining whether the Debtors are in compliance with the terms of this Order; and (d) the information contained in the Debtors' books and records related to their business operations. The Debtors shall cooperate, consult with, and provide to such consultants, accountants, agents, representatives, employees, or attorneys all such information as they may reasonably request for the purposes of determining or verifying compliance by the Debtors with the terms of this Order, examining and verifying the Debtors' financial reports or condition; and auditing or reviewing the Debtors' business operations or appraising and evaluating the Debtors' assets. The Debtors shall also provide the Agent with copies of the following documents and other financial information:

- a. Cash flow projections of the Debtors as prepared in the ordinary course of business.
- b. All financial or operating reports, including bank statements for any and all deposit accounts maintained by or for the benefit of each Debtor required or requested by the Office of the United States Trustee.
- c. Any financial reports required to be filed with the Bankruptcy Court.
- d. A written report (the "Report") certified by an officer of the Debtors and verified by the financial advisor of the Debtors, to be provided on or before 12:00 p.m. (Eastern) each Tuesday: (i) itemizing and cumulatively totaling all post-petition receipts and disbursements for the previous calendar week (*i.e.*, Sunday through Saturday), (ii) setting forth a performance vs. budget comparison analysis (including with respect to sales and collections) for the previous calendar week, (iii) setting forth a performance vs. budget comparison analysis (including with respect to sales and collections) for the cumulative period beginning with the date of the entry of this Order through the conclusion of the previous calendar week, and (iv) itemizing expenses incurred but not paid (and the terms thereof) during the previous calendar week; each to be in form and substance reasonably satisfactory to the Agent and based on a detailed template form agreed to by the Agent.

The Debtors and the financial advisor of Debtors shall make themselves available for a conference call with the Agent and Pre-Petition Lenders, no later than 5:00 p.m. (Eastern) each Tuesday (unless otherwise agreed to by the Agent in writing for any given week) and at such other times as reasonably requested by the Agent, in order to respond to any questions with respect to any of the deliveries set forth in this Paragraph 8.

9. **Perfection of Replacement Liens.** Neither Agent nor any Pre-Petition Lender shall be required to file any financing statements, mortgages, or other instruments in any recording office in order to perfect the Replacement Liens granted to them under this Order, which Replacement Liens are hereby declared perfected, valid and enforceable as of the Petition Date. If the Agent, for the benefit of the Pre-Petition Lenders, in its discretion, desires to file financing statements or mortgages, or take other steps to evidence the perfection of the Replacement Liens, all such actions shall be deemed to have been performed or filed as of the

Petition Date and the filing officer shall accept a certified copy of this Order as an appropriate filing. At the request of the Agent or Pre-Petition Lenders, the Debtors shall execute and deliver such further documents and instruments as any of the foregoing may reasonably deem necessary or desirable to grant, evidence, and perfect all of the rights given or intended to be given to the Agent and Pre-Petition Lenders by this Order.

10. **Preservation of Replacement Liens.** In the event that this Order or any authorization contained herein is reversed or modified on appeal, the Agent and Pre-Petition Lenders are entitled to the protection of section 364(e) of the Bankruptcy Code with respect to priorities, liens, and security interests granted under this Order, and any reversal, modification or reconsideration of this Order, whether on appeal or otherwise, shall not limit or affect the rights of the Agent and Pre-Petition Lenders arising from the use of Cash Collateral in reliance upon this Order.

11. **Prohibition against Granting of Other Postpetition Liens or Adequate Protection to Other Parties.** The Debtors shall not obtain credit or incur indebtedness secured by security interests in property in which the Agent or Pre-Petition Lenders have an interest, unless a condition of the granting of relief in such proceeding is that: (i) all Pre-Petition Obligations shall be paid in full; or (ii) the Agent and Pre-Petition Lenders shall have consented thereto previously in writing. In the event that any other party in interest seeks an order pursuant to sections 363 or 364 of the Bankruptcy Code or is otherwise granted or is to be granted adequate protection or assurance pursuant to sections 361, 362, 363, 364, or 365 of the Bankruptcy Code or under applicable law, the Debtors shall give the Agent and Pre-Petition Lenders notice of such grant or request within two business days thereafter.

12. **Survival.** The provisions of this Order, including the liens and security interests created and affirmed hereunder and the respective priorities of such liens as provided by this

Order, and any actions taken pursuant thereto, shall remain in effect and continue in this case of the Debtors under the Bankruptcy Code; and shall be binding on the Debtors and their successors and assigns, including any trustee or other fiduciary hereinafter appointed under chapter 11 or chapter 7 of the Bankruptcy Code; and shall be binding in the event of the confirmation of a chapter 11 plan by the Debtors.

13. **Automatic Stay.** The Automatic Stay is hereby modified to the extent necessary to permit all acts, actions and transfers, relating to perfection of interests contemplated herein. During the term of the use of Cash Collateral contemplated by this Order, the Agent and Pre-Petition Lenders may file a motion seeking to lift the automatic stay.

14. **No Consent to 506(c) Charges.** Nothing in this Order or any other budget shall constitute the consent by the Agent or Pre-Petition Lenders to the imposition of any costs or expense of administration or other charge, lien, assessment or claim (including, without limitation, any amounts set forth in any budget) against the Agent or Pre-Petition Lenders, their claims or their collateral under section 506(c) of the Bankruptcy Code or otherwise.

15. **Lenders' Reservation of Rights; No Waiver.** The Agent and Pre-Petition Lenders do not waive, and expressly reserve, any and all claims, defenses, rights and remedies they may have pursuant to any or all of the Pre-Petition Loan Documents, the Bankruptcy Code and/or other applicable law against the Debtors and any officer, director, employee, agent or other representative thereof. In addition, the rights, claims, liens, security interests and priorities of the Agent and Pre-Petition Lenders arising under this Order are in addition to, and are not intended as a waiver or substitution for, the rights, obligations, claims, liens, security interests and priorities granted by the Debtors in their pre-petition capacity.

16. **Lenders' Relationship with Debtors.** In taking any actions reasonably related to this Order (including, without limitation, the exercise of any approval rights with respect to any

budget), the Agent and Pre-Petition Lenders shall have no liability to any third party and shall not be deemed to be in control of the operations of the Debtors or to be acting as a "controlling person," "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act as amended, or any similar federal or state statute), and the Agent's and Pre-Petition Lenders' relationship with the Debtors shall not constitute or be deemed to constitute a joint venture or partnership of any kind between the Agent and Pre-Petition Lenders, on one hand, and the Debtors, on the other hand.

17. **Effect of Modification of Order.** If any of the provisions of this Order are hereafter modified, vacated or stayed by subsequent order of this or any other Court, such stay, modification or vacatur shall not affect the validity and enforceability of any lien, priority, right, privilege or benefit authorized hereby with respect to the Pre-Petition Obligations. Notwithstanding any such stay, modification or vacatur, the Agent and Pre-Petition Lenders shall be entitled to all the rights, privileges and benefits, including, without limitation, the security interests and priorities granted herein, with respect to all of the Pre-Petition Obligations.

18. **Notice of Final Order.** No later than one (1) business day after the date of this Order, the Debtors shall serve a copy of this Order upon: (i) counsel for the DIP Lender; (ii) counsel for the Agent; (iii) counsel for the Committee; (iv) all parties who have filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002; (v) the taxing authorities to which each Debtor pays taxes; and (vi) those other creditors known to the Debtors who may have liens upon or perfected security interest in any of the Debtors' assets and properties.

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AGREED TO BY:

Dated: March 24, 2010

/s/ Marc B. Merklin

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EXHIBIT 1

APPROVED BUDGET

MARCH 24, 2010 THROUGH MARCH 26,2010

<u>Sources</u>	<u>\$'s</u>	<u>Uses</u>	<u>\$'s</u>
EFO Available Funds	\$253,000	Payroll Funding	\$201,000
Cash Collateral	<u>\$323,000</u>	Raw Material and Health Care	<u>\$375,000</u>
Total	\$576,000	Total	\$576,000