

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND**

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| In re: |) | Chapter 11 |
| |) | |
| UTGR, INC. d/b/a TWIN RIVER, <u>et al.</u> , ¹ |) | Case No. 09 - _____ () |
| |) | |
| Debtors. |) | Joint Administration Pending |
| |) | |

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(A) AUTHORIZING THE USE OF CASH COLLATERAL,
(B) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES,
AND (C) SCHEDULING A FINAL HEARING**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), file this motion (the “Motion”) for entry of an interim order (the “Interim Cash Collateral Order”), substantially in the form attached hereto as **Exhibit A**, and a final order (the “Final Cash Collateral Order,” together with the Interim Cash Collateral Order, the “Cash Collateral Orders”) (a) authorizing the Debtors to use cash collateral, (b) granting adequate protection to certain prepetition secured parties for the use of their cash collateral, (c) prescribing the form and manner of notice and setting the time for the final hearing on the Motion, and (d) granting related relief. In support of the Motion, the Debtors respectfully state as follows.

Jurisdiction

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

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these chapter 11 cases are BLB Management Services, Inc., BLB Worldwide Holdings, Inc., and UTGR, Inc.

3. The statutory bases for the relief requested herein are sections 105, 361, 362, and 363 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 the Local Bankruptcy Rules and Forms of the United States Bankruptcy Court for the District of Rhode Island (the “Local Bankruptcy Rules”).

Concise Statement of the Material Terms of the Interim Cash Collateral Order²

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| <p><u>Parties With Interest in Cash Collateral:</u></p> | <p>Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated (“<u>MLPF&S</u>”), as joint lead arranger and book runner, Merrill Lynch Capital Corporation, as administrative agent (the “<u>Administrative Agent</u>” or “<u>First Lien Agent</u>”), Deutsche Bank Securities Inc. (“<u>DBSI</u>”), as joint lead arranger and book runner and as syndication agent, J.P. Morgan Securities Inc., as joint lead arranger and book runner, and JPMorgan Chase Bank, N.A., as documentation agent and the First Lien Lenders (as defined below), all as parties to both the First Lien Credit Agreement and the Second Lien Credit Agreement (both as defined below), and with certain lenders under the First Lien Facility or their affiliates who entered into certain interest rate protection agreements (the “<u>Swap Providers</u>”). Motion ¶¶ 9, 10, 11; 12; Interim Cash Collateral Order, ¶¶ E, F, G, H.</p> <p>Parties to a consolidated action brought by a construction company and its subcontractors (the “<u>Contractors</u>”) with perfected and enforceable mechanic’s liens in certain project property. Motion ¶ 14; Interim Cash Collateral Order ¶ J.</p> |
| <p><u>Use of Cash Collateral:</u></p> | <p>The Debtors may use Cash Collateral during the Cash Collateral Period pursuant to the Budget and otherwise in accordance with this Interim Order. Interim Cash Collateral Order ¶¶ 6, 7.</p> |
| <p><u>Adequate Protection:</u></p> | <p>In each case subject to the Carve Out, the First Lien Lenders shall receive the following:</p> <p><u>Adequate Protection Payments:</u> payments to the First Lien Lenders of amounts equal to all current interest accruing under</p> |

² To the extent anything in this summary is inconsistent with the proposed Interim Cash Collateral Order attached hereto as **Exhibit A**, such inconsistency shall be resolved in favor of the proposed Interim Cash Collateral Order.

the First Lien Facility, at the non-default interest rate, which shall become due or accrue during the Cash Collateral Period (the “Adequate Protection Payments”); provided, however, that the Debtors will make such payments only to the extent the Debtors hold Excess Available Cash (defined below) over and above \$5.75 million (the “Minimum Cash Balance”); provided, however, that any shortfall in such payments will be accrued and funded in subsequent months to the extent there is Excess Available Cash available to pay some or all of the accrued shortfall. “Excess Available Cash” is defined as the ending book cash balance as reported on the last day of each calendar month, less (i) the Minimum Cash Balance, (ii) billed and unpaid professional fees and expenses, and (iii) up to a maximum aggregate amount of \$3,000,000 for (x) incurred and unbilled professional fees and expenses and (y) any earned but unpaid court-approved employee incentive plans. Excess Available Cash payments are not to exceed the non-default interest payable to the First Lien Lenders for the relevant period. Interim Cash Collateral Order ¶ 7(a).

Section 507(b) Claim. Superpriority claims as and to the extent provided in section 507(b), with priority in payment over any and all unsecured claims and administrative expense claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code (subject to the Carve-Out). Interim Cash Collateral Order ¶ 7(b).

Adequate Protection Liens. Valid, perfected and enforceable liens and security interests in all prepetition and postpetition assets of the Debtors’ estates of any kind or nature whatsoever, including, without limitation, all real and personal property, intellectual property, contract rights, claims and causes of action (including claims and causes of action under Chapter 5 of the Bankruptcy Code; provided, however, the First Lien Agent shall not seek an Adequate Protection Lien on any claims and causes of action under Chapter 5 of the Bankruptcy Code until the final hearing on this Order), and all products and proceeds thereof. Interim Cash Collateral Order ¶ 7(c).

Reporting: As further adequate protection, the Debtors shall timely comply with various the reporting requirements under the First Lien Credit Agreement and Security Agreements and such other reasonable reporting and information requests made from time to time by the First Lien Agent or the First Lien Lenders or their respective advisors, including requests for periodic meetings with management. Interim Cash Collateral

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| | <p>Order ¶ 7(e).</p> <p>The Second Lien Lenders shall have silent Superpriority Claims and Adequate Protection Liens, in each case subordinate to the Superpriority Claims and Adequate Protection Liens provided to the First Lien Lenders, subject to the consent of the First Lien Lenders. Interim Cash Collateral Order ¶ 8.</p> <p>The Contractors shall have silent Superpriority Claims and Adequate Protection Liens, in each case subordinate to the Superpriority Claims and Adequate Protection Liens provided to the First Lien Lenders and to the Second Lien Lenders. Interim Cash Collateral Order ¶ 9.</p> |
| <p><u>Carve Out:</u></p> | <p>“Carve Out” means all liens on and security interests in the Collateral granted prepetition and pursuant to this Interim Order, including to the Lender Parties and Contractors as adequate protection for their interests in the Existing Collateral, and all superpriority administrative claims granted pursuant to the Interim Order, including to the Lender Parties and Contractors as adequate protection for the use of Cash Collateral and other diminution in value of their interests in the Existing Collateral, shall be subordinate to the following (collectively, and including the Professional Fee Carve-Out (as defined herein): (i) unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (ii) in the event of a conversion of the Cases to cases under chapter 7 of the Bankruptcy Code, fees and expenses incurred by a trustee and any professionals retained by such trustee, in an aggregate amount not exceeding \$50,000; and (iii) upon the delivery of a Carve-Out Trigger Notice (as defined herein), the Debtors shall fund a segregated First Lien Agent collateral account for the professional fees and expenses incurred by the Debtors and the Committee (collectively, the “<u>Professional Fees</u>”) subsequent to the delivery of a Carve-Out Trigger Notice (regardless of when such Professional Fees become allowed by order of the Bankruptcy Court), in an aggregate amount under this subparagraph (a)(iii) of \$2 million <u>plus</u> all unpaid Professional Fees incurred prior to the delivery of Carve-Out Trigger Notice (the provisions of this subparagraph (a)(iii) only, the “<u>Professional Fee Carve-Out</u>”). Interim Cash Collateral Order ¶ 10.</p> <p>Amounts on deposit in the segregated account described in the immediately preceding sentence shall be used solely to satisfy the Carve-Out and the balance in such segregated account shall not be available to pay any prepetition or other postpetition</p> |

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| | <p>obligations until such time as the obligations comprising the Carve-Out shall have been paid in full, notwithstanding any purported or asserted lien, claim or right to such balance. Nothing herein shall constitute a waiver by the Lender Parties of their rights to object to any Professional Fees of any professional retained by the Debtors or the Committee. Notwithstanding the foregoing, the First Lien Agent and the First Lien Lenders reserve their right to oppose the granting of a Carve-Out in their existing collateral security interests in connection with entry of the final cash collateral order. In the event that at the time of delivery of a Carve-Out Trigger Notice, there are insufficient amounts to fund the Carve-Out, the Carve-Out will be funded with the proceeds of the next disposition of collateral. Interim Cash Collateral Order ¶ 10.</p> <p>“<u>Carve-Out Trigger Notice</u>” means, upon the occurrence and during the continuation of a Termination Event, a written notice delivered by the First Lien Agent or the Debtors to counsel for the Debtors or the First Lien Agent, as applicable, and lead counsel to the Committee expressly stating that the Professional Fee Carve-Out has been invoked. Interim Cash Collateral Order ¶ 11.</p> |
| <p><u>Term:</u></p> | <p>Notwithstanding any provision of the Bankruptcy Code or the Bankruptcy Rules to the contrary, this Interim Order shall take effect immediately upon entry <u>nunc pro tunc</u> to the Petition Date and shall remain in effect until the expiration of the period set forth in the Initial Budget and any periods set forth in subsequent budgets agreed to between the Debtors and the First Lien Agent, subject to the termination of this Interim Order and any subsequent orders authorizing the Debtors’ use of Cash Collateral upon the occurrence of a Termination Event (as defined below) (such period being referred to as the “Cash Collateral Period”). The Adequate Protection Parties have not consented to and expressly reserve all rights to object to any use of Cash Collateral from and after the expiration of the Cash Collateral Period. The Debtors expressly reserve their rights to seek continued use of Cash Collateral after the expiration of the Cash Collateral Period on the terms set forth herein or on modified terms, and the Adequate Protection Parties reserve all rights to object to the Debtors’ request for such relief. Interim Cash Collateral Order ¶ 2.</p> |

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| <p><u>Termination Events:</u></p> | <p>The Debtors' ability to use Cash Collateral during the Cash Collateral Period will terminate five business days after the First Lien Agent or the Debtors provide(s) written notice of the occurrence of any event described below (each, a "<u>Termination Event</u>"): </p> <p>A. the expiration of the Cash Collateral Period as provided in paragraph 2;</p> <p>B. the Debtors' failure to make any Adequate Protection Payment in the total amount of Excess Available Cash then available when such Adequate Protection Payment comes due and payable in accordance with this Interim Order;</p> <p>C. the Debtors' failure to stay within \$5 million, on a cumulative basis from and after the Petition Date, of the estimated "net operational cash inflow" line item as listed on the Budget;</p> <p>D. the Debtors fail to comply in any material respect with any of the terms or conditions of this Interim Order;</p> <p>E. the Debtors seek any modification or extension of this Interim Order that seeks to limit or reduce the adequate protection granted hereunder or otherwise, in the latter case, without prior consultation with the First Lien Lenders;</p> <p>F. any Order shall be entered granting relief from the stay arising under section 362 of the Bankruptcy Code to the holder or holders of any security interest, lien or right of setoff to permit foreclosure (or the granting of a deed in lieu of foreclosure or similar instrument), possession, set-off or any similar remedy with respect to any assets of the Debtors in an amount greater than \$500,000 or which otherwise would have a material adverse effect on the Debtors' businesses or prospects;</p> <p>G. (1) any of the Cases shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code; or (2) a trustee under chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the Debtors' business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106 of the Bankruptcy Code shall be appointed or elected in any of the Cases; and</p> <p>H. the Debtors shall fail in any material respect to comply</p> |
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| | <p>with any provisions in the Credit Agreements or Security Agreements (as defined in the Credit Agreements) governing the maintenance of the Debtors' properties or insurance.</p> <p>Interim Cash Collateral Order ¶ 16.</p> |
| <p><u>Determination of the Validity, Perfection and Amount of Prepetition First Lien Obligations.</u></p> | <p>Upon entry of this Interim Order and subject to the Third Party Challenge, (i) the Facility Obligations shall constitute allowed secured claims of the First Lien Lenders against the Debtors and shall not be subject to contest, subordination or objection by the Debtors on any basis, including any contest or objection as to validity, enforceability, or priority of, or the extent of the security (including valuation of collateral) for, such claims, (ii) the Debtors shall have no claim for and shall be deemed to have waived and relinquished any claim or action for preferences, fraudulent conveyances, or other avoidance power claims as against the First Lien Lenders with respect to the Facility Obligations, (iii) the liens and security interests of the First Lien Agent for the benefit of the First Lien Lenders shall be determined to be valid, perfected, enforceable and not subject to defense, offset, counterclaim, avoidance, contest, subordination or objection by the Debtors on any basis, including any contest or objection as to the validity, enforceability, perfection or priority thereof and (iv) the Debtors shall be deemed to have no claims or causes of action against any of the First Lien Lenders or the First Lien Agent and its legal and financial advisors, and shall be deemed to have waived and relinquished any such claims or causes of action, for any actions arising under or related to the Credit Agreements or the documents entered into in connection with the Credit Agreements, in each case, which arose prior to the entry of this Interim Order. Interim Cash Collateral Order ¶13.</p> |
| <p><u>Third-Party Challenge</u></p> | <p>Notwithstanding the foregoing, such determination of the priority, extent (including valuation of collateral), validity, perfection, enforceability and unavailability of such liens, security interests and claims and the release of claims is without prejudice to the rights of any authorized party (other than the Debtors) to investigate and challenge any such liens, security interests and/or claims of the First Lien Lenders, or to assert any other claims or causes of action, at law or in equity against any of the First Lien Lenders (a "<u>Third Party Challenge</u>"); <u>provided</u> that any such Third Party Challenge not made by commencement of an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001 (an "<u>Adversary Proceeding</u>") and served no later than 75 days after the Petition Date or 60 days following the formation of the Official</p> |

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| | Committee, whichever is later, shall be forever barred; <u>provided, further</u> , that the Debtors are not permitted to use Cash Collateral to pay for the investigation or pursuit of a Third Party Challenge, but may use up to \$25,000 of Cash Collateral to fund an investigation (but not pursuit) by the Committee of the potential for a Third Party Challenge. Interim Cash Collateral Order ¶ 14. |
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Background³

4. The Debtors' principal asset is Twin River, a greyhound track and casino located in Lincoln, Rhode Island. BLB Investors, L.L.C. ("BLB Investors"), the direct and indirect parent of each of the Debtors, acquired Twin River in 2005. BLB Investors is a joint venture among three of the world's most accomplished leisure and gaming operators, developers, and managers: Starwood Capital Group I Global, L.L.C., Kerzner International Holdings Ltd., and Waterford Group, LLC. (collectively, the "Sponsors"). The Sponsors purchased Twin River for \$470 million and then invested another \$220 million towards renovating Twin River into a world class facility.

5. Twin River today is the preeminent racing-casino (sometimes referred to as a "racino") in New England. In many respects, the Debtors' businesses have been great successes. Since 2005, the Debtors have grown Twin River to over 500,000 square feet, including more than 156,000 square feet of gaming space and over 4,700 slot machines, and have improved revenues year over year as their primary regional competitors' revenues have slipped.

6. As successful as the Debtors' operations have been, their revenues cannot support the substantial demands imposed by the State of Rhode Island (the "State") tax rate and the Debtors' debt service obligations. Significantly, the State retains 61.5% of every dollar

³ The facts and circumstances supporting this Motion are further set forth in the Declaration of George Papanier, President and Chief Operating Officer of UTGR, Inc., in Support of First Day Motions (the "First Day Declaration"), filed contemporaneously herewith.

generated at Twin River (after winning customers have been paid), and reimburses Twin River less than 28% of every dollar.

7. Shortly before the filing of these chapter 11 cases (the "Chapter 11 Cases"), the Debtors reached an agreement with holders holding over 50% of the first lien debt and a substantial amount of the second lien debt, and the executive branch of the State on the terms of a preliminary restructuring transaction (the "Restructuring"), which is expected to eliminate approximately \$290 million in debt. The Restructuring provides for approximately \$11 million in annual support from the State in the form of promotional and marketing initiatives. Significantly, the Restructuring is conditioned on obtaining certain legislative enactments and amendments to the Master Video Lottery Terminal Contract (the "VLT Contract") between the State's Division of Lotteries and UTGR, Inc., which, among other things, will eliminate the requirement to maintain greyhound racing, approve 24-hour gaming at the facility, seven days a week, and enable the exercise of extension options under the VLT Contract, thus maintaining the tax rate for the facility. The Restructuring requires the Lenders to conduct a marketing process to identify a new operator of Twin River immediately, so that the Sponsors may transition out of the management and ownership of the facility.

8. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases. The Debtors have requested that the Court grant procedural consolidation and joint administration of these Chapter 11 Cases.

Prepetition Capital Structure

9. On August 23, 2005, BLB Management Services, Inc. ("BLB Management Services," the "Borrower"), BLB Worldwide Holdings, Inc. ("BLB Worldwide"), and UTGR,

Inc. (“UTGR” and, together with BLB Worldwide, the “Guarantors”) restated and amended their existing first lien credit facility and existing second lien credit facility by entering into a \$370 million first lien credit facility (the “First Lien Facility”) via that certain first priority Credit Agreement (the “First Lien Credit Agreement”) with the lenders party thereto (“the First Lien Lenders”) and a \$125 million second lien credit facility (the “Second Lien Facility” and, together with the First Lien Facility, the “Prepetition Facilities”) via that certain Second Priority Credit Agreement (the “Second Lien Credit Agreement” and, together with the First Lien Credit Agreement, the “Credit Agreements”) with the lenders party thereto (the “Second Lien Lenders”), both Credit Agreements with Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPF&S”), as joint lead arranger and book runner, Merrill Lynch Capital Corporation, as administrative agent (the “Administrative Agent” or “First Lien Agent”), Deutsche Bank Securities Inc. (“DBSI”), as joint lead arranger and book runner and as syndication agent, J.P. Morgan Securities Inc., as joint lead arranger and book runner, and JPMorgan Chase Bank, N.A., as documentation agent. The revolver loans and term loans under the First Lien Facility will expire on July 18, 2010 and July 18, 2011, respectively, and the term loans under the Second Lien Facility will expire on July 18, 2012.

10. On August 22, 2006, the parties to the First Lien Credit Agreement executed an amendment to the First Lien Credit Agreement (the “First Lien Amendment”), whereby the Borrower created a new class of additional term loans under the First Lien Facility in an aggregate amount of \$50 million and the parties to the Second Lien Credit Agreement executed an amendment to the Second Lien Credit Agreement (the “Second Lien Amendment”) whereby the Borrower created a new class of additional term loans under the Second Lien Facility in an aggregate amount of \$20 million. The various financial institutions and other entities acting as

lenders under the First Lien Credit Agreement (the “First Lien Lenders”), the various financial institutions and other entities acting as lenders under the Second Lien Credit Agreement (the “Second Lien Lenders”), and the Swap Providers (as defined below) are hereby referred to as the “Lender Parties.”

11. The obligations under the First Lien Facility (the “First Lien Facility Obligations”) are secured by perfected and enforceable first priority liens on substantially all of the Debtors’ assets (collectively, the “Existing Collateral”). In addition, the First Lien Facility Obligations include the Debtors’ obligations under certain interest rate protection agreements (the “First Lien Swaps”) the Debtors entered into with certain lenders under the First Lien Facility or their affiliates (the “First Lien Swap Providers”), which obligations are secured by perfected and enforceable first priority liens on the Existing Collateral.

12. The obligations under the Second Lien Facility (the “Second Lien Facility Obligations”) and, together with the First Lien Facility Obligations, the “Facility Obligations”) are secured by second priority liens on the Existing Collateral. In addition, the Second Lien Facility Obligations include the Debtors’ obligations under certain interest rate protection agreements (the “Second Lien Swaps”) the Debtors entered into with certain lenders under the Second Lien Facility or their affiliates (the “Second Lien Swap Providers”) and, together with the First Lien Swap Providers, the “Swap Providers”), which obligations are secured by perfected and enforceable second priority liens on the Existing Collateral. The First Lien Agent and the Second Lien Agent (each term as defined below) are parties to that certain Second Amended and Restated Intercreditor Agreement, dated as of August 23, 2005, amended as of August 22, 2006, and further amended on March 28, 2008 (as amended, modified, or supplemented from time to

time, the “Intercreditor Agreement”), which Intercreditor Agreement has been expressly acknowledged by the Borrower.

13. After application of certain payments made by the Debtors on account of the Facility Obligations, the current outstanding principal balances of the Facility Obligations (exclusive of interest, fees, reimbursable expenses, and other charges) are approximately:

| <u>Facility</u> | <u>Amount</u> |
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| First Lien Term Loan | \$289,087,916 |
| First Lien Revolver | \$125,690,000 |
| Estimated Liabilities Under the First Lien Swaps | \$20,273,715 |
| Second Lien Term Loan | \$145,000,000 |
| Estimated Liabilities Under the Second Lien Swaps | \$9,030,489 |

Mechanic’s Lienholders

14. Pursuant to that certain Amended Consent Order entered by the Rhode Island Superior Court on November 21, 2008, in a consolidated action brought by a construction company and its subcontractors (the “Contractors”), seeking payment for services provided to the Debtors’ Rhode Island facility, the Contractors have perfected and enforceable mechanic’s liens (the “Mechanic’s Liens”) in certain project property (the “Project Property”) in the amount of \$5,741,151, which amount has subsequently been reduced to \$3,045,000 as a result of interim payments by the Debtors to the Contractors. Also pursuant to the Amended Consent Order, the Contractors acknowledge their Mechanic’s Liens effectively are third priority liens on the Project Property, subordinate to the First Lien Lenders’ and Second Lien Lenders’ mortgages on the Project Property.

Relief Requested

15. The Debtors seek entry of the Cash Collateral Orders granting the following relief, without limitation:

- (a) authorizing the Debtors to use cash collateral pursuant to sections 361 and 363 of the Bankruptcy Code pursuant to the Budget (as defined in the Interim Order);
- (b) approving the form of adequate protection provided to the First Lien Lenders, the Second Lien Lenders, and the Contractors (together, the “Adequate Protection Parties”) pursuant to sections 361(a) and 363(c) of the Bankruptcy Code;
- (c) scheduling the final hearing on the Motion to consider entry of the Final Cash Collateral Order authorizing and granting the relief requested in the Motion; and
- (d) granting related relief and such other and further relief as the Court deems just and proper.

Basis for Relief

I. The Debtors’ Request to Use Cash Collateral and The Proposed Adequate Protection Is Appropriate.

16. The Debtors’ use of property of their estates is governed by section 363 of the Bankruptcy Code, which provides in pertinent part that:

If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

17. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor in possession to use cash collateral with the consent of the secured party. Section 363(e) of the Bankruptcy Code requires that the debtor adequately protect the secured creditors’ interest in property to be used by a debtor against any diminution in value of such property resulting from the debtor’s use of the property during the chapter 11 cases.

18. What constitutes sufficient adequate protection is decided on a case-by-case basis. See, e.g., In re Columbia Gas Sys., Inc., 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992);

see also In re Martin, 761 F.2d 472 (8th Cir. 1985); In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); In re Sw. Assocs., 140 B.R. 360 (Bankr. S.D.N.Y. 1992). By requiring debtors to provide adequate protection, the Bankruptcy Code shields a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. See In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); In re Hubbard Power & Light, 202 B.R. 680 (Bankr. E.D.N.Y. 1996). Adequate protection can come in various forms, including payment of adequate protection fees, payment of interest, granting of replacement liens, and administrative claims.

19. The Debtors' right to use the cash collateral is conditioned upon the Debtors providing the following primary forms of adequate protection. In all instances, the First Lien Lenders' adequate protection interests are senior to the Second Lien Lenders' adequate protection interests, and the First and Second Lien Lenders' adequate protection interests are senior to the Contractors' adequate protection interests.

20. **First**, the Debtors will pay to the First Lien Agent, for the benefit of the First Lien Lenders, amounts equal to all current interest accruing under the First Lien Facility, at the non-default interest rate, which shall become due or accrue during the Cash Collateral Period (the "Adequate Protection Payments"); provided, however, that the Debtors will make such payments only to the extent the Debtors hold Excess Available Cash (defined below) over and above \$5.75 million (the "Minimum Cash Balance"); provided, however, that any shortfall in such payments will be accrued and funded in subsequent months to the extent there is Excess Available Cash available to pay some or all of the accrued shortfall. "Excess Available Cash" is defined as the ending book cash balance as reported on the last day of each calendar month, less (i) the Minimum Cash Balance, (ii) billed and unpaid professional fees and expenses, and (iii) up to a

maximum aggregate amount of \$3,000,000 for (x) incurred and unbilled professional fees and expenses and (y) any earned but unpaid court-approved employee incentive plans. Excess Available Cash payments are not to exceed the non-default interest payable to the First Lien Lenders for the relevant period. All such Adequate Protection Payments accruing or paid during the Cash Collateral Period shall be calculated at the non-default interest rate. The Debtors shall pay to the First Lien Agent, for the benefit of the First Lien Lenders, those Adequate Protection Payments due and payable as of June 30, 2009 on July 15, 2009, and beginning with the calendar month ending July 31, 2009, all Adequate Protection Payments and fees and charges accruing under the First Lien Facility during the Cash Collateral Period shall be due and payable (i) 15 days after the end of each calendar month or (ii) the first business day thereafter, whichever is later. The application of any payments pursuant to this section shall be subject to any Third Party Challenge. Each of the Debtors, the First Lien Agent, and the Committee reserves all respective rights to argue whether Adequate Protection Payments made pursuant to this Order should be applied to reduce the principal amount of the First Lien Facility Obligations pursuant to section 506(b) of the Bankruptcy Code.

21. **Second**, in the event that, as a result of the Debtors' use of Cash Collateral as granted herein, or the imposition of the stay pursuant to section 362 of the Bankruptcy Code, and, if, notwithstanding the Adequate Protection Liens or other adequate protection granted herein, the collateral (including the Existing Collateral, any replacements thereof, and Cash Collateral) proves insufficient to repay the First Lien Facility Obligations in full, the First Lien Lenders shall have an administrative expense claim to the extent provided by section 507(b) of

the Bankruptcy Code with priority over all other administrative expense claims (the “Superpriority Claim”), subject to the Carve-Out.⁴

22. **Third**, the Debtors grant, assign and pledge to the First Lien Agent, for the ratable benefit of the First Lien Lenders, valid, perfected, and enforceable liens and security interests (the “Adequate Protection Liens”) in all prepetition and postpetition assets of the Debtors’ estates of any kind or nature whatsoever, including, without limitation, all real and personal property, intellectual property, contract rights, claims, and causes of action (including claims and causes of action under Chapter 5 of the Bankruptcy Code; provided, however, the First Lien Agent shall not seek an Adequate Protection Lien on any claims and causes of action under Chapter 5 of the Bankruptcy Code until the final hearing on the Interim Cash Collateral Order), and all products and proceeds thereof (the “Adequate Protection Collateral”).

23. **Fourth**, in addition to the Adequate Protection Payments, the Superpriority Claims, and the Adequate Protection Liens, the Debtors will permit the First Lien Lenders to retain certain professionals at the Debtors’ expense and upon the Debtors’ reasonable approval.

24. The Debtors shall timely comply with the various reporting requirements under the First Lien Credit Agreement and Security Agreements and such other reasonable reporting and information requests made from time to time by the First Lien Agent or the First Lien Lenders or their respective advisors, including requests for periodic meetings with management.

25. The Second Lien Lenders shall have silent Superpriority Claims and Adequate Protection Liens, in each case subordinate to the Superpriority Claims and Adequate Protection Liens provided to the First Lien Lenders, subject to the consent of the First Lien Lenders.

⁴ Any capitalized terms not defined herein shall have the meaning ascribed in the Cash Collateral Orders.

26. The Contractors shall have silent Superpriority Claims and Adequate Protection Liens, in each case subordinate to the Superpriority Claims and Adequate Protection Liens provided to the First Lien Lenders and to the Second Lien Lenders.

27. The Debtors believe that the proposed adequate protection for the Adequate Protection Parties is necessary and appropriate to ensure that the Debtors can continue to use the Cash Collateral. Accordingly, the adequate protection proposed herein and in the Cash Collateral Orders is fair and reasonable and sufficient to satisfy the requirements of sections 363(c)(2) and (e) of the Bankruptcy Code. Moreover, courts have granted similar relief in other recent chapter 11 cases. See, e.g., In re ACT Mfg., Inc., Case No. 01-47641 (Bankr. D. Mass. Jan. 28, 2002); In re Arch Wireless, Case No. 01-47330 (Bankr. D. Mass. Dec 10, 2001); see also In re Monaco Coach Corp., Case No. 09-10750 (Bankr. D. Del. Mar. 10, 2009) (interim order); In re Spansion Inc., Case No. 09-10690 (Bankr. D. Del. Mar. 4, 2009) (interim order); In re Muzak Holdings LLC, Case No. 09-10422 (Bankr. D. Del. Feb. 12, 2009) (interim order); In re Hawaiian Telcom Commun's, Inc., Case No. 08-13086 (Bankr. D. Del. Dec. 3, 2008); In re DBSI, Inc., Case No. 08-12687 (Bankr. D. Del. Dec. 8, 2008); In re Internet Corp., Case No. 08-11859 (Bankr. D. Del. Sept. 19, 2008) (amended Nov. 14, 2008); In re Tropicana Entm't, LLC, Case No. 08-10856 (Bankr. D. Del. May 30, 2008).

II. The Debtors Respectfully Assert That Failure to Use the Cash Collateral Within 20 Days of the Petition Date Would Cause Immediate and Irreparable Harm.

28. Pursuant to Bankruptcy Rule 6003, the Court may grant the relief requested in the Motion within 20 days after the Petition Date if the relief is necessary to avoid immediate and irreparable harm.

29. The Debtors have an urgent and immediate need for cash to continue to operate. Currently, the Debtors do not have sufficient funds with which to operate their businesses on an

ongoing basis. Without use of the Cash Collateral, the Debtors will have little or no cash to pay trade creditors and, therefore, the Debtors' trade creditors may cease to provide goods and services to the Debtors on credit. The Debtors also will not be able to pay their payroll and other direct operating expenses or obtain goods and services needed to run their businesses and meet customer demands in a manner that will avoid immediate and irreparable harm to the Debtors' estates. The Debtors' ability to finance their operations and the availability to the Debtors of sufficient working capital and liquidity through the use of cash collateral is vital to the confidence of the Debtors' employees, major suppliers, and to the preservation and maintenance of the going-concern values and other values of the Debtors' estates. The Debtors, therefore, seek immediate authority to use the Cash Collateral pursuant to the Budget as set forth in the Motion and in the Cash Collateral Orders.

30. Accordingly, to the extent that the Debtors requires the use of cash collateral, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate cash collateral availability.

Request for Final Hearing

31. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the final hearing that is as soon as practicable, but in no event later than thirty days following the entry of the Interim Cash Collateral Order, and fix the time and date prior to the final hearing for parties to file objections to the Motion.

Notice

32. The Debtors have provided notice of this Motion either by electronic mail or facsimile and/or by overnight mail to: (a) the Office of the United States Trustee for the District of Rhode Island; (b) the entities listed on the Consolidated List of Creditors Holding the 40 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) applicable local, state,

and federal regulatory entities; (d) counsel to the Administrative Agents for the First and Second Lien Lenders; (e) counsel to the equity sponsors; (f) counsel to those certain contractors who have asserted mechanic's liens against the Debtors; (g) the Internal Revenue Service; and (h) the Securities and Exchange Commission. Due to the urgency of the circumstances surrounding this Motion (as more fully described in the First Day Declaration) and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

No Prior Request

33. No prior motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other and further relief as the Court deems appropriate.

Dated: June 23, 2009
Providence, Rhode Island

WINOGRAD, SHINE & ZACKS, P.C.

/s/ Allan M. Shine

Allan M. Shine (Bar No. 0383)
123 Dyer Street
Providence, RI 02903
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- and -

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Proposed Counsel for the Debtors and Debtors in Possession

EXHIBIT A

Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND**

| | | |
|---|---|------------------------------|
| _____ |) | |
| In re: |) | Chapter 11 |
| |) | |
| UTGR, INC. d/b/a TWIN RIVER, <u>et al.</u> , ¹ |) | Case No. 09 - _____ () |
| |) | |
| Debtors. |) | Joint Administration Pending |
| _____ |) | |

**INTERIM ORDER (A) AUTHORIZING USE OF CASH COLLATERAL,
(B) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES,
AND (C) SCHEDULING A FINAL HEARING**

Upon the Motion of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) seeking (a) authority to use cash collateral, (b) to grant adequate protection to certain prepetition secured parties for the use of their cash collateral, (c) to prescribe the form and manner of notice and setting the time for the final hearing on the Motion, and (d) to grant related relief (the “Motion”),² wherein the Debtors moved this Court for, among other things, the entry of an interim order authorizing the Debtors’ use of Cash Collateral on an interim basis for ordinary course expenses pursuant to the Budget (as hereinafter defined) (the “Interim Relief”), and after notice and a hearing on the Interim Relief, the Court finds, subject to the terms and conditions hereof, that (i) the Interim Relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; (ii) the Interim Relief requested in the Motion is necessary to avoid immediate irreparable harm to the Debtors and their respective estates and to provide the Debtors with sufficient cash to continue operations and to preserve the going concern value of their businesses; (iii) proper and adequate notice of the Motion and the hearing on the

¹ The Debtors in these chapter 11 cases are: BLB Management Services, Inc., BLB Worldwide Holdings, Inc.; and UTGR, Inc.

² Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Motion.

Interim Relief has been given, and no other or further notice is necessary with respect to the Interim Relief; and (iv) upon the record herein, after due deliberation thereon, good and sufficient cause exists for the granting of the Interim Relief as set forth herein. Therefore,

THE COURT HEREBY FINDS AND CONCLUDES THAT:

Background

A. On June 23, 2009 (the "Petition Date"), the Debtors commenced these chapter 11 cases (the "Chapter 11 Cases") by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court.

B. The Debtors have continued in the management and operation of their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

C. No request has been made for the appointment of a trustee or an examiner and no statutory committee (a "Committee") has yet been appointed in the Cases.

D. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these Cases, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are sections 105, 361, 363, and 507 of the Bankruptcy Code and Rules 4001(b) and (d) of the Federal Rules of Bankruptcy Procedure. Venue of the Cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Prepetition Capital Structure and Cash Collateral

E. On August 23, 2005, BLB Management Services, Inc. ("BLB Management Services" or "Borrower"), BLB Worldwide Holdings, Inc. ("BLB Worldwide"), and UTGR, Inc. ("UTGR" and together with BLB Worldwide, the "Guarantors") restated and amended their existing first lien credit facility and existing second lien credit facility by entering into a

\$370 million first lien credit facility (the “First Lien Facility”) via that certain first priority Credit Agreement (the “First Lien Credit Agreement”), and a \$125 million second lien credit facility (the “Second Lien Facility” and together with the First Lien Facility, the “Prepetition Facilities”) via that certain Second Priority Credit Agreement (the “Second Lien Credit Agreement” and together with the First lien Credit Agreement, the “Credit Agreements”), both with Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPF&S”), as joint lead arranger and book runner, Merrill Lynch Capital Corporation, as administrative agent (the “Administrative Agent” or “First Lien Agent”), Deutsche Bank Securities Inc. (“DBSI”), as joint lead arranger and book runner and as syndication agent, J.P. Morgan Securities Inc., as joint lead arranger and book runner, and JPMorgan Chase Bank, N.A., as documentation agent. The revolver loans and term loans under the First Lien Facility will expire on July 18, 2010 and July 18, 2011, respectively, and the term loans under the Second Lien Facility will expire on July 18, 2012.

F. On August 22, 2006, the parties to the First Lien Credit Agreement executed an amendment to the First Lien Credit Agreement (the “First Lien Amendment”) whereby the Borrower created a new class of additional term loans under the First Lien Facility in an aggregate amount of \$50 million and the parties to the Second Lien Credit Agreement executed an amendment to the Second Lien Credit Agreement (the “Second Lien Amendment”) whereby the Borrower created a new class of additional term loans under the Second Lien Facility in an aggregate amount of \$20 million. The various financial institutions and other entities acting as lenders under the First Lien Credit Agreement (the “First Lien Lenders”), the various financial institutions and other entities acting as lenders under the Second Lien Credit Agreement (the

“Second Lien Lenders”), and the Swap Providers (as defined below) are hereby referred to as the “Lender Parties.”

G. The obligations under the First Lien Facility (the “First Lien Facility Obligations”) are secured by perfected and enforceable first priority liens on substantially all of the Debtors’ assets (collectively, the “Existing Collateral”). In addition, the First Lien Facility Obligations include the Debtors’ obligations under certain interest rate protection agreements (the “First Lien Swaps”) the Debtors entered into with certain lenders under the First Lien Facility or their affiliates (the “First Lien Swap Providers”), which obligations are secured by perfected and enforceable first priority liens on the Existing Collateral.

H. The obligations under the Second Lien Facility (the “Second Lien Facility Obligations”) and, together with the First Lien Facility Obligations, the “Facility Obligations”) are secured by second priority liens on the Existing Collateral. In addition, the Second Lien Facility Obligations include the Debtors’ obligations under certain interest rate protection agreements (the “Second Lien Swaps”) the Debtors entered into with certain lenders under the Second Lien Facility or their affiliates (the “Second Lien Swap Providers”) and, together with the First Lien Swap Providers, the “Swap Providers”), which obligations are secured by perfected and enforceable second priority liens on the Existing Collateral. The First Lien Agent and the Second Lien Agent (each term as defined below) are parties to that certain Second Amended and Restated Intercreditor Agreement dated as of August 23, 2005, amended as of August 22, 2006 and further amended on March 28, 2008 (as amended, modified, or supplemented from time to time, the “Intercreditor Agreement”), which Intercreditor Agreement has been expressly acknowledged by the Borrower.

I. After application of certain payments that have been made by the Debtors on account of the Facility Obligations, the current outstanding principal balances of the Facility Obligations (exclusive of interest, fees, reimbursable expenses and other charges) are approximately:

| Facility | Amount |
|---|---------------|
| First Lien Term Loan | \$289,087,916 |
| First Lien Revolver | \$125,690,000 |
| Estimated Liabilities Under the First Lien Swaps | \$20,273,715 |
| Second Lien Term Loan | \$145,000,000 |
| Estimated Liabilities Under the Second Lien Swaps | \$9,030,489 |

Mechanic’s Lienholders

J. Pursuant to an Amended Consent Order entered by the Rhode Island Superior Court on November 21, 2008, based on a consolidated action brought by a construction company and its subcontractors (the “Contractors” and together with the Lender Parties, the “Adequate Protection Parties”) seeking payment for services provided to the Debtors’ Rhode Island facility, the Contractors have perfected and enforceable mechanic’s liens (the “Mechanic’s Liens”) in certain project property (the “Project Property”) in the amount of \$5,741,151, which amount has subsequently been reduced to \$3,045,000 as a result of interim payments made by the Debtors to the Contractors. Also pursuant to the Amended Consent Order, the Contractors acknowledge their Mechanic’s Liens effectively are third priority liens on the Project Property, subordinate to the First Lien Lenders’ and Second Lien Lenders’ mortgages on the Project Property.

K. The Adequate Protection Parties assert and, subject to Third Party Challenge (defined herein), the Debtors for themselves and their respective estates acknowledge and agree that (i) the Facility Obligations constitute legal, valid, perfected and binding obligations of the Debtors, enforceable in accordance with their terms (other than in respect of the stay of

enforcement arising from section 362 of the Bankruptcy Code), (ii) no offsets, defenses or counterclaims exist to the Facility Obligations, and (iii) no portion of the Facility Obligations are subject to avoidance pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtors agree that the Facility Obligations shall not be subject to challenge or avoidance by the Debtors pursuant to the Bankruptcy Code or applicable non-bankruptcy law, provided that such obligations shall be subject to the rights of other parties under the Third Party Challenge (defined herein).

L. The Adequate Protection Parties assert and, subject to Third Party Challenge, the Debtors for themselves and their respective estates stipulate, acknowledge and agree, that the Debtors as of the Petition Date had cash, comprised of cash and Cash Equivalents (as defined in the Credit Agreements), with a value in excess of \$4.5 million in which the First Lien Agent for the benefit of the lenders under the First Lien Facility holds a valid, perfected first priority security interest. The Adequate Protection Parties and the Debtors agree that such cash, along with all of the proceeds of the Existing Collateral, constitutes “cash collateral” under section 363 of the Bankruptcy Code (the “Cash Collateral”).

M. An immediate need exists for the Debtors to have continued access to the Cash Collateral in order to continue their operations, meet their payroll and other necessary, ordinary course business expenditures, acquire goods and services, and administer and preserve the value of their estates, and maintain adequate access to cash in amounts customary and necessary for companies of this size in this industry to maintain customer and vendor confidence. The ability of the Debtors to finance their operations by way of working capital requires their access to their cash resources, the absence of which would immediately and irreparably harm the Debtors, their estates, and their creditors. The Debtors require the use of Cash Collateral pursuant to the

Budget to operate their businesses, to preserve the confidences of vendors, suppliers and customers, and to preserve the going concern value of their businesses.

N. The Interim Relief requested in the Motion is, subject to the terms and conditions hereof, necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the preservation of their estates and of going concern values.

O. It is in the best interest of the Debtors' estates to grant the Debtors immediate access to Cash Collateral and to provide the Adequate Protection Parties with the adequate protection set forth pursuant to the terms and conditions of this Interim Cash Collateral Order.

P. The Debtors have requested that the Adequate Protection Parties consent to the Debtors' use of the Cash Collateral pursuant to a budget that has been provided by the Debtors to the First Lien Agent, a copy of which is attached hereto as **Exhibit 1** and made a part hereof (the "**Initial Budget**") and, together with any subsequent budgets provided by the Debtors to the First Lien Agent in these cases, the "**Budget**"), and the terms and conditions of this Interim Cash Collateral Order during the Cash Collateral Period (as defined below). Subject to any Third Party Challenge, the Debtors for themselves and their respective estates stipulate, acknowledge and agree that the Adequate Protection Parties are entitled to adequate protection pursuant to sections 361 and 363(e) of the Bankruptcy Code with respect to the Existing Collateral.

Q. Subject to the entry of and continued effectiveness and the terms and conditions of this Interim Cash Collateral Order and the Debtors' strict compliance therewith during the Cash Collateral Period, the Adequate Protection Parties have consented to the Debtors' use of the Existing Collateral pursuant to the Budget, including the Cash Collateral, during the Cash Collateral Period so long as the Debtors remain in strict compliance with the terms and conditions of this Interim Cash Collateral Order during the Cash Collateral Period. The Debtors

may seek to modify the Budget, subject to the approval of the First Lien Agent, which approval shall not be withheld unreasonably. If the parties cannot reach agreement on any such modification, the First Lien Agent shall provide the Debtors five business days notice before declaring the occurrence of a Termination Event (defined below).

R. Prior notice of the hearing (the “Hearing”) and for the entry of the Interim Cash Collateral Order and the Interim Relief requested in the Motion, pursuant to Bankruptcy Rule 4001 and Local Bankruptcy Rule 4001-2, was given by telecopy, electronic mail, overnight delivery service, hand delivery or regular mail to (i) the office of the United States Trustee for the District of Rhode Island, (ii) counsel to the Administrative Agents for the First and Second Lien Lenders, (iii) counsel to those certain contractors who have asserted mechanics’ liens against the Debtors, and (iv) any persons who have filed a request for notice in these Cases pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”).

S. The Debtors have requested immediate entry of an Interim Cash Collateral Order of this Court approving the Interim Relief (the “Interim Cash Collateral Order”) pursuant to Bankruptcy Rule 4001(b) and the Adequate Protection Parties have consented to such relief. Good and sufficient cause has been shown for the entry of this Interim Cash Collateral Order. Among other things, the entry of this Interim Cash Collateral Order is in the best interests of the Debtors, their creditors, and their estates because it will enable the Debtors to: (i) continue the orderly operation of their businesses and avoid an immediate shutdown of operations; (ii) meet their obligations for payroll, necessary ordinary course expenditures, and other operating expenses; (iii) pay necessary fees and professional expenses under the Bankruptcy Code and make payments authorized under other Orders entered by this Court; (iv) obtain needed goods and services; (v) retain customer, supplier, and employer confidence by demonstrating that they

have the financial ability to maintain normal operations; and (vi) maintain adequate cash resources customary and necessary for companies of this size and in the industries in which they operate to maintain customer confidence, each in accordance with the Budget, thereby avoiding immediate and irreparable harm to the Debtors' estates.

NOW, based upon the Motion of the Debtors and the record before this Court with respect to the Motion made by the Debtors at the Hearing, and good cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED with respect to the requested Interim Relief. All objections to the Interim Relief or the entry of this Interim Cash Collateral Order not withdrawn or settled are overruled on their merits.

Period of Interim Relief

2. Notwithstanding any provision of the Bankruptcy Code or the Bankruptcy Rules to the contrary, this Interim Cash Collateral Order shall take effect immediately upon entry nunc pro tunc to the Petition Date and shall remain in effect until the expiration of the period set forth in the Initial Budget and any periods set forth in subsequent budgets agreed to between the Debtors and the First Lien Agent, subject to the termination of this Interim Cash Collateral Order and any subsequent orders authorizing the Debtors' use of Cash Collateral, upon the occurrence of a Termination Event (as defined below) (such period being referred to as the "Cash Collateral Period"). The Adequate Protection Parties have not consented to and expressly reserve all rights to object to any use of Cash Collateral from and after the expiration of the Cash Collateral Period. The Debtors expressly reserve their rights to seek continued use of Cash Collateral after the expiration of the Cash Collateral Period on the terms set forth herein or on modified terms, and the Adequate Protection Parties reserve all rights to object to the Debtors' request for such relief.

Good Faith

3. The Debtors, the Adequate Protection Parties, and their respective agents and employees have acted in good faith in negotiating, consenting, and agreeing to the Debtors' use of the Cash Collateral as contemplated and provided by this Interim Cash Collateral Order. The negotiation of the terms and provisions of this Interim Cash Collateral Order have been conducted at arms' length, and the Debtors believe such terms and provisions are fair and reasonable under the circumstances and reflect the Debtors' exercise of reasonable business judgment consistent with the Debtors' fiduciary duties.

4. If any of the provisions of this Interim Cash Collateral Order are hereafter modified, vacated, or stayed by an order of this Court or another court, such stay, modification, or vacation shall not affect the validity, perfection, and enforceability of any lien, security interest, priority, or protection authorized for the benefit of any of the Adequate Protection Parties hereunder that is granted or attaches prior to the effective date of such stay, modification or vacation, and any use of the Cash Collateral by the Debtors pursuant to this Interim Cash Collateral Order prior to the effective date of such modification, stay, or vacation shall be governed in all respects by the original provisions of this Interim Cash Collateral Order.

5. This Interim Cash Collateral Order is without prejudice to (i) the rights of the Adequate Protection Parties to seek a modification of this Interim Cash Collateral Order, including a request for additional adequate protection or the termination of the Debtors' right to use Cash Collateral, after notice and hearing, including a hearing noticed on an emergency basis; and (ii) the rights of the Debtors to seek modification and/or extension of the Interim Cash Collateral Order, including an increased use of Cash Collateral, after notice and hearing, including a hearing noticed on an emergency basis.

Authorized Use of Cash Collateral

6. The Debtors are hereby authorized to use Cash Collateral pursuant to the Budget during the Cash Collateral Period, subject to the conditions and limitations set forth below.

Adequate Protection to First Lien Lenders for Debtors' Use of Cash Collateral

7. In each case as adequate protection for, and to the extent of the diminution in value of, the First Lien Lenders' first priority interests in prepetition collateral resulting from the Debtors' use of Cash Collateral and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code during the Cash Collateral Period:

- (a) The Debtors shall pay to the First Lien Agent, for the benefit of the First Lien Lenders, amounts equal to all current interest accruing under the First Lien Facility, at the non-default interest rate, which shall become due or accrue during the Cash Collateral Period (the "Adequate Protection Payments"); provided, however, that the Debtors will make such payments only to the extent the Debtors hold Excess Available Cash (defined below) over and above \$5.75 million (the "Minimum Cash Balance"); provided, however, that any shortfall in such payments will be accrued and funded in subsequent months to the extent there is Excess Available Cash available to pay some or all of the accrued shortfall. "Excess Available Cash" is defined as the ending book cash balance as reported on the last day of each calendar month, less (i) the Minimum Cash Balance, (ii) billed and unpaid professional fees and expenses, and (iii) up to a maximum aggregate amount of \$3,000,000 for (x) incurred and unbilled professional fees and expenses and (y) any earned but unpaid court-approved employee incentive plans. Excess Available Cash

payments are not to exceed the non-default interest payable to the First Lien Lenders for the relevant period. All such Adequate Protection Payments accruing or paid during the Cash Collateral Period shall be calculated at the non-default interest rate. The Debtors shall pay to the First Lien Agent, for the benefit of the First Lien Lenders, those Adequate Protection Payments due and payable as of June 30, 2009 on July 15, 2009, and beginning with the calendar month ending July 31, 2009, all Adequate Protection Payments and fees and charges accruing under the First Lien Facility during the Cash Collateral Period shall be due and payable (i) 15 days after the end of each calendar month or (ii) the first business day thereafter, whichever is later. The application of any payments pursuant to this section shall be subject to any Third Party Challenge. Each of the Debtors, the First Lien Agent, and the Committee reserves all respective rights to argue whether Adequate Protection Payments made pursuant to this Order should be applied to reduce the principal amount of the First Lien Facility Obligations pursuant to section 506(b) of the Bankruptcy Code.

- (b) In the event that, as a result of the Debtors' use of Cash Collateral as granted herein, or the imposition of the stay pursuant to section 362 of the Bankruptcy Code, and, if, notwithstanding the Adequate Protection Liens or other adequate protection granted herein, the collateral (including the Existing Collateral, any replacements thereof, and Cash Collateral) proves insufficient to repay the First Lien Facility Obligations in full, the First

Lien Lenders shall have an administrative expense claim to the extent provided by section 507(b) of the Bankruptcy Code with priority over all other administrative expense claims (the “Superpriority Claim”), subject to the Carve-Out (defined below).

- (c) The Debtors hereby grant, assign, and pledge to the First Lien Agent, for the ratable benefit of the First Lien Lenders, valid, perfected, and enforceable liens and security interests (the “Adequate Protection Liens”) in all prepetition and postpetition assets of the Debtors’ estates of any kind or nature whatsoever, including, without limitation, all real and personal property, intellectual property, contract rights, claims, and causes of action (including claims and causes of action under Chapter 5 of the Bankruptcy Code; provided, however, the First Lien Agent shall not seek an Adequate Protection Lien on any claims and causes of action under Chapter 5 of the Bankruptcy Code until the final hearing on this Order), and all products and proceeds thereof (the “Adequate Protection Collateral”).
- (d) During the Cash Collateral Period, the Debtors shall pay monthly, promptly upon submission of invoices and related documentation, all reasonable fees, charges, expenses (including attorneys’ fees and other professional expenses), and other amounts incurred or accrued by any of the First Lien Lenders (in their capacities as First Lien Lenders), as the case may be, in connection with the Cases or the First Lien Facility, including without limitation, (i) the reasonable attorneys’ fees and

expenses of Cadwalader, Wickersham & Taft, LLP, as counsel to the First Lien Agent; (ii) the reasonable fees and expenses of Capstone Advisory Group, LLC, the financial advisor retained by the First Lien Agent at the direction of and for the benefit of the First Lien Lenders; and (iii) the reasonable attorneys' fees and expenses of Edwards Angell Palmer & Dodge LLP, as local counsel to the First Lien Agent. The Debtors' obligations to make such payments shall include, in each instance, any of such fees, charges, expenses and other amounts which were incurred or accrued but unpaid as of the date hereof. Copies of any such invoices shall be provided to the United States Trustee and counsel to any Official Committee.

- (e) The Debtors shall timely comply with various the reporting requirements under the First Lien Credit Agreement and Security Agreements and such other reasonable reporting and information requests made from time to time by the First Lien Agent or the First Lien Lenders or their respective advisors, including requests for periodic meetings with management.

Adequate Protection to Second Lien Lenders for Debtors' Use of Cash Collateral

8. The Second Lien Lenders shall have silent Superpriority Claims and Adequate Protection Liens, in each case subordinate to the Superpriority Claims and Adequate Protection Liens provided to the First Lien Lenders, subject to the consent of the First Lien Lenders.

Adequate Protection to Contractors for Debtors' Use of Cash Collateral

9. The Contractors shall have silent Superpriority Claims and Adequate Protection Liens, in each case subordinate to the Superpriority Claims and Adequate Protection Liens provided to the First Lien Lenders and to the Second Lien Lenders.

Carve Out

10. Subject to the terms and conditions contained in this paragraph, all liens on and security interests in the Existing Collateral granted prepetition and pursuant to this Interim Cash Collateral Order, including to the Lender Parties and Contractors as adequate protection for their interests in the Existing Collateral, and all superpriority administrative claims granted pursuant to this Interim Cash Collateral Order, including to the Lender Parties and Contractors as adequate protection for the use of Cash Collateral and other diminution in value of their interests in the Existing Collateral, shall be subordinate to the following (collectively, and including the Professional Fee Carve-Out (as defined herein), the “Carve-Out”): (i) unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (ii) in the event of a conversion of the Cases to cases under chapter 7 of the Bankruptcy Code, fees and expenses incurred by a trustee and any professionals retained by such trustee, in an aggregate amount not exceeding \$50,000; and (iii) upon the delivery of a Carve-Out Trigger Notice (as defined herein), the Debtors shall fund a segregated First Lien Agent collateral account for the professional fees and expenses incurred by the Debtors and the Committee (collectively, the “Professional Fees”) subsequent to the delivery of a Carve-Out Trigger Notice (regardless of when such Professional Fees become allowed by order of the Bankruptcy Court), in an aggregate amount under this subparagraph (a)(iii) of \$2 million plus all unpaid Professional Fees incurred prior to the delivery of Carve-Out Trigger Notice (the provisions of this subparagraph (a)(iii) only, the “Professional Fee Carve-Out”). Amounts on deposit in the segregated account described in the immediately preceding sentence shall be used solely to satisfy the Carve-Out and the balance in such segregated account shall not be available to pay any prepetition or other postpetition obligations until such time as the obligations comprising the Carve-Out shall have been paid in full, notwithstanding any purported or asserted lien, claim or right to such balance. Nothing herein

shall constitute a waiver by the Lender Parties of their rights to object to any Professional Fees of any professional retained by the Debtors or the Committee. In the event that at the time of delivery of a Carve-Out Trigger Notice, there are insufficient amounts to fund the Carve-Out, the Carve-Out will be funded with the proceeds of the next disposition of collateral.

11. As used herein, "Carve-Out Trigger Notice" means, upon the occurrence and during the continuation of a Termination Event, a written notice delivered by the First Lien Agent or the Debtors to counsel for the Debtors or the First Lien Agent, as applicable, and lead counsel to the Committee expressly stating that the Professional Fee Carve-Out has been invoked.

12. Any payment or reimbursement made on or after delivery of the Carve-Out Trigger Notice in respect of any allowed Professional Fees shall permanently reduce the Professional Fee Carve-Out on a dollar-for-dollar basis. Any payments or reimbursements made in respect of allowed Professional Fees at any time prior to delivery of the Carve-Out Trigger Notice shall not reduce the Professional Fee Carve-Out.

13. Upon entry of this Interim Cash Collateral Order and subject to any Third Party Challenge, (i) the Facility Obligations shall constitute allowed secured claims of the First Lien Lenders against the Debtors and shall not be subject to contest, subordination or objection by the Debtors on any basis, including any contest or objection as to validity, enforceability, or priority of, or the extent of the security (including valuation of collateral) for, such claims, (ii) the Debtors shall have no claim for and shall be deemed to have waived and relinquished any claim or action for preferences, fraudulent conveyances, or other avoidance power claims as against the First Lien Lenders with respect to the Facility Obligations, (iii) the liens and security interests of the First Lien Agent for the benefit of the First Lien Lenders shall be determined to be valid,

perfected, enforceable and not subject to defense, offset, counterclaim, avoidance, contest, subordination or objection by the Debtors on any basis, including any contest or objection as to the validity, enforceability, perfection or priority thereof and (iv) the Debtors shall be deemed to have no claims or causes of action against any of the First Lien Lenders or the First Lien Agent and its legal and financial advisors, and shall be deemed to have waived and relinquished any such claims or causes of action, for any actions arising under or related to the Credit Agreements or the documents entered into in connection with the Credit Agreements, in each case, which arose prior to the entry of this Interim Cash Collateral Order.

14. Notwithstanding the foregoing, such determination of the priority, extent (including valuation of collateral), validity, perfection, enforceability and unavailability of such liens, security interests and claims and the release of claims is without prejudice to the rights of any authorized party (other than the Debtors) to investigate and challenge any such liens, security interests and/or claims of the First Lien Lenders, or to assert any other claims or causes of action, at law or in equity against any of the First Lien Lenders (a "Third Party Challenge"); provided that any such Third Party Challenge not made by commencement of an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001 (an "Adversary Proceeding") and served no later than 75 days after the Petition Date or 60 days following the formation of the Official Committee, whichever is later, shall be forever barred; provided, further, that the Debtors are not permitted to use Cash Collateral to pay for the investigation or pursuit of a Third Party Challenge, but may use up to \$25,000 of Cash Collateral to fund an investigation (but not pursuit) by the Committee of the potential for a Third Party Challenge.

15. Despite the initiation of any such Adversary Proceeding asserting a Third Party Challenge, such liens, security interests, and secured claims shall be presumed to be valid and

entitled to the benefit of this Interim Cash Collateral Order pending the entry of a final non-appealable judgment and order in favor of the authorized party with respect to such Third Party Challenge. If no such Adversary Proceeding is properly and timely filed and served by such date, (i) the Facility Obligations (as applicable) shall not be subject to any other or further claim, challenge, counterclaim, defense, offset, subordination, or avoidance by any party in interest, including without limitation any subsequently appointed trustee in these chapter 11 cases or in any chapter 7 case or subsequent case or proceeding involving any Debtor, and (ii) the liens and security interests of the First Lien Agent or any other collateral agent, for the benefit of the First Lien Lenders, shall not be subject to any other or further Third Party Challenge and shall be determined to have been, as of the Petition Date, valid, binding, perfected, enforceable, unavoidable, and having the priority asserted. The Third Party Challenge Period with respect to the First Lien Lenders may be extended by agreement between the First Lien Agent and the Committee, when formed, without further order of the Court.

Termination of Debtors' Ability to Use Cash Collateral

16. The Debtors' ability to use Cash Collateral during the Cash Collateral Period will terminate five business days after the First Lien Agent or the Debtors provide(s) written notice of the occurrence of any event described below (each, a "Termination Event"):

- (a) the expiration of the Cash Collateral Period as provided in Paragraph 2;
- (b) the Debtors' failure to make any Adequate Protection Payment in the total amount of Excess Available Cash then available when such Adequate Protection Payment comes due and payable in accordance with this Interim Cash Collateral Order;

- (c) the Debtors' failure to stay within \$5 million, on a cumulative basis from and after the Petition Date, of the estimated "net operational cash inflow" line item as listed on the Budget;³
- (d) the Debtors fail to comply in any material respect with any of the terms or conditions of this Interim Cash Collateral Order;
- (e) the Debtors seek any modification or extension of this Interim Cash Collateral Order that seeks to limit or reduce the adequate protection granted hereunder or otherwise, in the latter case, without prior consultation with the First Lien Lenders;
- (f) any Order shall be entered granting relief from the stay arising under section 362 of the Bankruptcy Code to the holder or holders of any security interest, lien or right of setoff to permit foreclosure (or the granting of a deed in lieu of foreclosure or similar instrument), possession, set-off, or any similar remedy with respect to any assets of the Debtors in an amount greater than \$500,000 or which otherwise would have a material adverse effect on the Debtors' businesses or prospects;
- (g) (1) any of the Cases shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code; or (2) a trustee under chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the Debtors' business (powers beyond

³ For the avoidance of any doubt, line items in the Budget shall not serve as a limitation on the fees otherwise to be paid to professionals, including if paid pursuant to the Carve-Out.

those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106 of the Bankruptcy Code shall be appointed or elected in any of the Cases; and

- (h) the Debtors shall fail in any material respect to comply with any provisions in the Credit Agreements or Security Agreements (as defined in the Credit Agreements) governing the maintenance of the Debtors' properties or insurance.

17. The provisions of this Interim Cash Collateral Order shall be binding upon and inure to the benefit of the Debtors, the Adequate Protection Parties, any Committee, and any trustee subsequently appointed for the estates of any of the Debtors, whether in the chapter 11 cases or in the event of any conversion of any chapter 11 case to a liquidation administered under chapter 7 of the Bankruptcy Code, or other case or proceeding involving any Debtor. Such binding effect is an integral part of the Interim Cash Collateral Order.

18. This Interim Cash Collateral Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon execution hereof. The ten (10) day stay provisions of Bankruptcy Rule 6004(h) are waived and shall not apply to this Interim Cash Collateral Order.

Dated: June __, 2009
Providence, Rhode Island

Arthur N. Votolato
United States Bankruptcy Judge

Exhibit 1

Budget

UTGR, Inc.

Projected Cash Flow - Cash Collateral Model For the 41 weeks ending April 3, 2010

(\$000's)

| Week Ending | Week ending 6/27/09 | 5 Wks Ending 8/1/09 | 4 Weeks Ending 8/29/09 | 5 Weeks Ending 10/3/09 | 4 Weeks Ending 10/31/09 | 4 Weeks Ending 11/28/09 | 5 Weeks Ending 1/2/10 | 4 Weeks Ending 1/30/10 | 4 Weeks Ending 2/27/10 | 5 Weeks Ending 4/3/10 | 41 weeks Ending Total |
|--|------------------------|---------------------------|------------------------------|------------------------------|-------------------------------|-------------------------------|-----------------------------|------------------------------|------------------------------|-----------------------------|-----------------------------|
| Receipts | | | | | | | | | | | |
| Gaming receipts (net of 10% decline) | 1,949 | 10,076 | 7,431 | 9,107 | 7,012 | 6,857 | 8,650 | 7,108 | 7,258 | 10,034 | 75,481 |
| Other revenue | 487 | 2,573 | 2,102 | 2,683 | 2,072 | 2,164 | 2,604 | 1,946 | 2,366 | 2,706 | 21,703 |
| Operational receipts | <u>2,436</u> | <u>12,649</u> | <u>9,533</u> | <u>11,790</u> | <u>9,083</u> | <u>9,020</u> | <u>11,254</u> | <u>9,054</u> | <u>9,624</u> | <u>12,740</u> | <u>97,184</u> |
| Disbursements | | | | | | | | | | | |
| Op. Disbursements | (2,473) | (8,759) | (6,120) | (7,663) | (7,135) | (5,904) | (8,061) | (7,459) | (5,846) | (7,713) | (67,134) |
| Net operational cash inflow | <u>(37)</u> | <u>3,891</u> | <u>3,413</u> | <u>4,127</u> | <u>1,948</u> | <u>3,116</u> | <u>3,193</u> | <u>1,595</u> | <u>3,778</u> | <u>5,026</u> | <u>30,050</u> |
| Other receipts and disbursements | | | | | | | | | | | |
| Restructuring fees | - | (1,601) | (1,524) | (1,831) | (2,340) | (1,879) | (2,051) | (1,699) | (1,725) | (1,811) | (16,461) |
| Adequate Protection Payment | - | (1,619) | - | - | (1,156) | - | (83) | (1,155) | - | (727) | (4,740) |
| Other receipts and disbursements | (125) | (375) | (375) | (375) | (375) | (375) | (375) | (375) | (375) | (375) | (3,500) |
| Other inflows / (outflows) | <u>(125)</u> | <u>(3,595)</u> | <u>(1,899)</u> | <u>(2,206)</u> | <u>(3,871)</u> | <u>(2,254)</u> | <u>(2,509)</u> | <u>(3,229)</u> | <u>(2,100)</u> | <u>(2,914)</u> | <u>(24,702)</u> |
| Net cash inflow / (outflow) | <u>\$ (162)</u> | <u>\$ 295</u> | <u>\$ 1,514</u> | <u>\$ 1,921</u> | <u>\$ (1,923)</u> | <u>\$ 862</u> | <u>\$ 684</u> | <u>\$ (1,634)</u> | <u>\$ 1,678</u> | <u>\$ 2,113</u> | <u>\$ 5,348</u> |
| Beginning Cash Balances | | | | | | | | | | | |
| Total Beginning Cash | \$ 5,173 | \$ 5,011 | \$ 5,306 | \$ 6,820 | \$ 8,741 | \$ 6,818 | \$ 7,681 | \$ 8,365 | \$ 6,731 | \$ 8,409 | \$ 5,173 |
| Net cash inflow / (outflow) | (162) | 295 | 1,514 | 1,921 | (1,923) | 862 | 684 | (1,634) | 1,678 | 2,113 | 5,348 |
| Total Ending Cash (excl. cash on floor) | <u>\$ 5,011</u> | <u>\$ 5,306</u> | <u>\$ 6,820</u> | <u>\$ 8,741</u> | <u>\$ 6,818</u> | <u>\$ 7,681</u> | <u>\$ 8,365</u> | <u>\$ 6,731</u> | <u>\$ 8,409</u> | <u>\$ 10,521</u> | <u>\$ 10,521</u> |

EXCESS AVAILABLE CASH CALCULATION TO DETERMINE ADEQUATE PROTECTION PAYMENTS

| | | | | | | | | | | | Adequate Protection Payments (1) |
|-------------------------------------|-----------------|-------------|-------------|-----------------|-------------|--------------|-----------------|-------------|---------------|-----------------|---|
| Ending Book Cash | | \$ 5,306 | \$ 6,820 | \$ 8,741 | \$ 6,818 | \$ 7,681 | \$ 8,810 | \$ 6,731 | \$ 8,409 | \$ 10,521 | |
| Minimum Cash Balance | | (5,750) | (5,750) | (5,750) | (5,750) | (5,750) | (5,750) | (5,750) | (5,750) | (5,750) | |
| Billed and Unpaid Pro Fees | | (305) | (406) | (585) | (585) | (431) | (405) | (431) | (431) | (345) | |
| Incurred and Unbilled | | (1,083) | (1,167) | (1,250) | (1,333) | (1,417) | (1,500) | (1,500) | (1,500) | (1,500) | |
| Initial Adequate Protection Payment | 1,619 | | | | | | | | | | |
| Excess Available Cash | <u>\$ 1,619</u> | <u>\$ -</u> | <u>\$ -</u> | <u>\$ 1,156</u> | <u>\$ -</u> | <u>\$ 83</u> | <u>\$ 1,155</u> | <u>\$ -</u> | <u>\$ 727</u> | <u>\$ 2,926</u> | <u>\$ 7,667</u> |

(1) The adequate protection payment calculated in the week ending 4/3/09 is assumed to be paid on 04/15/10.