

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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IN RE:

ALLWAYS EAST TRANSPORTATION, INC.

Chapter 11  
Case No. 16-22589(RDD)

Debtor.  
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**FINAL ORDER AUTHORIZING THE DEBTOR TO (I) ENTER  
INTO FACTORING ARRANGEMENT WITH CAPITAL  
SOLUTIONS BANCORP AND SELL CERTAIN ACCOUNTS  
RECEIVABLE PURSUANT TO 11 U.S.C. SECTIONS 363(b)  
AND (f) AND (II) GRANT SECURITY INTERESTS  
PURSUANT TO 11 U.S.C. SECTION 364(c)(2)**

UPON the motion, dated August 17, 2016 (the “**Motion**”) of Allways East Transportation, Inc. (the “**Debtor**”) the debtor and debtor in possession in this case (the “**Case**”), seeking entry of interim and final orders authorizing the Debtor to (1) enter into a post-petition Purchase and Sale Agreement with Capital Solutions Bancorp (“**Lender**” or “**Capital Solutions**”), (2) sell certain accounts receivable to Capital Solutions under such agreement pursuant to sections 363(b) and (f) of Title 11 of the United States Code (the “**Bankruptcy Code**”) and to grant security interests to Capital Solutions pursuant to sections 364(c)(2) and/or (3) of the Bankruptcy Code, (3) enter into a surety agreement and related documentation and (4) schedule the interim hearing on the Motion on shortened notice; and the Debtor having filed a voluntary petition for reorganization pursuant to chapter 11 of title 11, United States Code (the “**Bankruptcy Code**”), on April 28, 2016 (the “**Petition Date**”), and the Debtor having requested in the Motion, *inter alia*, entry of interim and final orders:

(1) authorizing and approving, pursuant to sections 363(b), (f) and 364(c) of the Bankruptcy Code, the Debtor to obtain debtor-in-possession financing in the form of accounts receivable factoring (the “**DIP Loan**”) from Lender pursuant to the terms and conditions of (a) this Order (the “**Final Order**”) entered after a Final Hearing (as defined herein below), and (b) the loan agreement and all ancillary documents referred to in the Motion, the Interim Orders (as defined below), or any Final Order and/or required to be executed by the Debtor in connection therewith (collectively, the “**DIP Loan Documents**”);

(2) granting Lender a perfected security interest and first priority lien (junior and subject to satisfying the El Jebel II, LLC lien) in the Debtor’s accounts receivable (other than its accounts receivable relating to the Debtor’s Dutchess County contract) pursuant to section 364(c)(2) and/or (3) of the Bankruptcy Code and the proceeds therefrom (the “**DIP Collateral**”)

(3) authorizing and approving, pursuant to section 363 of the Bankruptcy Code, the Debtor’s use of Cash Collateral (as defined herein below);

(4) authorizing the Debtor to make payments to Lender pursuant to the DIP Loan Documents, and

(5) granting any further and related relief as the Court deems just and equitable.

AND interim hearings having been held on August 18, 2016 and September 13, 2016, respectively, and the Court having entered a First Interim Order (as defined below) on August 18, 2016 and a Second Interim Order (as defined below) on September 16, 2016; and, pursuant to the Second Interim Order, the Court having scheduled a final hearing for October 18, 2016 (the “**Final Hearing**”); and there being no objections to the entry of this Final Order; and upon the record of the Case and the record of the Final Hearing, good and sufficient cause appearing therefor, and it appearing to be in the best interests of the Debtor’s estate and creditors,

THE COURT HEREBY FINDS, DETERMINES AND CONCLUDES THAT<sup>1</sup>:

A. On the Petition Date, the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). The Debtor is continuing in the management and possession of its business and properties as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. Consideration of the Motion constitutes a “core proceeding” as defined in 28 U.S.C. §§ 157(b)(2)(A), (D), (G), (K), (M) and (O). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b).

C. To obtain the necessary capital for the Debtor to fund, among other things, the Debtor’s ongoing expenses and business operations in the ordinary course, and to confirm a plan of reorganization, the Debtor has applied to the Court for authority pursuant to Bankruptcy Code sections 363 and 364, to obtain debtor-in-possession accounts receivable factoring from Lender. A summary of the material terms of the DIP Loan are set forth in the Term Sheet annexed to the Motion as Exhibit “B”.

D. Lender is willing to advance funds to the Debtor only upon the terms and conditions contained in the previously entered Interim Orders, this Order and the other DIP Loan Documents, as modified herein.

E. The Debtor is unable to obtain sufficient levels of unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to maintain and conduct its businesses.

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<sup>1</sup> Findings of fact contained herein shall be construed as conclusions of law, and conclusions of law herein shall be construed as findings of fact.

F. The Debtor is unable to obtain the necessary financing as unsecured credit allowable under section 364(a), (b) or (c)(1) of the Bankruptcy Code. Additionally, the Debtor is unable to procure the necessary financing on more favorable terms than those offered by Lender or provided in this Order.

G. The terms and conditions of the DIP Loan, as set forth in the DIP Loan Documents, and the fees paid and to be paid thereunder (i) are fair, reasonable, and the best available under the circumstances; (ii) reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties; and (iii) are supported by reasonably equivalent value and consideration.

H. The credit and financial accommodations to be extended under the DIP Loan are being extended by Lender in good faith; the Debtor and Lender have negotiated the terms and conditions contained in this Order in an arms' length, open and honest fashion; and Lender is entitled to the full protections of section 364(e) of the Bankruptcy Code.

I. It is in the best interests of the Debtor's estate and creditors that the Debtor be allowed to finance its operations under the terms and conditions set forth herein.

J. Sufficient and adequate notice of the Motion has been provided under the present circumstances pursuant to Bankruptcy Rules 2002, 4001(b), (c) and (d) and 9014 and section 102(1) of the Bankruptcy Code, as required by sections 363(b) and 364(c) of the Bankruptcy Code, and no further notice of, or interim or preliminary hearing on, the Motion or this Order is necessary or required.

K. The Court held an interim on August 18, 2016 to consider granting emergency relief to the Debtor under the Motion. The Court entered an interim order granting limited relief under the Motion on August 18, 2016 (the "**First Interim Order**").

L. The Court held a second interim hearing on September 14, 2016 to consider entry of a further interim order (the "**Second Interim Order**," and collectively with the First Interim

Order, the “**Interim Orders**”), pursuant to which the Court entered the Second Interim Order on September 16, 2016.

M. Notice of the Final Hearing was given to all parties required to receive notice under the Second Interim Order. The Final Hearing was held on October 18, 2016. No objections to the Motion on a final basis were filed.

N. Good, adequate and sufficient cause has been shown to justify the granting of the relief requested in the Motion and the immediate entry of this Order.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Motion Granted.** The Motion is granted on a final basis to the extent and in accordance with the terms and conditions set forth in this Order. The Debtor, effective as of the First Interim Order, is authorized on a final basis to receive advances from the sale of accounts receivable to the Lender, for purposes of funding the Debtor’s general and overall business operations up to a maximum aggregate amount of \$1,500,000. Any objections to the Motion with respect to the entry of this Order to the extent not withdrawn, waived or otherwise resolved, and all reservations of rights included therein (but subject to all reservation of rights included herein), if any, are hereby denied and overruled.

2. **Authorization to Borrow.** The Debtor is authorized to (a) sell accounts receivable and obtain advances thereon, so long as the unpaid balance of obligations to the Lender does not exceed \$1,500,000 exclusive of fees and other charges permitted under the DIP Loan Documents, (b) enter into the DIP Loan, (c) execute and deliver the DIP Loan Documents, and (d) use the proceeds of the DIP Loan in a manner consistent with the DIP Loan Documents. The Debtor is hereby authorized and directed to do and perform all acts and to make, execute and deliver all instruments and documents that may be required or necessary for the performance by the Debtor under the DIP Loan Documents. Lender’s right to decline to provide advances to the Debtor under the DIP Loan, in its sole and absolute discretion, is preserved.

3. **Use of Funds.** Pursuant to the terms and conditions of this Order and the DIP Loan Documents, the Debtor is authorized to use the advances under the DIP Loan Documents. The Debtor's rights to use the extensions of credit under the DIP Loan Documents shall terminate upon the earlier of (i) the occurrence of an Event of Default (defined below) in accordance with the provisions of paragraph 10 hereof, or (ii) upon the termination of the DIP Loan (the "**Termination Date**").

4. **Grant of Security Interest.** Upon the entry of this Order effective as of the Petition Date, Lender is hereby granted on a final basis the following security interests and liens against the assets of the Debtor, all of which shall immediately be valid, binding, permanent, continuing, enforceable and non-avoidable (collectively, the "**DIP Liens**"): pursuant to section 364(c)(2) and (3) of the Bankruptcy Code, a perfected first priority lien in the Debtor's accounts receivable (other than accounts receivable relating to the Debtor's Dutchess contract) and the proceeds therefrom (together, the "**DIP Collateral**"). The DIP Liens shall (a) be deemed effective and perfected as of the Petition Date and without the necessity of the Debtor or Lender incurring the expense for the execution, recordation or filing of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or without the necessity of Lender taking possession or control of applicable assets, and (b) extend and attach to all DIP Collateral and any proceeds of DIP Collateral which is presently in existence or is hereafter acquired (whether acquired prior to or subsequent to the Petition Date) and which is owned by the Debtor or in which the Debtor has any interest, whether held by the Debtor or by others for any of the Debtor's accounts, wherever located. Nevertheless, Lender shall be and hereby is authorized to take any action it deems necessary or appropriate to perfect the DIP Liens, including but not limited to filing financing statements, all of which shall be deemed to have been filed on the Petition Date.

5. **Satisfaction of El Jebel II, LLC Secured Claim and Lien.** The Debtor has heretofore satisfied, from proceeds held by the Lender (the “**Retained Advances**”), the El Jebel II, LLC secured claim and lien in full by paying the amount of \$89,710.92 from the Retained Advances. Accordingly, El Jebel shall no longer have any lien or security interest in the Debtor’s assets. Either the Debtor or Lender are authorized and directed to file a termination of any financing statement in favor of El Jebel.

6. **Pricing Under DIP Loan Term Sheet.** The pricing set forth in the DIP Loan Documents shall not exceed “1% every 10 days” and may include other fees.

7. **Relief from Automatic Stay.** The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to (i) permit the Debtor to grant the DIP Liens and to incur all liabilities and obligations to Lender under and in connection with the DIP Loan Documents and this Order, (ii) authorize Lender to retain and apply payments hereunder; and (iii) authorize Lender to enforce the provisions of this Order or the DIP Loan Documents.

8. **Reporting.** The Debtor shall provide Lender with all financial and other reporting in full compliance with the DIP Loan Documents.

9. **No Senior Liens/Sale of DIP Collateral.** From and after entry of the First Interim Order, unless Lender has provided its prior written consent or the DIP Loan has been indefeasibly paid in full, there shall not be entered in this Case, or in any other proceeding related to this Case, any order which authorizes the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or entitled to priority administrative status which is superior to or *pari passu* with those granted pursuant to this Order to Lender. The Debtor shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral without the prior written consent (by email or otherwise) of Lender (which shall not be unreasonably withheld or delayed) required under the applicable DIP Loan Documents, except

as otherwise provided for in the DIP Loan Documents and this Order and approved by the Bankruptcy Court to the extent required under applicable bankruptcy law.

10. **Default.** The Debtor shall be in default under this Order upon the occurrence of any of the following events (an “**Event of Default**”): (a) the occurrence of any event of default under the DIP Loan, or (b) the Debtor’s failure to comply with any other terms or condition set forth in the DIP Loan Documents or this Order.

11. **Survival.** This Order shall be binding upon and inure to the benefit of Lender, the Debtor and their respective successors and assigns, including, without limitation, any trustee, responsible officer, examiner, estate administrator or representative, or similar person appointed in a case for the Debtor under any chapter of the Bankruptcy Code. The provisions of this Order and any actions taken pursuant to this Order shall, to the extent permitted by applicable law, survive entry of any orders which may be entered confirming any plan of reorganization or which may be entered converting this Case from Chapter 11 to Chapter 7 of the Bankruptcy Code. The terms and provisions of this Order, as well as the secured claims granted by this Order, shall (to the extent permitted by applicable law) continue in this Case or any subsequent or related case under the Bankruptcy Code and shall continue notwithstanding any dismissal of the Case, and such claims shall maintain their priority as provided by this Order until the DIP Loan is satisfied in full.

12. **Good Faith Under Section 364(e).** Lender shall be entitled to the benefits and protections of this Order, including the protections afforded pursuant to Bankruptcy Code section 364(e), with respect to all post-petition advances and/or financial accommodations made by Lender to or for the benefit of the Debtor. Pursuant to the provisions of Bankruptcy Code section 364(e), the secured status of Lender’s post-petition advances shall be binding on the Debtor or any successor trustee or trustees even if this Order is reversed or modified on appeal.



13. **Effective Immediately.** The terms and conditions of this Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Order. Specifically, pursuant to this Order, the fourteen (14) day automatic stay period of Bankruptcy Rule 6004 is expressly inapplicable to this Order and the transactions, including, without limitation, transfers contemplated hereby, and accordingly, this Order shall become operative immediately upon entry on the docket.

14. **Inconsistency.** To the extent that any of the provisions of this Order shall conflict with any of the provisions of the DIP Loan Documents, the DIP Loan Documents are deemed to control and shall supersede the conflicting provision(s). To the extent that any of the provisions of this Order shall conflict with any order of the Court authorizing the Debtor to continue the use of pre-petition bank accounts, cash management systems and/or business forms, or any similar orders, then this Order is deemed to control and supersede the conflicting provision(s) in said orders.

15. **Modifications.** Lender and the Debtor may amend, modify or supplement any of the provisions of the DIP Loan Documents (each a “Modification” and, collectively, the “Modifications”) without further order of the Court, provided that (a) such Modification is not material, (b) the Office of the United States Trustee and the official committee of unsecured creditors appointed in the Case (any such committee, if formed, the “Committee”), provide their written consent in advance, which consent shall not be unreasonably withheld, and (c) notice of such Modification is filed with the Court at least two business days prior to the proposed effective date thereof, provided, however, that filing with the Court shall not be required with respect to any Modification that in addition to being non-material is also technical and/or ministerial. The foregoing provisions shall not apply to any forbearance or waiver by Lender with respect to any events of default which may have occurred (and the foregoing provisions shall not limit or impair Lender’s absolute discretion to agree to such forbearance or waiver),

provided that such forbearance or waiver is not itself conditioned upon the Debtor's agreeing to any Modification that is material.

16. **Retention of Jurisdiction.** This Court shall retain jurisdiction over any disputes related to or arising from this Order, including but not limited to any action, suit, or proceeding for the interpretation and enforcement of the DIP Loan, DIP Loan Documents, or the collection of any amount allegedly payable pursuant to any of the foregoing documents.

17. **Enforceability.** This Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable immediately upon execution hereof

Dated: White Plains, New York  
October 20, 2016

/s/Robert D. Drain  
HON. ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE