

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

-----X
In re : Chapter 11
 :
Telogy, LLC, et al., : Case No. 10-10206 (____)
 :
Debtors. : Joint Administration Pending
-----X

**MOTION OF THE DEBTORS PURSUANT TO
SECTIONS 105(a), 361, 362, 363 AND 552 OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULE 4001(b) FOR ENTRY OF A STIPULATION
AND INTERIM AND FINAL ORDERS: (A) AUTHORIZING USE OF
CASH COLLATERAL; (B) GRANTING ADEQUATE PROTECTION;
AND (C) SCHEDULING A FINAL HEARING ON THE MOTION**

The debtors and debtors in possession in the above-captioned cases (together, the “**Debtors**”)¹ hereby move (the “**Motion**”) for the entry of: (i) an interim order, substantially in the form annexed hereto as Exhibit A (the “**Interim Order**”), (a) authorizing the Debtors to use Cash Collateral (as defined below), pursuant to sections 105(a), 361, 362, 363 and 552 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Local Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), (b) granting adequate protection to the Agent and Lenders (each as defined below), and (c) scheduling a final hearing on the Motion (the “**Final Hearing**”); and (ii) a final order (the “**Final Order**”) on substantially the same terms as the Interim Order. In support of the Motion, the Debtors rely upon and incorporate by reference the Affidavit of Gary B. Phillips, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First

¹ The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) e-Cycle, LLC (1582) and (ii) Telogy, LLC (1530). The Debtors’ executive headquarters are located at 3200 Whipple Road, Union City, California 94587.

Day Pleadings (the “**Phillips Affidavit**”), which was filed with the Court concurrently herewith. In further support of the Motion, the Debtors, by and through their undersigned proposed co-counsel, respectfully represent:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are sections 105(a), 361, 362, 363 and 552 of the Bankruptcy Code, Bankruptcy Rule 4001(b) and Local Rule 4001-2.

BACKGROUND

A. General

2. On January 24, 2010 (the “**Petition Date**”), Telogy, LLC (“**Telogy**”) and e-Cycle, LLC (“**e-Cycle**”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors have requested that these chapter 11 cases be consolidated for procedural purposes. As of the date hereof, no official committee of unsecured creditors has been appointed.

3. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Phillips Affidavit.

4. For their fiscal year ended December 31, 2009, the Debtors had consolidated gross revenues of approximately \$33.0 million, and incurred losses (excluding

interest, taxes, depreciation and amortization expenses, and losses from discontinued operations) in the amount of approximately \$4.2 million.²

B. Prior Chapter 11 Restructuring and Current Debt Structure

5. On November 29, 2005, Telogy, Inc. ("**Old Telogy**") and e-Cycle L.L.C. ("**Old e-Cycle**") each commenced chapter 11 cases under title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Northern District of California (the "**2005 Bankruptcy Cases**"). As part of their restructuring, Old Telogy and Old e-Cycle transferred substantially all of their assets and operations to newly-formed Telogy and e-Cycle, respectively, and the secured debt holders of Old Telogy and Old e-Cycle converted the majority of their debt into equity in the Debtors.

6. In addition, in connection with the restructuring effected in the 2005 Bankruptcy Cases, Telogy and e-Cycle entered into: (i) that certain Term Loan and Guaranty Agreement, dated as of July 28, 2006, among Telogy, e-Cycle, the lenders party thereto (the "**Term Lenders**"), and The Bank of New York Mellon (the "**Agent**"), as Administrative Agent for the Lenders (the "**Term Loan Agreement**"); and (ii) that certain Revolving Credit and Guaranty Agreement, dated as of July 28, 2006, among Telogy, e-Cycle, the lenders party thereto (the "**Revolving Lenders**" and, together with the Term Lenders, the "**Lenders**"), and the Agent, as Administrative Agent for the Lenders (the "**Revolving Credit Agreement**" and, together with the Term Loan Agreement, the "**Secured Credit Agreements**").³

² Telogy has not yet conducted an audit for fiscal year ended December 31, 2009, and all amounts presented herein for the fiscal year ended December 31, 2009 are unaudited.

³ Certain principals or employees of the Lenders are members of the board of directors of Telogy.

7. Pursuant to the Secured Credit Agreements, Telogy issued promissory notes having an aggregate principal amount of \$30,000,000 to the Term Lenders, and the Revolving Lenders agreed to extend revolving credit to Telogy in an aggregate principal amount not to exceed \$20,000,000, which amount was later increased to \$40,000,000 under that certain Amendment No. 2 to the Revolving Credit and Guaranty Agreement, dated May 27, 2007.

8. Telogy's obligations under the Secured Credit Agreements are guaranteed by e-Cycle, and the Debtors' obligations to the Lenders are secured by all of their assets, including, but not limited to, all accounts, chattel paper, deposit accounts, documents, general intangibles, goods, equipment, fixtures, inventory, intellectual property, investment property, letter-of-credit rights, commercial tort claims, all other tangible and intangible personal property whatsoever of the Debtors and all proceeds thereof (collectively, the "**Prepetition Collateral**"). As of January 21, 2010, the Debtors' outstanding obligations under the Term Loan Agreement, including principal and interest, totaled approximately \$26,089,375.00, and the Debtors' outstanding obligations under the Revolving Credit Agreement, including principal and interest and fees, totaled approximately \$32,800,549.43.

C. Events Leading to the Debtors' Bankruptcy Filing.

9. In the months leading up to the commencement of these chapter 11 cases, Telogy faced significant challenges and operational difficulties which resulted in severe liquidity constraints. In December 2008, Telogy retained Broadpoint Capital, Inc. as investment banker to assist Telogy in its analysis, consideration and pursuit of potential divestitures of its assets. During these endeavors, in September 2009, the Company sold its international operations, which were run by Telogy International, N.V., a non-Debtor wholly owned subsidiary of Telogy.

10. Unfortunately, given Telogy's need to reduce its debt load and interest expense, and Telogy's increasing concerns about the potential deterioration of its business and concomitant degradation in value, Telogy ultimately determined that the value of its estate would best be maximized and preserved through the sale of its remaining operations. After a lengthy marketing process, Telogy determined that the bid from McGrath Rent Corp. ("**McGrath**") was a viable opportunity and commenced these chapter 11 cases to implement the proposed transaction with McGrath pursuant to section 363 of the Bankruptcy Code, subject to a competitive sale process and the solicitation of higher and/or otherwise better offers (a "**Sale**"). Telogy believes that, unless a Sale is expeditiously consummated, whether to the Potential Purchaser or to a purchaser submitting a higher or otherwise better offer, there will be significant deterioration in the value of its estate. Accordingly, the prompt pursuit and consummation of a Sale is essential to maximization of the value of the Debtors' estates.

DEBTORS' REQUEST TO USE CASH COLLATERAL

11. It is essential to the Debtors' efforts to preserve and maximize the value of their assets through the Sale process that they obtain the authority to use the cash claimed as collateral by the Agent and Lenders (the "**Cash Collateral**"). The Cash Collateral will be used to pay: (a) the ordinary, reasonable, and necessary expenses actually paid by the Debtors in connection with the operation of their business (including, without limitation, wages, salaries, benefits and other compensation payable to the Debtors' employees and, and chapter 11 administrative and other related costs, fees, and expenses attendant thereto ("**Ordinary Operating Expenses**"); (b) expenses approved by an order of the Bankruptcy Court,⁴ solely to

⁴ Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Interim Order.

the extent acceptable to the Agent and the Lenders (the “**Approved Expenses**”); (c) the ordinary, reasonable, and necessary expenses actually paid by the Debtors in connection with the wind-down of the Debtors’ business, and chapter 11 administrative and other related costs, fees, and expenses attendant thereto that may be incurred after a Sale, as set forth on a budget with respect thereto approved in advance by the Agent and the Lenders (the “**Wind-down Expenses**”); and (d) funding of the Carve-Out (as defined below) (collectively with the Ordinary Operating Expenses, the Approved Expenses, and the Wind-down Expenses, the “**Permitted Expenses**”).

12. The reasons supporting the Debtors’ need to use Cash Collateral during the course of the Debtors’ cases are compelling. Telogy is required, under its stalking horse purchase agreement with McGrath (the “**APA**”), to continue operating its business in the ordinary course and consistent with past practice. Absent permission to use Cash Collateral, Telogy will not be able to fund its day-to-day operating expenses, making it virtually impossible for Telogy to comply with that obligation under the APA. In addition, without sufficient funds to support the Debtors’ business operations, the value of the Telogy’s assets may quickly erode, further diminishing the Debtors’ prospects for a value-maximizing Sale process. Therefore, authorization to use Cash Collateral pending the Final Hearing is in the best interests of the Debtors’ estates and creditors.

13. The Debtors and the Agent, at the direction of and with the consent of the Required Lenders (as defined in the Secured Credit Agreements), have reached an agreement with respect to the Debtors’ use of Cash Collateral upon the terms and conditions set forth in the

Interim Order and summarized below. The Interim Order includes the following key provisions:⁵

- (a) Term. The Debtors' ability to use Cash Collateral on an interim basis automatically expires upon the earlier of: (a) the date on which the Final Order is entered or denied; and (b) the date (the "**Termination Date**") that is the earlier to occur of: (i) the first business day after expiration of the Remedies Notice Period; and (ii) February 28, 2010.
- (b) Permitted Expenses. The Cash Collateral will be used solely to pay the Permitted Expenses.
- (c) Adequate Protection Liens. As adequate protection, the Debtors will grant the Agent and Lenders additional, replacement and continuing, valid, binding, enforceable, non-avoidable and automatically and properly perfected first-priority security interests in and liens (collectively, the "**Adequate Protection Liens**") on all of the Debtors' assets, wherever located, by whomsoever held, including, subject to entry of the Final Order, causes of action under chapter 5 of the Bankruptcy Code ("**Avoidance Claims**"), and any and all proceeds thereof (collectively, the "**Postpetition Collateral**"). The Adequate Protection Liens shall be subject and subordinate only to the Carve-Out, and shall be senior and prior to all other interests or liens whatsoever in or on the Postpetition Collateral.
- (d) Superpriority Claim. As additional adequate protection, the Debtors will grant the Agent and Lenders an allowed superpriority expense claim (the "**Superpriority Claim**") which shall have priority in the Debtors' chapter 11 cases and in any case under chapter 7 of the Bankruptcy Code upon conversion of any of the Debtors' cases or any other action, case or proceeding related to or arising out of any of the foregoing (individually or collectively, the "**Successor Case**") under sections 364(c)(1), 502(b) and 507(b) of the Bankruptcy Code, and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever; provided, that, the Superpriority Claim shall be subject to the Carve-Out.
- (e) Adequate Protection Payments. As additional adequate protection, the Agent and Lenders will, until the Termination Date, receive: (a) payments of cash in an amount equal to interest under the Secured Credit Agreements on a current basis, calculated at the applicable non-default

⁵ The summary of key provisions of the Interim Order is qualified by the terms of the Interim Order. In the event of an inconsistency, the terms of the Interim Order shall control.

interest rates under the Secured Credit Agreements as in effect on the Petition Date; (b) payments in cash on a current basis, promptly, but in no event later than ten (10) days following receipt by the Debtors of an invoice therefor, of all fees, costs and reasonable expenses of the Agent and Lenders payable under the Secured Credit Agreements, including, without limitation, the reasonable fees and out-of-pocket disbursements of the Agent's outside counsel; and (c) payment of the Excess Carve-Out on the Final Date (as defined below) (collectively, the "**Adequate Protection Payments**"); provided, however, that the Debtors will not be obligated to pay the Adequate Protection Payments if doing so would result in the Debtors being unable to (i) fund the Permitted Expenses, including funding of the Carve-Out, and (ii) maintain an adequate assurance deposit account with respect to postpetition utility services, pursuant to an applicable order of the Bankruptcy Court.

- (f) Maintenance of Insurance. As additional adequate protection, until the consummation of a Sale, the Debtors will maintain insurance coverage with respect to the Prepetition Collateral and Postpetition Collateral in substantially similar form and limits as the Debtors maintained immediately prior to the Petition Date.
- (g) Budgets and Reporting. As additional adequate protection, until a Termination Date, the Debtors will provide weekly reports in sufficient detail in a form acceptable to the Agent and Lenders reflecting the payment of the Permitted Expenses and provide such other reports and access to the Debtors, their books and records and knowledgeable personnel as permitted or required under the Secured Credit Agreements. Further, within ten days of the date of entry of the Interim Order, the Debtors will be required to provide a proposed budget for the Permitted Expenditures to the Agent and the Lenders in sufficient detail and in form acceptable to the agent and Lenders, representing the Permitted Expenses from the Petition Date through April 30, 2010, which, upon approval by the Agent and Lenders will become the "**Budget**." The Debtors will update the Budget every two weeks and extend the period reflected in the Budget on a rolling two weeks basis.
- (h) Carve-Out. The Agent and the Lenders have agreed that the Adequate Protection Liens and Superpriority Claims will be subject to the payment of the following (the "**Carve-Out**"): (a) allowed administrative expenses pursuant to 28 U.S.C. Section 1930(a)(6) incurred after the Termination Date; (b) allowed actual and necessary expenses incurred by members of any Creditors' Committee after the Termination Date; and (c) allowed fees and expenses of attorneys, financial advisors and accountants employed by (i) the Debtors pursuant to section 327 of the Bankruptcy Code, in an aggregate amount not to exceed \$1,500,000, and (ii) any Creditors' Committee pursuant to section 1103 of the Bankruptcy Code, in aggregate amount not to exceed \$200,000, inclusive of any amounts investigating

any Challenge (the “**Professionals**”), each solely to the extent allowed by an order of this Court (including pursuant to any fee procedures order entered by the Bankruptcy Court), and regardless of whether such fees and expenses were incurred before or after the Termination Date; provided, that, the amounts payable under clauses (b) and (c) of this paragraph will not in the aggregate exceed \$1,700,000, inclusive any retainers held by any Professional, from the Petition Date through the date the cases are closed or dismissed (“**Final Date**”).

- (i) Remedies. Upon the occurrence of an Event of Default and expiration of the Remedies Notice Period, the Agent and Lenders will be entitled to foreclose on all or any portion of the Prepetition Collateral and Postpetition Collateral and collect accounts receivable related thereto and apply the proceeds thereof in satisfaction of the Carve-Out and the Secured Obligations.

14. The Interim Order additionally contains certain acknowledgements and stipulations by the Debtors concerning the amount due and owing under the Secured Credit Agreements and the validity and perfection of the Agent’s and Lenders’ prepetition liens in the Debtors’ assets. The Interim Order further provides that those stipulations and acknowledgments (which appear in paragraph G), shall be binding on all creditors, interest holders, parties in interest and their estates in the cases or any Successor Case, unless any Creditors’ Committee or other person or entity with legal standing commences an action or other appropriate proceeding in this Court on or before: (A) the later of sixty (60) days from the initial date of appointment of the Creditors’ Committee in the Debtors’ chapter 11 cases, or seventy-five (75) days from entry of the Petition Date if no Creditors’ Committee is appointed; or (B) entry of any order approving the Sale.

RELIEF REQUESTED

15. The Debtors seek: (a) authority pursuant to sections 105(a), 361, 362, 363, 364 and 552 of the Bankruptcy Code for use of the Cash Collateral pursuant to the terms of the Interim Order; (b) to grant to the Agent and Lenders adequate protection in respect of their

interests in the Prepetition Collateral in accordance with the Interim Order; and (c) at the Final Hearing, entry of the Final Order.

16. Bankruptcy Rule 4001(d) provides that the Court may fix the time within which objections to the approval of an agreement relating to cash collateral and adequate protection pursuant to section 363 of the Bankruptcy Code must be filed. In addition, the Court is empowered to conduct an expedited preliminary hearing on the motion and authorize the use of cash collateral to the extent necessary to avoid immediate and irreparable harm to the Debtors' estates.

ARGUMENT

17. The Agent and Lenders assert that the cash received by the Debtors generated from the operation of their businesses in the ordinary course constitutes cash collateral. The Debtors' use of the Cash Collateral is necessary to maintain and maximize the value of Telogy's assets while pursuing, negotiating and consummating a Sale. Absent the use of Cash Collateral, the Debtors will be unable to operate their businesses in a manner necessary to maintain and maximize the value of the assets pending the anticipated Sale, and consistent with Telogy's obligations under the APA.

18. Unless the Debtors have access to the Cash Collateral, the value of the Debtors' assets will be seriously diminished. Simply stated, without the use of the Cash Collateral as requested by this Motion, the Debtors will suffer immediate and irreparable harm, their business operations will deteriorate and the operational value of the business will not be realized.

19. Bankruptcy Rule 4001(b) permits a court to approve a debtor's request for use of cash collateral during the 15-day period following the filing of a motion requesting authorization to use cash collateral, "only . . . as is necessary to avoid immediate and irreparable

harm to the estate pending a final hearing.” Bankruptcy Rule 4001(b)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. See, e.g., In re Simasko Production Co., 47 B.R. 444, 449 (D. Co. 1985), 47 B.R. at 449; see also In re Ames Dep’t Stores Inc., 115 B.R. 34, 38 (Bank S.D.N.Y. 1990) 115 B.R. at 38. After the 15-day period, the request for use of cash collateral is not limited to those amounts necessary to prevent destruction of the debtor’s business. A debtor is entitled to use cash collateral that it believes prudent in the operation of its business. See, e.g., Simasko, 47 B.R. at 449; Ames Dep’t Stores, 115 B.R. at 36.

20. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use cash collateral unless “(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2). Further, Bankruptcy Code section 363(e) provides, in pertinent part, that “on request of an entity that has an interest in property . . . proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). Examples of adequate protection are provided in section 361 of the Bankruptcy Code and include, but are not limited to: (a) lump sum or periodic cash payments to the extent that such use will result in a decrease in value of such entity’s interest in the property; (b) provisions for an additional or replacement lien to the extent that the use of the property will cause a decrease in the value of such entity’s interest in the property; and (c) such other relief as will result in the realization by the entity of the indubitable equivalent of such entity’s interest in the property. 11 U.S.C. § 361.

21. Adequate protection must be determined on a case-by-case basis, in light of the particular facts and circumstances presented, the focus being that which is required to protect a secured creditor from diminution in the value of its interest in the particular collateral during the use period. In re Ledgmere Land Corp., 116 B.R. 338, 343 (Bankr. D. Mass. 1990); Delbridge v. Production Credit Assoc. & Federal Land Bank, 104 B.R. 824, 827 (E.D. Mich. 1989); In re Kain, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986).

22. As more fully set forth in the Interim Order, as adequate protection for the use of Cash Collateral, the Debtors will be providing the Agent and Lenders with, *inter alia*: (a) continuing, valid, binding, enforceable, non-avoidable and automatically and properly perfected first-priority security interests in and liens on the Postpetition Collateral; (b) the Adequate Protection Payments; (c) the Superpriority Claim, which has priority over all administrative expense claims and unsecured claims against the Debtors and their estates; (d) the Debtors' maintenance of insurance coverage with respect to the Prepetition Collateral and Postpetition Collateral until the consummation of the Sale; and (e) the Debtors' provision to the Agent and Lenders of weekly reports regarding paid Permitted Expenses and maintenance of a budget of Permitted Expenses.

23. The terms and conditions on which the Debtors may use Cash Collateral have been carefully designed to meet the dual goals of sections 361 and 363 of the Bankruptcy Code. If the Interim Order is entered, the Debtors will have working capital to operate their businesses and consummate a value-maximizing Sale for the benefit of their stakeholders. At the same time, the Agent and the Lenders will be adequately protected in a manner that they have agreed to for consenting to Debtors' use of Cash Collateral. Therefore, the Debtors respectfully

submit that the use of Cash Collateral on the terms set forth in the attached proposed Interim Order provides the Agent and Lenders with adequate protection and is in the best interest of the Debtors, their estates, their creditors and all parties in interest, and therefore should be authorized by this Court.

PROVISIONS THAT IMPLICATE LOCAL RULE 4001-2

24. Local Rule 4001-2 requires that certain provisions contained in motions requesting use of cash collateral be highlighted. One such provision required to be highlighted is the disparate treatment of professionals retained by a statutory committee with respect to a professional fee carve out. Del. Bankr. L. R. 4001-2(a)(i)(F). Paragraph 11 of the Interim Order provides, among other things, that the Carve-Out amount reserved for the Debtors' Professionals shall not exceed \$1,500,000, while the Carve-Out amount for Professionals retained by the Creditors' Committee shall not exceed \$200,000. The Debtors submit that the disparate treatment is justified given the facts and circumstances of these chapter 11 cases and the size of carveout acceptable to the Agent and Lenders. Specifically, these chapter 11 cases were filed in order to conduct an expedient Sale of the Debtors' assets. As a result, the Debtors' professionals will be required to expend significant time and resources seeking Court approval of the APA, coordinating a competitive Sale process, evaluating alternative bids, and consummating a Sale in order to maximize the value of the Debtors' assets for the benefit of all stakeholders. The Committee, on the other hand, should have a substantially more limited role and will not have the responsibility for, nor incur the costs associated with, the consummation of the Sale. Accordingly, the Debtors submit that the disparate treatment is justified by the facts and circumstances of these chapter 11 cases.

25. The Debtors do not believe that the Interim Order contains any other provisions requiring special disclosure under Local Rule 4001-2. Nonetheless, the Debtors highlight that the Agent and Lenders seek, in the Final Order: (a) pursuant to paragraph 5(a) of the Interim Order, Adequate Protection Liens on causes of action under chapter 5 of the Bankruptcy Code; and (b) pursuant to paragraph 16 of the Interim Order, a waiver of the Debtors' rights under section 506(c) of the Bankruptcy Code.

REQUEST FOR FINAL HEARING

26. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtors request that the Court set a date for the Final Hearing no later than February 28, 2010, upon which date the Debtors' ability to use Cash Collateral pursuant to the Interim Order (if entered) will terminate.

NOTICE

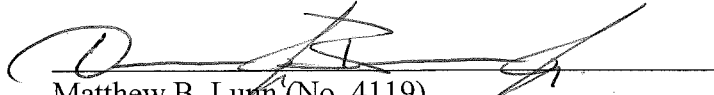
27. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' prepetition secured lenders; and (c) the Debtors' twenty (20) largest unsecured creditors on a consolidated basis. The Debtors will serve copies of the Motion pursuant to Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

28. Following entry of the Interim Order, notice of the Final Hearing will be given as provided for in the Interim Order.

CONCLUSION

WHEREFORE, the Debtors respectfully request entry of the Interim Order, in the form annexed hereto as Exhibit A, granting the Debtors the relief requested herein, and such other and further relief as may be just or proper.

Dated: Wilmington, Delaware YOUNG CONAWAY STARGATT & TAYLOR, LLP
 January 24, 2010



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Proposed Counsel to the Debtors
and Debtors in Possession

EXHIBIT A

Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X	:	
In re	:	Chapter 11
	:	
Telogy, LLC, <u>et al.</u> ¹	:	Case No. 10-10206 (____)
	:	
Debtors.	:	(Joint Administration Pending)
	:	Related Docket No. ____
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**STIPULATION AND INTERIM ORDER (A) AUTHORIZING
USE OF CASH COLLATERAL AND (B) GRANTING ADEQUATE PROTECTION**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

This Stipulation and Interim Order (the “Stipulation”) is made by and among Telogy, LLC (“Telogy”) and e-Cycle, LLC (“e-Cycle”), the debtors and debtors in possession in the above-captioned cases (each a “Debtor” and, collectively, the “Debtors”), and certain secured lenders (in their capacity as such, the “Lenders”) that are party to: (i) that certain Term Loan and Guaranty Agreement, dated as of July 28, 2006, among Telogy, e-Cycle, the Lenders party thereto, and The Bank of New York Mellon (the “Agent”), as Administrative Agent for the Lenders (the “Term Loan Agreement”); and (ii) that certain Revolving Credit and Guaranty Agreement, dated as of July 28, 2006, among Telogy, e-Cycle, the Lenders party thereto, and the Agent, as Administrative Agent for the Lenders (the “Revolving Credit Agreement” and, together with the Term Loan Agreement, the “Secured Credit Agreements”). The Debtors and the Lenders hereby stipulate to the Debtors’ interim use of Cash Collateral (as defined below) on

¹ The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) e-Cycle, LLC (1582) and (ii) Telogy, LLC (1530). The Debtors’ executive headquarters are located at 3200 Whipple Road, Union City, California 94587.

the terms, for the specified period and subject to the conditions contained in this Stipulation.

This Stipulation is made with reference to the following recitals:

RECITALS

A. Petition Date. The Debtors filed voluntary petitions under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on January 22, 2010 (the “Petition Date”). Contemporaneously therewith, the Debtors filed a motion with this Court seeking joint administration of these cases for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

B. Debtors in Possession. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors have retained possession of their assets and are authorized, as debtors and debtors-in-possession, to continue the operation and management of their businesses.

C. Jurisdiction. The Court’s consideration of this Stipulation is a core proceeding as defined in 28 U.S.C. §§ 157(b)(2)(A) and (D). The statutory predicates for the relief sought herein are sections 361 and 363 of the Bankruptcy Code, among others, and Bankruptcy Rule 4001(b).

D. Committee Formation. As of the date hereof, no official committee of unsecured creditors or of other parties in interest (any and all such official committees, the “Creditors’ Committee”) has been appointed in the Debtors’ cases.

E. Debtors’ Entry into the Secured Credit Agreements. On November 29, 2005, Telogy, Inc. (“Old Telogy”) and e-Cycle L.L.C. (“Old e-Cycle”) each commenced chapter 11 cases under title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of California (the “2005 Bankruptcy Cases”). As part of their restructuring, Old Telogy and Old e-Cycle transferred substantially all of their assets and operations to newly-formed Telogy and e-Cycle, respectively, and the secured debt holders

of Old Telogy and Old e-Cycle converted the majority of their debt into equity in the Debtors. In connection with consummation of the plan of reorganization for Old Telogy and Old e-Cycle in the 2005 Bankruptcy Cases, the Debtors entered into the Secured Credit Agreements on June 28, 2006. Pursuant to the Secured Credit Agreements, Telogy issued promissory notes having an aggregate principal amount of \$30,000,000 to the Lenders under the Term Loan Agreement, and the Lenders under the Revolving Credit Agreement agreed to extend revolving credit to Telogy in an aggregate principal amount not to exceed \$20,000,000, which amount was later increased to \$40,000,000 under that certain Amendment No. 2 to the Revolving Credit and Guaranty Agreement, dated May 27, 2007. Telogy's obligations under the Secured Credit Agreements are guaranteed by e-Cycle, and the Debtors' obligations to the Lenders are secured by all of their assets, including, but not limited to, all accounts, chattel paper, deposit accounts, documents, general intangibles, goods, equipment, fixtures, inventory, intellectual property, investment property, letter-of-credit rights, commercial tort claims, all other tangible and intangible personal property whatsoever of the Debtors and all proceeds thereof (the "Prepetition Collateral").

F. The Secured Obligations. As of January 21, 2010, the Debtors' outstanding obligations under the Term Loan Agreement, including principal and interest, totaled approximately \$26,089,375.00 (the "Term Loan Obligations"), and the Debtors' outstanding obligations under the Revolving Credit Agreement, including principal and interest and fees, totaled approximately \$32,800,549.43 (the "Revolving Obligations" and, together with the Term Loan Obligations and all accrued and accruing unpaid interest, fees, costs, charges, assessments

and all other liabilities, Indebtedness and Obligations of the Debtors to the Agent and Lenders under the Loan Documents, the “Secured Obligations”).²

G. Debtors’ Acknowledgment and Agreements: After consultation with their attorneys and financial advisors, but without prejudice to the rights of parties in interest set forth in paragraph 8 below, the Debtors admit, stipulate, acknowledge and agree to the following (collectively, the “Debtors’ Stipulations”):

1. Validity and Enforceability of the Secured Credit Agreements (including the Secured Obligations thereunder) and the Lenders’ Security Interests. The Agent and Lenders have valid, binding, enforceable, unavoidable, and perfected first priority security interests in and liens on the Prepetition Collateral and the proceeds thereof, including, without limitation, cash collateral. In addition: (a) the Agent’s and Lenders’ liens are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (b) the Secured Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors that, except for the stay of enforcement arising from section 362 of the Bankruptcy Code, are enforceable in accordance with the terms of the Secured Credit Agreements; (c) no offsets, defenses, challenges, claims, or counterclaims of any kind or nature to any of the Secured Obligations or liens exist, and no portion of the Secured Obligations is subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (d) the Debtors and their estates have no offsets, defenses, claims, objections, challenges, and/or causes of action, including, without limitation, claims under chapter 5 of the Bankruptcy Code, against the Agent or the Lenders, or any of their property or property interests; and (e) any payments made or to be made on account of the Secured Obligations (i) have been or will be payments out of the Prepetition Collateral and the proceeds thereof, and (ii) have not and will not diminish any property otherwise available for distribution to unsecured creditors.

² Defined terms used herein and not otherwise defined shall have the meaning ascribed in the Secured Credit Agreements.

H. Debtors' Need for Use of Cash Collateral. The Debtors cannot meet their ongoing postpetition obligations unless they are authorized to use cash claimed as collateral (the "Cash Collateral") by the Agent and Lenders. The ability of the Debtors to finance their operations requires the immediate use of the Cash Collateral, absent which immediate and irreparable harm will result to the Debtors, their estates, their creditors and the possibility for an effective and orderly reorganization of the Debtors' businesses. In the absence of the use of the Cash Collateral, the continued operation of the Debtors' businesses would not be possible. The relief requested in this Stipulation is, therefore, necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the preservation of their estates.

I. Sale. On the Petition Date, the Debtors filed a motion for orders approving (a) procedures with respect to the proposed sale of substantially all of Telogy's assets and certain buyer protections related thereto, and (b) the consummation of the sale of such assets to McGrath RentCorp, pursuant to the terms of an Asset Purchase Agreement dated January [], 2010 (the "APA") or another party on higher and/or better terms (the "Sale").

J. Section 506(c) and 552(b) Waivers. The Agent and Lenders are entitled to a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and a waiver of the provisions of section 506(c) of the Bankruptcy Code, subject to entry of the Final Stipulation (as defined below).

K. Lenders' Adequate Protection. As a result of the use of the Cash Collateral, the use, sale, or lease of other Prepetition Collateral authorized herein, and/or the imposition of the automatic stay, the Agent and Lenders are entitled to receive adequate protection pursuant to sections 361 and 363 of the Bankruptcy Code to the extent of any diminution in the value of their interests in the Prepetition Collateral (including the Cash

Collateral) resulting from the Debtors' use, sale, or lease thereof during these cases and/or the imposition of the automatic stay.

L. Notice. Notice of: (i) a hearing to consider the interim relief requested in this Stipulation; and (ii) the actual interim relief requested in this Stipulation has been provided by the Debtors, whether by telecopy, email, overnight courier or hand delivery, to certain parties in interest, including: (a) the Office of the United States Trustee; (b) the Internal Revenue Service; (c) the Debtors' largest twenty (20) unsecured creditors; (d) all parties asserting an interest in the Prepetition Collateral; (e) all landlords of the Debtors; and (f) counsel to the Agent and Lenders. Under the circumstances, such notice of the hearing and the interim relief requested in the Stipulation constitutes due and sufficient notice and complies with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001(b).

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter contained, the Agent for itself and for the benefit of the Lenders and the Debtors (collectively, the "Parties") stipulate as follows:

1. Definition of Cash Collateral. The term "Cash Collateral" shall mean and include all "cash collateral," as defined by section 363 of the Bankruptcy Code, in which the Agent or any Lender has an interest.

2. Consent to Interim Use of Cash Collateral. The Agent and Lenders hereby consent to and the Court hereby authorizes the Debtors' use of the Cash Collateral, from the date hereof, on the terms and conditions set forth in this Stipulation, through and including the earlier of: (a) the date on which an order is entered approving or denying a final stipulation regarding the Debtors' use of Cash Collateral (the "Final Stipulation"); and (b) the date (the "Termination

Date”) that is the earlier to occur of: (i) the first business day after expiration of the Remedies Notice Period (as defined below); and (ii) February 28, 2010.

3. Permitted Expenses. The use of the Cash Collateral authorized hereby shall be limited to payment of: (a) the ordinary, reasonable, and necessary expenses actually paid by the Debtors in connection with the operation of the Debtors’ business (including, without limitation, wages, salaries, benefits and other compensation payable to the Debtors’ employees and, and chapter 11 administrative and other related costs, fees, and expenses attendant thereto (“Ordinary Operating Expenses”)); (b) expenses approved by an order of the Bankruptcy Court, solely to the extent acceptable to the Agent and the Lenders, including, without limitation, the costs and expenses associated with consummation of a Sale and payments made pursuant to any Court-approved incentive plan implemented by the Debtors (“Approved Expenses”); (c) the ordinary, reasonable, and necessary expenses actually paid by the Debtors in connection with the wind-down of the Debtors’ business, and chapter 11 administrative and other related costs, fees, and expenses attendant thereto that may be incurred after a Sale as set forth on a budget with respect thereto approved in advance by the Agent and the Lenders (the “Wind-down Expenses”); and (d) funding of the Carve-Out as set forth herein (collectively with the Ordinary Operating Expenses, the Approved Expenses, and the Wind-down Expenses, the “Permitted Expenses”). For the avoidance of doubt, Permitted Expenses include, but are not limited to, the fees and expenses of Professionals (as defined below) to the extent authorized by order of the Bankruptcy Court (including pursuant to any interim compensation procedures order entered by the Bankruptcy Court), but subject to the limits set forth in the Carve-Out; provided, however, that Permitted Expenses shall not include the fees and costs set forth in paragraph 4(c) below.

4. Exclusions from Permitted Expenses. Permitted Expenses that may be paid with Cash Collateral shall not include, *inter alia*:

- (a) Any payment or distribution to any non-Debtor affiliate, equity holder, or insider of any Debtor outside of the ordinary course of business (excluding those transactions approved by the Bankruptcy Court pursuant to orders granting certain relief requested in connection with these cases);
- (b) Any accrual, payment or distribution in the ordinary course of business which is not made in exchange for full and fair equivalent consideration;
- (c) Professional fees or costs incurred by: (i) any of the Debtors or any Creditors' Committee appointed in these cases in connection with the prosecution (as opposed to investigation) of any claim, cause of action, objection, challenge or proceeding by or on behalf of any of the Debtors, or support of the prosecution by any affiliate or creditor of any of the Debtors or any Creditors' Committee in these cases, to the extent any such claim, cause of action, objection, challenge or proceeding is against the Agent or a Lender or their property or property interests; and (ii) any other party in connection with the investigation or prosecution of any claim, cause of action, objection, challenge or proceeding, to the extent any such claim, cause of action, objection, challenge or proceeding is against the Agent or a Lender or their property or property interests.

5. Adequate Protection. As adequate protection of the Agent's and Lenders' interests in the Prepetition Collateral (including the Cash Collateral) against any diminution in the value of their interests in the Prepetition Collateral (including the Cash Collateral) as a result of the use, sale or lease thereof, and/or the imposition of the automatic stay, the Agent and Lenders shall receive adequate protection as follows (together, (a), (b), (c), (d) [and (e)], the "Adequate Protection Package"):

- (a) Postpetition Collateral: Pursuant to sections 361 and 363(e) of the Bankruptcy Code, the Agent, for itself and for the benefit of the Lenders is hereby granted additional, replacement and continuing, valid, binding, enforceable, non-avoidable and automatically and properly perfected first-priority security interests in and liens (collectively, the "Adequate Protection Liens") on all of the

Debtors' assets, wherever located, by whomsoever held, including, subject to entry of the Final Stipulation, causes of action under chapter 5 of the Bankruptcy Code ("Avoidance Claims"), and any and all proceeds thereof (collectively, the "Postpetition Collateral"). The Adequate Protection Liens shall be subject and subordinate only to the Carve-Out, and shall be senior and prior to all other interests or liens whatsoever in or on the Postpetition Collateral.

- (b) Superpriority Claim. Subject to the Carve-Out, the Agent and Lenders shall have an allowed superpriority expense claim (the "Superpriority Claim") which shall have priority in these chapter 11 cases and in any case under chapter 7 of the Bankruptcy Code upon conversion of any of these cases or any other action, case or proceeding related to or arising out of any of the foregoing (individually or collectively, the "Successor Case") under sections 364(c)(1), 502(b) and 507(b) of the Bankruptcy Code, and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726(b) (to the extent permitted by law), 1113, and 1114 of the Bankruptcy Code. Other than the Carve-Out, no costs or expenses of administration including, without limitation, fees or expenses of Professionals allowed and payable under Bankruptcy Code sections 328, 330, and 331, or otherwise, that have been or may be incurred in these cases or in any Successor Case, and no priority claims asserted against or payable from the proceeds of the Prepetition Collateral or the Postpetition Collateral are, or will be senior to, prior to, or on parity with the Superpriority Claim.
- (c) Adequate Protection Payments. The Agent and Lenders shall, until the Termination Date, receive: (a) payments of cash in an amount equal to interest under the Secured Credit Agreements on a current basis, calculated at the applicable non-default interest rates under the Secured Credit Agreements as in effect on the Petition Date; (b) payments in cash on a current basis, promptly, but in no event later than ten (10) days following receipt by the Debtors of an invoice therefor, of all fees, costs and reasonable expenses of the Agent and Lenders payable under the Secured Credit Agreements, including, without limitation, the reasonable fees and out-of-pocket disbursements of the Agent's outside counsel; and (c) payment of the Excess Carve-Out on the Final Date (defined below) (collectively, the "Adequate Protection Payments"); provided, however, in no event shall the Debtors be obligated to pay the

Adequate Protection Payments if doing so would result in the Debtors being unable to (i) fund the Permitted Expenses, including funding of the Carve-Out (as defined below), and (ii) maintain an adequate assurance deposit account with respect to postpetition utility services, pursuant to an applicable order of the Bankruptcy Court.

- (d) Maintenance of Insurance. Until the consummation of a Sale, the Debtors shall maintain insurance coverage with respect to the Prepetition Collateral and Postpetition Collateral in substantially similar form and limits as the Debtors maintained immediately prior to the Petition Date.

- (e) Budgets and Reporting. Until a Termination Date, the Debtors shall provide weekly reports in sufficient detail in a form acceptable to the Agent and Lenders reflecting the payment of the Permitted Expenses and provide such other reports and access to the Debtors, their books and records and knowledgeable personnel as permitted or required under the Secured Credit Agreements. Further, within ten days of the date of this Stipulation, the Debtors shall provide a proposed budget for the Permitted Expenditures to the Agent and the Lenders in sufficient detail and in form acceptable to the agent and Lenders, representing the Permitted Expenses from the Petition Date through April 30, 2010, which upon approval by the Agent and Lenders shall become the "Budget." The Debtors shall update the Budget every two weeks and extend the period reflected in the Budget on a rolling two weeks basis.

6. Post-Petition Lien Perfection. This Stipulation shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Adequate Protection Liens without the necessity of filing or recording any financing statement or other instrument or document (including, without limitation any mortgages or leasehold mortgages), or the taking of any other action whatsoever which may otherwise be required under the law of any jurisdiction to validate or perfect the Adequate Protection Liens or to entitle the Agent and Lenders to the protections and priorities granted herein. Notwithstanding the foregoing, the Agent for itself and for the benefit of the Lenders or representatives, respectively may, in their sole discretion, file such financing statements, mortgages, leasehold mortgages, notices of liens, and other similar

documents, and are hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, leasehold mortgages, notices, and other documents shall be deemed to have been filed or recorded at the time and on the Petition Date. The Debtors shall execute and deliver to the Agent all such financing statements, mortgages, leasehold mortgages, notices, and other documents as the Agent may reasonably request to evidence, confirm, validate or perfect, or to ensure the contemplated priority of, the Adequate Protection Liens granted pursuant hereto. The Agent, in its sole discretion, may file a copy of this Stipulation as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtors have real or personal property, and in such event, the subject filing or recording officer shall file or record such copy of this Stipulation.

7. Modification of the Automatic Stay. The automatic stay imposed by Bankruptcy Code section 362(a) of the Bankruptcy Code is hereby additionally modified to the extent necessary to permit the Debtors to grant the Adequate Protection Package and for the Agent to implement its rights under the preceding paragraph 6.

8. Claims and Defenses; Challenge Period. Notwithstanding anything herein to the contrary, no Prepetition Collateral, Cash Collateral, Postpetition Collateral or proceeds thereof is authorized hereunder to be used by any of the Debtors, any Creditors' Committee or any other person or entity to prosecute any proceeding, to object to, challenge or contest in any manner, or to raise any defenses to, or assert any right of recoupment or set-off with respect to, the validity, perfection, extent, priority, or enforceability of the Secured Obligations or liens pursuant to the Secured Credit Agreements or this Stipulation or to prosecute any action for preferences, fraudulent transfers or conveyances, other Avoidance Claims, equitable

subordination, or any other claims or causes of action against the Agent or any Lender or their counsel and/or financial advisor(s), or any of their respective property or property interests, including, without limitation, with respect to the Secured Obligations or the liens pursuant to the Secured Credit Agreements (collectively, the “Claims and Defenses”) and only fees incurred in an amount not to exceed \$25,000 by any Creditors’ Committee (as expressly determined by the Court) may be incurred and paid in respect of the investigation of any such Claims and Defenses. Without limitation of the foregoing: (a) any Creditors’ Committee or other person or entity shall have the right to assert Claims and Defenses (i) only in an action or other appropriate proceeding commenced in this Court on or before (A) the later of sixty (60) days from the initial date of appointment of the Creditors’ Committee in the Debtors’ chapter 11 cases, or seventy-five (75) days from the [date of entry of the Interim Order] if no Creditors’ Committee is appointed or (B) entry of any order approving the Sale (the “Challenge Period”), or such later date as may be (1) ordered by the Court for cause shown on a motion filed within the Challenge Period or (2) agreed to by the Agent and Lenders without further order of the Court, and (ii) only to the extent that such other person or entity, as the case may be, would otherwise have legal standing to assert Claims and Defenses; (b) if no such action or proceeding is commenced on or before the expiration of the Challenge Period, or is commenced but subsequently withdrawn or dismissed, or otherwise determined adversely to such party (i) the liens pursuant to the Secured Credit Agreements shall be and deemed to be, as of the Petition Date, legal, valid, binding, perfected, not subject to recharacterization, and otherwise unavoidable, (ii) the Secured Obligations shall be and deemed to be allowed in full, (iii) the Debtors’ Stipulations shall be binding on all creditors, interest holders, parties in interest and their estates in the cases or any Successor Case, and (iv) all Claims and Defenses shall be and be deemed to be forever relinquished, waived and released

as to any Creditors' Committee and each other party in interest in these cases and any Successor Case; and (c) if such an action or proceeding is commenced on or before the expiration of the Challenge Period, all Claims and Defenses shall be deemed to have been forever relinquished, waived and released as to the Debtors, any Creditors' Committee, and any other person or entity and the estates, except with respect to Claims and Defenses that are specifically asserted in such action or proceeding. The Debtors and their estates shall have no right to assert any such Claims and Defenses. If an action or proceeding described above is timely filed during the Challenge Period, the findings and stipulations contained in this Stipulation shall nonetheless be binding and preclusive except to the extent that such findings and stipulations are successfully challenged in such action or proceeding by the obtaining by such person bringing such action or proceeding of an order rendered by a court of competent jurisdiction.

9. Events of Default. The occurrence of any of the following events, unless waived by the Agent and the Lenders, shall constitute an "Event of Default" hereunder:

- (a) the failure by the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Stipulation; or
- (b) the obtaining of credit or the incurring of indebtedness that is (i) secured by a security interest, mortgage or other lien on all or any portion of the Prepetition Collateral or Postpetition Collateral which is equal or senior to any security interest, mortgage, or other lien of the Agent or any Lender, or (ii) entitled to priority administrative status which is equal or senior to that granted to Agent or any Lender herein; or
- (c) the institution of any proceeding by the Debtors seeking to challenge the validity of any portion of the Secured Credit Agreements or the applicability or enforceability of the same, or which seeks to void, avoid, limit or otherwise adversely affect any security interest created by or in relation to the Secured Credit Agreements, or this Stipulation or any payment pursuant thereto or hereto; or

- (d) any lien or security interest purported to be created under the Secured Credit Agreements shall cease to be, or shall be asserted by any Debtor not to be, a valid and perfect lien on or security interest in any Prepetition Collateral or Postpetition Collateral, with the priority required by the applicable Secured Credit Agreement and this Stipulation; or
- (e) reversal, vacatur or modification (without the express prior written consent of the Lenders) of this Stipulation; or
- (f) dismissal of the Debtors' chapter 11 cases or conversion of the Debtors' chapter 11 cases to chapter 7 cases or the appointment of a chapter 11 trustee or examiner (with expanded powers) or other responsible person; or
- (g) failure to obtain an order approving the Sale (the "Sale Order") within seventy-five (75) days of the Effective Date (as defined in the APA); or
- (h) failure to close the Sale within ninety (90) days of the Effective Date (as defined in the APA) (the "Closing Date"); or
- (i) failure to pay to the Agent for itself and for the benefit of the Lenders the cash consideration received by the Debtors in connection with the Sale, in an amount acceptable to the Agent, on the Closing Date; or
- (j) failure to provide a wind-down budget acceptable to Agent and Lenders within three (3) business days after entry of the Sale Order.

10. Remedies. Immediately upon the occurrence and during the continuation of an Event of Default and following the provision of five (5) business days' notice (the "Remedies Notice Period") of such Event of Default to the Debtors, any Creditors' Committee, and the United States Trustee, the Agent and Lenders shall be entitled to foreclose on all or any portion of the Prepetition Collateral and Postpetition Collateral and collect accounts receivable related thereto and apply the proceeds thereof in satisfaction of the Carve-Out and the Secured Obligations, including, without limitation, the Adequate Protection Package. Unless after notice and hearing, at which Debtors or other party in interest seeking to maintain the

automatic stay in effect may only seek such relief based upon asserting that an Event of Default has not occurred, the Court orders otherwise prior to the Termination Date, the automatic stay, as to the Agent and Lenders, shall be automatically terminated upon the expiration of the Remedies Notice Period without further notice or order.

11. Carve-Out. Upon the Termination Date, the Adequate Protection Liens and Superpriority Claims shall be subject to the payment of the following (the “Carve-Out”):

(a) allowed administrative expenses pursuant to 28 U.S.C. Section 1930(a)(6) (the “U.S. Trustee Fees”) incurred after the Termination Date; (b) allowed actual and necessary expenses incurred by members of any Creditors’ Committee after the Termination Date; and (c) allowed fees and expenses of attorneys, financial advisors and accountants employed by (i) the Debtors pursuant to section 327 of the Bankruptcy Code, in an aggregate amount not to exceed \$1,500,000, and (ii) any Creditors’ Committee pursuant to section 1103 of the Bankruptcy Code, in aggregate amount not to exceed \$200,000, inclusive of any amounts investigating any Challenge (the “Professionals”), each solely to the extent allowed by an order of this Court (including pursuant to any fee procedures order entered by the Bankruptcy Court), and regardless of whether such fees and expenses were incurred before or after the Termination Date; provided, that, the amounts payable under clauses (b) and (c) of this paragraph shall not in the aggregate exceed \$1,700,000, inclusive any retainers held by any Professional, from the Petition Date through the date the cases are closed or dismissed (“Final Date”). The Carve-Out shall be funded by the Debtors from the Agent’s and Lenders’ Prepetition Collateral and Postpetition Collateral, including Cash Collateral, and the Carve-Out amount shall be deposited in Cash in an escrow account for the benefit of the Professionals and the Creditors’ Committee within one (1) business day after the approval of this Stipulation by this Court; provided, however, such funded escrow

shall (subject to the applicable claims of Professionals) remain subject to the Agent's and Lenders' liens and Adequate Protection Liens and any excess as of the Final Date ("Excess Carve-Out") shall be remitted to the Agent for itself and for the benefit of the Lenders on account of the Secured Obligations. For the avoidance of doubt, in no event shall the Agent or the Lenders have any obligation to fund any amount of the Carve-Out. So long as the Termination Date has not occurred, and subject to the Carve-Out limits set forth herein, the Debtors shall be permitted to pay, except as otherwise limited herein, fees, compensation, and reimbursement of expenses allowed and payable (including any such fees and expenses that are accrued but unpaid and ultimately allowed) under Bankruptcy Code sections 330, 331, and/or 503, as the same may be due and payable. The Carve-Out shall exclude any fees and expenses incurred by the Debtors, any Creditors' Committee or any other person or entity in connection with prosecuting or raising of any Claims and Defenses; provided, however, that such exclusion does not encompass any fees and expenses incurred by any Creditors' Committee in connection with its investigation of Claims and Defenses to the extent such fees and expenses would be payable under paragraph 8 hereof.

12. No Additional Waivers/Consents. Except as expressly provided for herein or by the Bankruptcy Code, nothing herein shall:

- (a) constitute a waiver by the Agent or Lenders of any rights which may exist under the Term Loan Agreement or Revolving Credit Agreement including, without limitation, (i) the right to exercise the rights and remedies of a secured party thereunder and under applicable law, or (ii) the right to seek additional adequate protection or to challenge any impairment of their respective claim or liens;
- (b) constitute a waiver by the Agent or any Lender of the right (i) to seek to dismiss or convert these chapter 11 cases, (ii) to move for the appointment of a chapter 11 trustee or examiner (with or without expanded powers), or (iii) to seek relief from the automatic

stay or to exercise any other rights which it may have under the Bankruptcy Code;

- (c) constitute consent by the Agent and Lenders to the use of Cash Collateral other than as specifically provided herein; or
- (d) obligate the Agent or any Lender to permit the use of Cash Collateral other than as specifically provided herein or to advance funds or otherwise provide any financial accommodations to the Debtors for any reason, including, without limitation, for the payment of expenses of administration under the Bankruptcy Code. For the avoidance of doubt, none of the Agent or Lenders has any commitment or obligation to make or fund any Secured Obligations to any of the Debtors and their commitments, if any remain, are terminated.

13. Default/Extension of Stipulation. Unless sooner terminated under this subparagraph, this Stipulation, including but not limited to the Agent's and Lenders' consent to the Debtors' use of the Cash Collateral, shall cease to be effective on the Termination Date, at which time the Debtors shall have no further right to use Cash Collateral for any purpose whatsoever; provided, however, that the Agent for itself and for the benefit of the Lenders shall have the right to waive any Event of Default and to continue the effectiveness of this Stipulation in its sole and exclusive discretion without further order of this Court by written notice by facsimile or electronic mail to counsel for the Debtors and any Creditors' Committee; and provided further, however, that nothing herein requires the Agent or Lenders to continue the term of this Stipulation upon the occurrence of any such Event of Default or Termination Date.

14. Successors and Assigns. This Stipulation shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns, including, without limitation, any trustee, examiner or other responsible person who might be appointed in these cases or any Successor Case.

15. Counterparts. This Stipulation may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

16. Sections 506(c) and 552(b). Subject to the entry of the Final Stipulation, without the prior written consent of the Agent and Lenders, which consent shall not be implied from any action, inaction, or acquiescence by the Agent or Lenders, no costs or expenses of administration that have been or may be incurred in these chapter 11 cases at any time shall be charged against the Agent or Lenders or their claims pursuant to sections 105, 506(c), or 552 of the Bankruptcy Code, or the Prepetition Collateral or the Postpetition Collateral or otherwise, until and unless all Secured Obligations have been indefeasibly paid in full and in cash. The Agent and Lenders shall all be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Agent or Lenders with respect to proceeds, offspring or profits of any of the Prepetition Collateral or Postpetition Collateral.

17. Monitoring of Collateral. The Debtors shall permit representatives, agents, and/or employees of the Agent and Lenders to have reasonable access to the Debtors’ premises and their records during normal business hours (without unreasonable interference with the proper operation of the Debtors’ businesses) and shall cooperate, consult with, and provide to such persons all such non-privileged information as they may reasonably request.

18. No Other Liens. Unless otherwise provided by further order of the Court, and except as otherwise expressly provided herein, the Debtors shall be enjoined and prohibited from at any time during their chapter 11 cases granting liens in the Prepetition Collateral or Postpetition Collateral or any portion thereof to any other parties pursuant to section 364(d) of

the Bankruptcy Code or otherwise. For the avoidance of doubt, the prohibition in this paragraph 18 shall not apply to the perfection of liens after the Petition Date that are excepted from the automatic stay pursuant to sections 362(b) and 546(b) of the Bankruptcy Code.

19. Good Faith and Reasonableness. The adequate protection arrangements authorized hereunder have been negotiated in good faith and at arm's length, and the terms of such adequate protection arrangements are fair and reasonable under the circumstances and reflect the Debtors' exercise of prudent business judgment.

20. Reservation of Rights to Seek Additional Adequate Protection. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgement by the Agent or Lenders, that the adequate protection granted herein does in fact adequately protect the Agent and Lenders against any diminution in value of their interests in the Prepetition Collateral and Postpetition Collateral (including the Cash Collateral) arising on account of the Debtors' use, sale, or lease thereof during the term of this Stipulation or the imposition of any stay.

21. Further Assurances. The Parties hereby agree to execute all further documents and perform such further acts as may reasonably be required to effectuate the purpose and intent of this Stipulation.

22. Headings. Headings have been inserted in this Stipulation as a matter of convenience for reference only and it is agreed that such headings are not a part of this Stipulation and shall not be used in interpreting any provision of this Stipulation.

23. Binding Nature. This Stipulation, and each term hereof, shall be binding upon the Debtors (including their respective estates), any chapter 11 or chapter 7 trustee appointed herein, all creditors of the Debtors and the Agent and Lenders, upon entry of this Stipulation.

24. Interim Nature of Relief. This Stipulation shall expire on the date that an order is entered approving or denying the Final Stipulation. A hearing on the Final Stipulation has been scheduled for February [], 2010 at []:00 []m. (prevailing Eastern Time). Any objections to entry of an order approving the Final Stipulation must: (i) be made in writing; (ii) state with particularity the grounds therefor; (iii) be filed with the Bankruptcy Court (with a copy to the Judge's chambers); and (iv) be served upon: (a) co-counsel to the Debtors, Young Conway Stargatt & Taylor LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801 (Attn: Matthew B. Lunn), and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: John C. Longmire, Esq. and Shaunna D. Jones, Esq.); (b) counsel to the Agent and Lenders, Edwards Angell Palmer & Dodge LLP, 919 N. Market Street, 15th Floor, Wilmington, DE 19801 (Attn: Stuart Brown, Esq. and R. Craig Martin, Esq.); (c) counsel to the Agent, McGuire Craddock & Strother PC, 2501 N. Harwood, Suite 1800, Dallas, TX 75201 (Attn: Jonathan Thalheimer, Esq. and Mark Chevallier, Esq.); (d) counsel to the Creditors' Committee, if a Creditors' Committee is appointed; and (e) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Richard Shepacarter, Esq.), together with proof of service thereof, so as to be received no later than [], 2010 at 4:00 p.m.

WHEREFORE, the Parties respectfully pray that the Court enter this Stipulation,
and grant such further relief as is just.

STIPULATED AND AGREED TO BY:

Dated: Wilmington, Delaware
January 22, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Matthew B. Lunn
Matthew B. Lunn (No. 4119)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
(302) 571-6600

-and-

WILLKIE FARR & GALLAGHER LLP
John C. Longmire
Shaunna D. Jones
Andrew D. Sorkin
787 Seventh Avenue
New York, New York 10019
(212) 728-8000

Proposed Counsel for the Debtors and
Debtors in Possession

Dated: January 22, 2010

/s/ Stuart M. Brown
EDWARDS ANGELL PALMER & DODGE LLP
Stuart M. Brown (#4050)
R. Craig Martin (#____)
919 N. Market Street, 15th Floor
Wilmington, DE 19801
(302) 777-7770

Counsel to the Agent and Lenders

SO ORDERED this ____ day
of _____, 2010

UNITED STATES BANKRUPTCY JUDGE