

that the Motion may be heard on December 17, 2009 at 1:00 p.m. (ET), in connection with the hearing to consider confirmation of the Debtors' Plan (as defined below).

1. The Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") require twenty (21) days' notice prior to the hearing date for motions involving the use or sale of estate property. *See* Fed. R. Bankr. P. 2002(a)(2). Likewise, Local Rule 9006-1(c) provides for a seventeen (17) day notice period (if service is by mail) for motions not otherwise governed by the Bankruptcy Rules or the Local Rules. Pursuant to Local Rule 9006-1(e), however, such periods may be shortened by Order of the Court upon written motion specifying the exigencies supporting shortened notice.

2. The Debtors commenced the present chapter 11 cases under substantial financial distress and with a need to quickly rationalize their balance sheets to remain viable during the current unprecedented economic downturn and to preserve and maximize the value of their assets. The competitive landscape demands that the Debtors, like their competitors, demonstrate an ability to survive this difficult period and quickly emerge from bankruptcy with a capital structure that is sufficient to support the reorganized Debtors' business operations on a go-forward basis. The longer the Debtors remain in chapter 11, the greater effect these proceedings have on the Debtors' business operations as the Debtors' competitors continue in their efforts to siphon the Debtors' employees and customers—luring them away with the promise of greater stability elsewhere.

3. Mindful of the debilitating effect these proceedings have on their business operations, the Debtors labored to develop a plan of reorganization that results in the greatest possible distribution to their creditors and which incorporates a capital structure that will allow the Debtors' business operations to continue. To this end, on the Petition Date, the

Debtors filed their proposed chapter 11 plan (the “*Plan*”) and accompanying disclosure statement (the “*Disclosure Statement*”). Since that time, the Debtors filed several amended versions of the Plan and Disclosure Statement. The Court approved the Disclosure Statement by order entered on October 22, 2009 [Docket No. 768], and the hearing to confirm the Plan is currently scheduled for December 17, 2009.

4. The exit credit facilities described in the Plan and Disclosure Statement represented the most favorable exit financing commitment the Debtors were able to obtain as of this Court’s approval of the Disclosure Statement. Nevertheless, in part because of the restrictive terms of the Old Exit Financing, and in part because of the impact of the Worker, Homeownership, and Business Assistance Act of 2009, the Debtors continued to solicit other offers to provide exit financing on terms more favorable than those embodied in the Old Exit Financing. Specifically, the Debtors sought to maximize the benefits to be generated by the anticipated \$70 million federal tax refund they will receive on account of the New Tax Legislation. Towards that goal, they sought better financial terms from the lenders under the Old Exit Financing, and approached new potential lenders to consider alternative financing structures made possible by the refund asset.

5. Given the Debtors’ continuing need to emerge from chapter 11 as quickly as possible, and in light of the recent favorable developments with respect to the New Tax Legislation and the New Exit Financing, the Debtors submit that there is sufficient cause to justify shortening the notice period for the hearing on approval of the Motion as it relates to

the relief sought therein. As set forth more fully in the Motion,³ as a result of the Debtors' efforts to obtain more favorable exit financing, they have obtained a binding commitment, subject to the terms and conditions of the applicable commitment letters, from DK Acquisition Partners, L.P. and Wells Fargo Foothill, LLC to provide such financing, in the form of a \$50 million revolving credit facility and a \$40 million term loan. The New Exit Financing has a lower overall cost and contains less restrictive financial covenants than the Old Exit Financing. The Debtors also anticipate that it will be easier to work through any future issues that may arise with respect to this financing package because it will have only one term lender and one revolver lender, as opposed to the multiple-lender arrangements embodied in the Old Exit Financing.

6. However, to induce DKAP to enter into negotiations with respect to the New Exit Financing, the Debtors have agreed, subject to this Court's approval and through the DKAP Expense Agreement Letter, to pay DKAP's documented out-of-pocket expenses of up to \$500,000 related to the New Exit Financing and to indemnify DKAP for any losses it may incur due to its negotiations with the Debtors. Meanwhile, to induce WFF to execute a binding commitment letter to provide the New Exit Financing, the Debtors have agreed in the WFF Expense Agreement Letter to pay WFF's documented out-of-pocket expenses related to the New Exit Financing and to indemnify WFF (and certain related parties) under certain circumstances described more fully in the Motion.

³ To the extent there is any inconsistency between the descriptions contained herein and the Motion and/or the DKAP Expense Agreement Letter and the WFF Expense Agreement Letter (the "*Agreement Letters*"), the Motion and the terms and conditions of the Agreement Letters shall control.

7. As a result of the expedited timeframe in which the Debtors are seeking to confirm the Plan and emerge from chapter 11, and because exit financing is critical to doing so, the Debtors submit that it is necessary and in the best interests of their estates for the relief sought in the Motion to be considered and approved on an expedited basis at the December 17, 2009 hearing. Absent the relief requested herein, the Debtors may not be able either to expeditiously finalize the required Exit Financing or to maintain the competitive tension necessary to obtain the most favorable terms possible for such financing, to the detriment of their estates and creditors. In light of the foregoing, the Debtors submit that consideration and approval of the Motion at the December 17th hearing is necessary and in the best interests of the Debtors, their estates and creditors.

8. Because of the shortened notice period, the Debtors propose to give any party objecting to the Motion until the hearing to file and serve any objections upon the undersigned counsel for the Debtors. Furthermore, the Motion will be served by overnight and/or electronic or hand delivery on: (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan); (d) DKAP; (e) WFF; and (f) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

WHEREFORE, the Debtors respectfully request the Court to enter an order, substantially in the form attached hereto as *Exhibit A*, scheduling a hearing on the relief requested in the Motion for December 17, 2009 at 1:00 p.m. (ET) and requiring that any

responses to such motion be filed and served upon the undersigned counsel so as to be received prior to the hearing.

Dated: Wilmington, Delaware
December 14, 2009

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ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A
Proposed Order

interest; and it appearing that due and adequate notice of the Motion to Shorten has been given under the circumstances, and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion to Shorten is granted.
2. Approval of the Motion shall be considered by this Court on December 17, 2009 at 1:00 p.m. (ET) (the "*Hearing*").
3. Any objections to the relief requested in the Motion shall be filed and served upon counsel to the Debtors prior to the Hearing.
4. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
December ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge