

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:

**BUFFET PARTNERS, L.P., et al.,
DEBTORS.¹**

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**CASE NO. 14-30699-11
CHAPTER 11
(Jointly Administered)**

**FINAL ORDER AUTHORIZING USE OF
CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363**

On February 4, 2014, Debtors Buffet Partners, L.P. and Buffet G.P., Inc. (“Debtors”) filed their Motion to Approve Interim and Final Orders (I) Authorizing Use of Cash Collateral and (II) Adequate Protection to the Prepetition Secured Lender Pursuant to 11 U.S.C. § 363 (Dkt. No. 10) (the “Motion”).² On February 5, 2014, the Court granted the Motion on an interim basis and entered its Interim Order Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363 (the “First Interim Order”), pursuant to which the Court authorized the Debtors' use of Cash

¹ The Debtors in these chapter 11 cases are Buffet Partners, L.P. and Buffet G.P., Inc.

² Unless otherwise defined herein, capitalized terms shall have the same meaning as these given in the Motion.

Collateral (as defined in the First Interim Order) until February 23, 2014. On February 27, 2014, the Court further extended the cash collateral period on an interim basis and entered its Second Interim Order Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363 (Dkt. No. 122) (the "Second Interim Order"). On March 10, 2014, the Court further extended the cash collateral period on an interim basis and entered its Third Interim Order Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363 (Dkt. No. 160) (the "Third Interim Order"). On March 21, 2014, the Court further extended the cash collateral period on an interim basis and entered its Fourth Interim Order Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363 (Dkt. No. 212) (the "Fourth Interim Order"). On April 23, 2014, the Court further extended the cash collateral period on an interim basis and entered its Fifth Interim Order Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363 (Dkt. No. 307) (the "Fifth Interim Order"). On April 30, 2014, the Court further extended the cash collateral period on an interim basis and entered its Fifth Interim Order Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363 (Dkt. No. 341) (the "Bridge Order" and together with the First Interim Order, the Second Interim Order, the Third Interim Order, the Fourth Interim Order, and the Fifth Interim Order, collectively hereinafter referred to as the "Interim Orders"), pursuant to which the Court authorized the Debtors' use of Cash Collateral until May 6, 2014. Having considered the record and having heard from the parties present at a hearing on the Motion held May 5, 2014 (the "Hearing"), and considering the evidence presented, the Court hereby FINDS AS FOLLOWS (to the extent any findings of fact constitute conclusions of law, they are adopted as such, and vice versa):

A. **Procedural Background and Jurisdiction.**

On February 4, 2014 (the "Petition Date"), the Debtors filed with this Court their voluntary petitions for reorganization under Chapter 11 of Title 11, United States Code, 11

U.S.C. § 101, et seq. (the “Bankruptcy Code”) and continue to manage their properties and operate their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. On February 11, 2014, the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”). See Dkt. No. 59.

The Court has jurisdiction over the Debtors' jointly administered Chapter 11 cases pursuant to 28 U.S.C. § 157(b) and 1334, and venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

B. Loan Documents.

The Motion describes and defines the various loan documents (the “Loan Documents”) under which cash collateral rights are asserted. Under the Loan Documents, the Debtors acknowledge and stipulate that Chatham Credit Management III, LLC, as administrative agent for the Lenders (as defined in the Loan Documents) (“Chatham”) has a properly perfected first priority security interest in and lien upon substantially all assets of the Debtors (the “Pre-Petition Collateral”), including all rents, profits, and proceeds derived therefrom which constitute cash collateral within the meaning of Section 363(a) of the Bankruptcy Code (the “Cash Collateral”) to secure all debt under the Loan Documents.

C. **Pre-Petition Debt.** As of the Petition Date, the Debtor acknowledges and stipulates that the principal amount of the indebtedness owed by Debtors under the Loan Documents is approximately \$39,528,229, exclusive of interest, costs, attorneys’ fees, and other amounts chargeable to the Debtors under the Loan Documents (collectively, the “Pre-Petition Debt”).

D. **Pre-Petition PACA Trust Debt.** On February 14, 2014, (Dkt. No. 77) an ad hoc group of creditors holding claims under the trust provision of the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §§ 499a et seq. (“PACA”) filed an objection to the Debtors’ request for continued use of Cash Collateral, claiming an unpaid trust debt in the aggregate amount of \$218,683.43.³ On or about February 26, 2014, alleged PACA trust beneficiaries National Frozen Foods Corporation and the Pictsweet Company filed a joinder to the objection of the Ad Hoc Group Objecting Creditors asserting PACA trust claims in the aggregate amount of \$109,103.77. On or about that same time, an additional alleged PACA trust beneficiary, Inn Foods, Inc., contacted the Debtors asserting a PACA trust beneficiary claim in the amount of \$30,096.00. Collectively, the aforementioned alleged PACA trust beneficiary claims and objecting parties shall be referred to herein as the “Objecting PACA Trust Claims” and the “Objecting PACA Trust Claimants”.

E. **Need for Use of Cash Collateral.** The Debtors require the use of Cash Collateral to continue operating their business. Serious and potentially irreparable harm to Debtors, their creditors and their estates may occur absent authorization for the use of Cash Collateral. Chatham is willing to consent to the use of its Cash Collateral, subject to the terms and conditions set forth herein. The terms of the of the Debtors' use of Cash Collateral appear to be fair and reasonable and within the scope of the Debtor's exercise of reasonable business judgment.

³ These creditors are Food Services of America, Inc., Go Fresh Produce, Inc., Hardies Fruit and Vegetable Company Houston, LP, Hardies Fruit and Vegetable Company South LP, Hardies Fruit and Vegetable Company, LP, Loffredo Fresh Produce Co., Inc., Potato Specialty Co., Segovias Distributing, Inc., and Stern Produce Company, Inc. (the “Ad Hoc Group Objecting PACA Creditors”).

F. **Notice.** Based upon the record before the Court, including certificates of service filed by the Debtors indicating the Motion and notice of the Hearing were served upon (i) the Office of the United States Trustee, (ii) counsel for Chatham, and (iii) the creditors included on the list(s) filed pursuant to Fed.R.Bankr.P. 1007(d), adequate and sufficient notice of the Motion and the Hearing has been provided under the circumstances in compliance with the requirements of Sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), and the local rules of this Court.

Based upon the foregoing findings, the Court **HEREBY ORDERS** as follows:

1. **Grant of Motion.** The Motion is *granted* as hereinafter set forth.

2. **Authority to Use Cash Collateral.**

a. Upon entry of this Order, the Debtors may use Cash Collateral until the occurrence of Termination Event (as defined in Paragraph 19 herein) unless and until the Court orders otherwise, or the Debtors and Chatham (with the written consent of the Committee) stipulate in writing otherwise, in accordance with the budget attached hereto as Exhibit A (as supplemented in accordance with this Order, the “Budget”). With respect to the total expenses listed in the Budget, expenditures of Cash Collateral shall not exceed the amount set forth in the Budget by more than 15% for any line item per month, or in the aggregate, per month (except for utilities, for which Debtors will pay the actual amount due) without further Order of Court or consent of Chatham.

b. Debtors shall not use, sell or expend, directly or indirectly, Cash Collateral or any proceeds, products, or offspring thereof, except as expressly authorized in this Order or any other order of the Bankruptcy Court, after notice and a hearing, allowing such expenditure.

c. Until expended by Debtors, all Cash Collateral shall remain subject to the asserted liens and claims of Chatham under the Loan Documents and any valid and unpaid pre-petition and post-petition claims of the Objecting PACA Trust Claimants arising under the trust provisions of PACA.

d. No later than ten (10) days prior to the expiration of the Budget, the Debtors shall deliver to Chatham and the Committee a supplemental budget covering a 4 week time period (or such other time period as Chatham may consent) to modify the attached Budget or to cover future time periods. In the event no objection is filed to such supplemental budget within ten (10) days after delivery, then such supplemental budget shall supersede the attached Budget and constitute the Budget for purposes of this Final Order. In the event an objection is filed, the Court shall schedule a hearing on the objection, and until the Court resolves such objection the Debtors shall only use Cash Collateral consistent with the portion of the Budget that is not subject to dispute or objection.

3. **Adequate Protection Granted to Chatham.** Chatham shall be entitled to adequate protection as follows:

a. **Adequate Protection Liens.** As adequate protection solely for any diminution in value resulting from the use of Cash Collateral or Pre-Petition Collateral on or after the Petition Date pursuant to this Order, Chatham is hereby granted a lien (the "Post-Petition Lien") in all of the Debtors' assets acquired post-petition, including the DIP Bank Accounts and their balances, as defined herein (the "Post-Petition Collateral," and together with the Pre-Petition Collateral, the "Collateral"). The Post-Petition Lien shall be subject and junior in priority to: (I) any non-avoidable, perfected pre-petition

liens in the Collateral of any other party that are superior in priority to the pre-petition liens of Chatham in such Collateral, (II) any valid and unpaid pre-petition and post-petition claims of the Objecting PACA Trust Claimants under the trust provisions of PACA, and (III) any pre-petition lien(s) of Chatham against the Collateral which are subsequently avoided and preserved for the benefit of the Debtors' estate pursuant to 11 U.S.C. § 551. Upon the entry of this Order, the Post-Petition Lien shall be automatically deemed perfected. Although not required, Chatham is authorized to file and record any instruments or documents necessary to perfect the security interest and liens granted by this Order and any such actions taken by Chatham shall not be deemed a violation of the automatic stay. Nothing in this Order is or shall be considered as altering, impairing, or otherwise limiting any rights of Chatham under 11 U.S.C. § 552(b). No lien in Chapter 5 avoidance actions is granted by this Order.

b. **Debtors' Leases.** Notwithstanding anything to the contrary in this Order or any financing agreements or documents, (a) with respect to the Debtors' non-residential real property leases that are not presently encumbered by valid liens or security interests of Chatham, no liens or encumbrances shall be granted on or extend to such unencumbered real property leases themselves, but rather, any liens granted shall extend only to the proceeds of such real property leases; and (b) upon an event of default, the rights of Chatham, or its agents or representatives, to enter onto the Debtors' leased premises to access and/or liquidate any pre-petition or post-petition collateral shall be limited to (i) any such rights agreed to in writing by the applicable landlord prior to entry onto the leased premises, (ii) any rights that Chatham, or its agents or representatives, have under applicable non-bankruptcy law, or (iii) such rights as may be granted by the

Bankruptcy Court on a separate motion with notice to the applicable landlords of the leased premises and an opportunity for such landlords to respond and be heard.

c. **Administrative Priority Claim.** In addition to the liens and security interests granted to Chatham herein, Chatham shall be entitled to an administrative priority claim under Section 507(b) of the Bankruptcy Code for the amount, if any, by which the protections afforded to Chatham for the Debtors' use of the Collateral proves to be inadequate, and such claim shall have priority over all other costs and expenses of the kind specified in, or ordered pursuant to, Sections 105, 326, 330, 331, 364(c), 503(b), 506(c), 507(a), or 726 of the Bankruptcy Code and shall at all times be senior to the rights of the Debtors and any creditors or claimants in this proceeding or any subsequent proceeding under the Bankruptcy Code, with the exception of (a) all statutory fees of the United States Trustee; (b) the allowed professional fees and expenses of the Debtors' and Committee's professionals; (c) costs of the Clerk of Court; and (d) valid and unpaid pre-petition and post-petition claims of the Objecting PACA Trust Claimants arising under the trust provisions of PACA.

4. **Estates' Professionals.** Subject to the Carveout (defined herein) and the terms and conditions of Paragraph 10 of this Order, Chatham consents to payment of the fees and expenses of the Debtors' and Committee's court approved counsel and professionals, to the extent such fees are accrued up to and including the termination of this Order, in each case subject to prior approval pursuant to the terms of a Court ordered interim and final fee procedures order. If no such interim procedure is established, payment of any amounts under the Carveout (defined herein) will be subject to Court approval following a hearing on at least twenty (20) days' notice to Chatham, the U.S. Trustee and other parties-in-interest entitled to

notice. Additionally, Chatham expressly reserves the right to object to any fee application filed in these Cases on any basis.

5. **Carve Out.** Chatham will allow the Court approved professionals to retain any retainers held as of the Petition Date as security for payment of authorized and allowed fees and expenses incurred prior to a Termination Event. Additionally, Chatham shall allow (the “Carveout”): (a) the Debtors’ lead counsel, Baker & McKenzie LLP, a \$100,000 “carveout” of Chatham's Collateral in the event that (i) any retainer held by Baker & McKenzie LLP or (ii) the amounts paid by the Debtors in the ordinary course of business in payment of authorized and allowed fees and expenses incurred by the Debtors' counsel are insufficient to fully secure such firm’s outstanding fees and expenses; and (b) the Committee’s professionals (inclusive of expenses of members of the Committee) a “carve-out” of Chatham’s Collateral equal to \$250,000 (the “Committee Expense Cash”) for the fees and expenses incurred by the Committee’s professionals and its members, and to the extent such fees and expenses are ultimately allowed by the Court, which Committee Expense Cash shall be reduced dollar-for-dollar by the amount that is actually paid to such Committee professionals and members in accordance with the Budget, this Order, or any subsequent order of the Court. The payment and use of the Committee Expense Cash shall be governed by the Court’s Order Granting Joint Motion of the Official Committee of Unsecured Creditors and the Debtors for Order Approving Compromise of Controversies in Accordance with the Term Sheet, as Modified in Accordance with the Court’s Ruling (Dkt. No. 284). The Carveout shall be subject to and subordinate to valid and unpaid pre-petition and post-petition claims of the Objecting PACA Trust Claimants arising under the trust provisions of PACA. If either the Committee professionals or Debtors’ counsel do not receive payment from the Debtors’ estate on account of the Carveout, Chatham

shall satisfy the Carveout solely from any proceeds generated or realized upon the sale or disposition of the Collateral; provided that, the Committee professionals and Debtors' counsel shall seek payment of the Carveout first from unencumbered assets of the Debtors' estate, if any, and second from any proceeds of the Collateral.

6. **Reporting.** Debtors shall file their monthly operating report with the Court each month as required by the U.S. Trustee. Additionally, within five (5) business days upon receiving a request from Chatham, the Debtors shall provide to Chatham such financial reports, in substance and form acceptable to Chatham, substantially similar to all reports required by the Loan Documents and previously provided to Chatham by the Company and its advisors, pre-petition. Any report provided by the Debtors to Chatham as the Debtors' secured lender shall be promptly provided by the Debtors to the Committee's professionals.

7. **Emergency Hearing Available Upon Default.** In the event the Debtors default or violate the terms and conditions of this Order, (a) Chatham shall be entitled to request an emergency hearing to prohibit the Debtors' continued use of Cash Collateral and to enforce Chatham's rights and remedies hereunder and (b) the Objecting PACA Trust Claimants shall be entitled to request an emergency hearing to enforce the Objecting PACA Trust Claimants' rights and remedies hereunder and under the PACA trust.

8. **DIP Account(s).** Subject to the Debtor's and the Committee's right to challenge whether post-petition revenues constitute Cash Collateral, the Debtors shall sequester and deposit all the Cash Collateral collected, received, generated, or derived from their businesses in one or more segregated bank accounts established and maintained in accordance with Section 363(c)(4) of the Bankruptcy Code (the "DIP Bank Accounts"). Except as otherwise expressly authorized herein, the Debtors shall at all times during the pendency of these

bankruptcy cases keep all Cash Collateral generated from their businesses that come into the Debtors' possession, custody, or control, together with all proceeds, products, or profits thereof, separate and distinct from all other property of the Debtors or the estates. Subject to the foregoing sentences and the Carveout, all funds on deposit in the DIP Bank Accounts shall at all times be subject to the senior liens and security interests of Chatham and the liens of the Objecting PACA Trust Claimants arising from valid and unpaid pre-petition and post-petition claims of the Objecting PACA Trust Claimants as provided herein.

9. **No Further Liens.** The Debtors shall not create, permit, or assume any lien or security interest, in favor of any person or entity other than Chatham on any property of the Debtors, except (a) any liens or security interests that existed prior to the Petition Date, (b) the liens of Chatham on the Cash Collateral, the DIP Bank Accounts, and the Post-Petition Collateral, (c) any liens or security interests expressly consented to in advance in writing by Chatham, or (d) trust claims arising under PACA.

10. **Restrictions on use of Cash Collateral.** The Debtors shall be authorized to use the Cash Collateral solely for the purpose of funding the ordinary and necessary costs of operating and maintaining its business and limited in kind and dollar amount to the line-item expenses set forth in the Budget. The Debtors shall operate their business within the parameters of the Budget. All disbursements shall be made in strict compliance with the terms of this Order and the Budget. Cash Collateral shall not be disbursed or otherwise used by the Debtors for the payment of any expenses not specifically included in the Budget without the prior written approval of Chatham or further order of this Court; provided, however, the Cash Collateral shall not be used to pay any fees or expenses incurred by the Debtors or professionals retained by the Debtors or the Committee in (i) preventing, hindering or delaying Chatham's enforcement or

realization upon any of the Collateral upon the termination of this Order, (ii) using or seeking to use Cash Collateral or selling any other Collateral without Chatham's consent, (iii) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority or enforceability of the Pre-Petition Debt or any mortgages, liens or security interests with respect thereto or any other rights or interests of Chatham, or in asserting any claims or causes of action, including, without limitation, any Challenge or any avoidance actions against Chatham; or (iv) objecting to or contesting in any manner Chatham's right and ability to credit bid its Pre-Petition Debt at any sale of the Debtors' assets pursuant to Section 363 of the Bankruptcy Code; provided, further, that the Committee may use the Carveout to investigate the validity and priority of Chatham's claims and liens.

11. **PACA Trust Claims.**

a. Debtors are authorized and directed to use Cash Collateral to pay valid, unpaid PACA trust claims of the Objecting PACA Trust Claimants in four (4) equal weekly installments, beginning or continuing on February 26, 2014, and payments shall continue on the following Wednesday until all pre-petition PACA trust claims of the Objecting PACA Trust Claimants are paid in full. Such payments are made without prejudice to any rights of the Debtors or the Objecting PACA Trust Claimants. Nothing herein, nor the installment nature of the payments being made hereunder, shall be deemed, interpreted or otherwise construed as an extension of credit by the Objecting PACA Trust Claimants to Debtors, nor as a waiver of the Objecting PACA Trust Claimants' rights under the PACA statutory trust as set forth in 7 U.S.C. § 499e(c). The rights of the Objecting PACA Trust Claimants herein are in addition to their rights under said trust. Nothing herein shall prejudice the rights of the Objecting PACA Trust

Claimants to pursue any and all third parties for the amounts due to them under the PACA trust in the event of a default by Debtors in the payments set forth herein. Nothing in this Order is or shall be considered a determination as to the validity, priority, or enforceability of any of the Objecting PACA Trust Claims.

b. The Ad Hoc Group Objecting PACA Creditors have agreed to extend post petition credit to the Debtors on a “net 14” basis. After 30 days, if all prepetition claims of the Ad Hoc Group Objecting PACA Creditors have been paid in full (and the Debtors have not defaulted on either the weekly payments thereof or upon the terms given for post petition credit), the Ad Hoc Group Objecting PACA Creditors have agreed to consider, in good faith, extending credit thereafter to the Debtors on a “net 30 basis,” however, any such decision to amend terms shall be in the Ad Hoc Group Objecting PACA Creditors’ sole discretion.

c. National Frozen Foods Corporation, Pictsweet Company, and Inn Foods, Inc. have agreed to extend normal “net 30” terms for post petition credit, with standard discounts for early payment.

12. **Deadline For Objecting to Chatham's Secured Claim.** The time period for the Committee to challenge or object to the validity, priority, perfection or amount of Chatham's asserted liens and claims (a “Challenge”) expired on April 16, 2014 (the “Objection Deadline”). No Challenge or other objection was timely filed by the Objection Deadline. Chatham shall be deemed to hold an allowed secured claim as set forth in its proof of claim that is not subject to defense, subordination, avoidance, counterclaim or offset by either of the Debtors, the Committee, or any party seeking to exercise the rights of the Debtors or the Debtors’ Estates, including without limitation any successor thereto.

13. **Survival of Adequate Protection.** Notwithstanding the termination of the Debtors' right to use the Cash Collateral hereunder or any default by the Debtors causing an earlier cessation of the use of the Cash Collateral, but subject to the Debtors' and Committee's right to challenge the nature, extent, validity and priority of Chatham's claims and liens, the rights, security interests, liens, priorities and adequate protection provided to Chatham pursuant to the terms of this Order shall in any and all events continue in full force and effect. Chatham shall be entitled to rely upon the authority granted in this Order, and no priority, lien or security interest granted hereby shall be affected by any objection to or appeal from this Order.

14. **Insurance / Taxes.** The Debtors shall keep all insurance policies required by the Loan Documents in full force and effect at all times. Following the entry of this Order, the Debtors shall provide to Chatham and the Committee's professionals copies of the binders and insurance policies reflecting Chatham as the loss payee under said insurance policies. The Debtors shall timely pay any and all ad valorem taxes coming due with respect to its real property during the Cash Collateral Period and shall provide Chatham and the Committee's professionals with proof of any such payment within five (5) business days after payment is made.

15. **Successors and Assigns.** The provisions of this Order shall be binding upon the Debtors and their successors and assigns. The rights, remedies, powers and privileges conferred upon Chatham pursuant to this Order shall be in addition to and cumulative with those rights, remedies, powers and privileges contained in the Loan Documents.

16. **U.S. Trustee's Fees.** Notwithstanding the security interests and liens recognized or granted to Chatham under this Order, the Cash Collateral may be used by the Debtors to pay all statutory fees of the United States Trustee.

17. **506(c) Waiver.** The Debtors are restrained and enjoined from using the Cash Collateral except as specifically provided in this Interim Order and the Budget. In no event shall the Debtors for themselves or their estates assert a claim that any costs or expenses of administration be imposed upon Chatham or the Collateral pursuant to Section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of Chatham, and no such consent shall be implied from any action, inaction, or acquiescence by Chatham, during the term of this Order. Except for the items specified in paragraph 16 above, the Debtors hereby waive their rights of surcharge under Section 506(c) of the Bankruptcy Code with respect to Chatham or the Collateral.

18. **Defaults.** It is understood and agreed that the Debtors shall be in default under this Order: (a) if the Debtors write any check(s) against any of their DIP accounts for expense(s) not set forth in the Budget or otherwise approved in writing by Chatham or authorized by final order of this Court; (b) if the monthly total of checks written by the Debtors against its DIP Bank Accounts for any line item expense(s), or in the aggregate, exceeds by more than fifteen (15%) percent the total monthly amount budgeted for said expense(s) (or said aggregate amount) as set forth in the Budget; (c) Debtors fail to make the scheduled payments to the Objecting PACA Trust Claimants; or (d) Debtors fail to close a sale of substantially all of its assets by May 30, 2014.

19. **Termination.** The Debtors' authority to use the Cash Collateral as provided herein shall immediately and automatically terminate upon the occurrence of any of the following (each a "Termination Event"): (a) the dismissal or conversion of this bankruptcy case to a Chapter 7; (b) the appointment of a trustee or examiner in this bankruptcy case; (c) the entry of an order granting Chatham relief from the automatic stay provisions of Section 362 of the

Bankruptcy Code; (d) the occurrence or existence of a default under the terms and conditions of this Order; (e) the closing of a sale of substantially all of the Debtors' assets; (f) the written agreement of Chatham, the Committee, and the Debtors; or (g) May 30, 2014. Thereafter, the Debtors' authority to use Cash Collateral may be continued only by further order of the Court or by a written stipulation signed by counsel for Chatham, the Objecting PACA Trust Claimants, and the Debtors and filed with the Court. The termination of this Order shall not affect or in any way impair any right, interest or lien granted to Chatham under this Order, or the Carveout.

20. **Non-Waiver.** The failure to enforce, at any time, any of the provisions of this Order or to require performance by the other party of any provision of this Order shall in no way be construed to be a waiver of said provision or affect either the validity of this Order or the right of any party to enforce each and every provision of this Order. Chatham reserves all of its rights and remedies under the Loan Documents, at law, and in equity and nothing herein shall be construed to be a waiver by Chatham of any such rights.

21. **Good Faith Negotiation.** The terms and conditions for the Debtors' use of the Cash Collateral set forth herein have been negotiated at arms' length for reasonably equivalent value and are fair and reasonable. The parties have acted in good faith in connection with the negotiation of this Order.

22. **Miscellaneous.** All of the terms and provisions of this Order, including but not limited to, the security interests and liens created and perfected hereby, in the priority established hereby, shall be binding upon the Debtors and any subsequent Chapter 7 trustee(s) appointed for the Debtors. No later than three (3) calendar days after the entry of this Order, the Debtors shall serve a copy of this Order by First Class Mail to (i) the United States Trustee, (ii) counsel for

Chatham, (iii) counsel for the Committee, (iv) any third parties known by the Debtors to assert liens upon the Debtors' assets, and (v) any other parties requesting notice in the Debtors' case.

23. **Prior Interim Orders.** Except as modified or superseded by this Order, all of the terms, conditions, stipulations and reservations of the prior Interim Orders, including, without limitation, the adequate protection granted to Chatham for the Debtor's use of Cash Collateral during the time periods covered by the Interim Orders, shall apply and continue in force and effect. The terms and provisions in this Order relating to the Carveout shall replace and supersede the Carveout terms in the Interim Orders.

24. **Texas Comptroller of Public Accounts.** Notwithstanding anything herein to the contrary, the relief granted herein is without prejudice to any rights of the Texas Comptroller of Public Accounts to funds which do not constitute property of the estate but which may qualify as tax trust funds. The Texas Comptroller of Public Accounts is not precluded from pursuing such funds, if any, by this Order, nor is any party in interest precluded from contesting any action of the Texas Comptroller of Public Accounts to recover alleged trust funds.

25. **Order Immediately Effective.** Notwithstanding anything to the contrary in the Federal Rules of Bankruptcy Procedure or otherwise, the effectiveness of this Order shall not be stayed, and this Order shall be immediately effective upon entry. The entry of this Order is without prejudice to Chatham's right to seek such other and further relief as it may deem appropriate.

END OF ORDER