

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)**

In re

CASHMAN EQUIPMENT CORP.,¹

Debtor

Chapter 11

Case No. 17-12205-MSH

Jointly-Administered

**NINTH INTERIM ORDER GRANTING (1) USE OF
CASH COLLATERAL, (2) REPLACEMENT LIENS,
(3) ADDITIONAL ADEQUATE PROTECTION, AND (4) OTHER RELIEF**

This matter having come before the Court on the *Motion for an Order (1) Authorizing the Continued Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* [doc. no. 632] filed on December 26, 2017, and the *Supplement in Support of Continued Use of Cash Collateral* [doc. no. 642] filed on January 5, 2018 (collectively the “Cash Collateral Motion”), by Cashman Equipment Corp. (“CEC”), Cashman Scrap & Salvage, LLC (“CSS”), Servicio Marina Superior, LLC (“SMS”), Cashman Canada, Inc. (“CCI”), and Mystic Adventure Sails, LLC (“Mystic”, and together with CEC, CSS, SMS and CCI the “Debtors”), the debtors and debtors-in-possession in the above captioned cases; and the Court having considered the Cash Collateral Motion, the *Affidavit of James Cashman in Support of First Day Motions* [doc. no. 12], the objections to the use of cash collateral of the Debtors as defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”), and the arguments of counsel made at the hearing held on January 10, 2018 (the

¹ The Debtors in these jointly administered Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Cashman Equipment Corp. (7969), Cashman Scrap & Salvage, LLC (6088), Servicio Marina Superior, LLC (6919), Mystic Adventure Sails, LLC (2137) and Cashman Canada, Inc. (1296).

“Interim Hearing”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014 and MBLR 4001-2(b); and the Interim Hearing having been held and concluded; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estate pending a final hearing on the use of Cash Collateral, and is otherwise fair and reasonable, in the best interests of the Debtors, their estates, and their creditors, and equity holders, and essential for the maximization of the assets of the Debtors’ business; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS AND RULINGS:

A. On June 9, 2017 (the “Petition Date”), the Debtors filed voluntary petitions with this Court for relief under Chapter 11 of the Bankruptcy Code. The Chapter 11 cases filed by the Debtors are referred to herein as the “Cases.”

B. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

C. This Court has jurisdiction over these proceedings, and the persons and properties affected hereby, pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and the standing order of reference codified in LR D. Mass. 201. The Cash Collateral Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

D. On June 28, 2017, the United States Trustee for the District of Massachusetts (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Creditors’ Committee”) in the Cases pursuant to Section 1102 of the Bankruptcy Code.

E. The Debtors requested entry of this order pursuant to Bankruptcy Rule 4001(b)(2). The Debtors have an immediate need to use the Cash Collateral to, among other things, preserve and maximize the value of the Debtors' assets, absent which immediate and irreparable harm will result to the Debtors, their estates, and their creditors. The preservation and maintenance of the Debtors' assets and business is necessary to maximize values available for distribution to creditors. Absent the Debtors' ability to use Cash Collateral, the Debtors would not have sufficient available sources of working capital or financing and would be unable to pay their operating expenses (including fuel, port fees, insurance cost, crew and repairs) or maintain their assets (including, their fleet of vessels), to the severe detriment of the Debtors' estates and creditors. Accordingly, the relief requested in the Cash Collateral Motion and the terms of this order are (i) critical to the Debtors' ability to maximize the value of their Chapter 11 estates, (ii) in the best interests of the Debtors and their estates, and (iii) necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors and their assets. This Order and all of its terms meet the standard for interim relief set forth in MLBR 4001-2(e)(2).

F. The following entities, subject to the reservations of rights set forth in paragraph 16 of the Eighth Cash Collateral Order (as defined below), have valid claims against the Debtors secured by valid and perfected liens on certain of the Debtors' properties (including an interest in Cash Collateral relating to those properties): (i) Rockland Trust Company ("Rockland"); (ii) Santander Bank, N.A. ("Santander"); (iii) Wells Fargo Equipment Finance, Inc. ("Wells"); (iv) Citizens Asset Finance, Inc. ("Citizens"); (v) U.S. Bank, National Association, acting through its division, U.S. Bank Equipment Finance ("U.S. Bank"); (vi) Key Equipment Finance, a division of KeyBank National Association ("Key"); (vii) Fifth Third Bank ("Fifth Third"); (viii) Radius Bank ("Radius"); (ix) Pacific Western Bank ("PacWest"); (x) Equitable Bank ("Equitable"); and (xi)

Banc of America Leasing and Capital, LLC (“B of A”). In addition, the U.S. Secretary of Transportation acting through the U.S. Maritime Administration (“MARAD”, and together with Rockland, Santander, Wells, Citizens, U.S. Bank, Key, Fifth Third, Radius, PacWest, Equitable and B of A the “Lenders”) assert claims against and liens on certain properties of the Debtors, including an interest in Cash Collateral relating to those properties as specified in paragraph 13 of the Eighth Cash Collateral Order (defined below). Each claim by a Lender, as well as any other amounts that may be allowed by the Court to the Lenders, is referred to as the “Lender Claim” of such Lender. Rockland has liens on Cash Collateral in its capacity as the Collateral Agent (as defined below).

G. On October 25, 2017, the Court entered its *Order Granting Motion by Debtors to Approve Stipulation of Settlement by and Between Debtors and Insurers* [doc. no. 551] approving the stipulation of settlement [doc. no. 463-1] between the Debtors, Starr Indemnity & Liability Company (“Starr”) and Great American Insurance Company (together with Starr the “Insurers”). As part of that stipulation, the Debtor acknowledged certain liens held by the Insurers’ on properties of the Debtors (collectively the “Insurer Liens”), but not any liens on Cash Collateral associated with those properties.

H. Attached to the Cash Collateral Motion is a budget (the “Budget”) for the use of Cash Collateral. The Budget has been approved by the Lenders and is reasonable.

I. On June 14, 2017, the Court entered its *Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* (the “First Interim Order”) [doc. no. 56].

J. On July 12, 2017, the Court entered its *Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* (the “Second Interim Order”) [doc. no. 217].

K. On August 14, 2017, the Court entered its *Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* (the “Third Interim Order”) [doc. no. 326].

L. On August 30, 2017, the Court entered its *Fourth Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* (the “Fourth Interim Order”) [doc. no. 326].

M. On September 13, 2017, the Court entered its *Fifth Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* (the “Fifth Interim Order”) [doc. no. 407].

N. On October 6, 2017, the Court entered its *Sixth Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3) Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief* (the “Sixth Interim Order”) [doc. no. 407].

O. On October 11, 2017, the Court entered its *Seventh Interim Order Granting Motion for an Order (1) Authorizing the Use of Cash Collateral, (2) Granting Replacement Liens, (3)*

Scheduling a Hearing on the Further Use of Cash Collateral, and (4) Granting Other Relief (the “Seventh Interim Order”) [doc. no. 506].

P. On October 24, 2017, the Court entered its *Eighth Interim Order Granting (1) Use of Cash Collateral, (2) Replacement Liens, (3) Additional Adequate Protection, And (4) Other Relief* (the “Eighth Cash Collateral Order”) [doc. no. 546]. The First Interim Order, the Second Interim Order, the Third Interim Order, the Fourth Interim Order, the Fifth Interim Order, the Sixth Interim Order, the Seventh Interim Order and the Eighth Cash Collateral Order are referred to collectively as the “Previous Interim Orders”. Pursuant to the Eighth Cash Collateral Order, the Lenders (other than MARAD) entered into that certain Intercreditor Agreement (as defined in the Eighth Cash Collateral Order) and the Debtors have executed or will execute certain mortgages and assignments of insurance with respect to the Eighth Cash Collateral Order, which remain in full force and effect.

Q. On October 24, 2017, the Court entered its *Order Authorizing Sales of Certain Assets Free and Clear of All Liens, Claims and Interests* (the “Sale Order”) [doc. no. 545]. The Sale Order authorizes the Debtors, subject to the conditions specified, to (i) sell Mortgaged Vessels and/or Unencumbered Vessels (each as defined below) without further notice, free and clear of liens, claims and interests, (ii) pay the Closing Costs (as defined in the Sale Order) associated with such sales, and (iii) distribute the Net Proceeds (as defined in the Sale Order) of such sales in accordance with the terms of the Sale Order. Attached as Exhibit A to the Eighth Cash Collateral Order is a schedule of: (1) the vessels and certain other equipment that are subject to a mortgage and/or lien in favor of any Lender as of the Petition Date (collectively the “Mortgaged Vessels,” and excluding vessels and equipment subject to a lien in favor of MARAD or PacWest, the “Adequate Protection Mortgaged Vessels”), and (2) all vessels of any Debtor that are not subject to

a mortgage or other lien as of the Petition Date (collectively the “Unencumbered Vessels”). The Debtors have sought to continue the process under the Sale Order pursuant to their Motion for an Order Authorizing Sales of Certain Assets Free and Clear of All Liens Claims and Interests [doc. no. 631] (the “Second Sale Motion”). If the Second Sale Motion is granted, the order thereon shall be included in the definition of “Sale Order” as used in this order.

R. Rockland has agreed to serve as Collateral Agent for the Lenders (the “Collateral Agent”) pursuant to the Intercreditor Agreement (as defined in the Eighth Cash Collateral Order) to hold, on behalf of the Lenders (including MARAD, if it elects to join the Intercreditor Agreement pursuant to paragraph 7 below), the liens on the Unencumbered Vessels and the Adequate Protection Mortgaged Vessels as adequate protection pursuant to the Eighth Cash Collateral Order, the Sale Order and the Intercreditor Agreement. The Lenders assent to Rockland continuing to serve as Collateral Agent under this order and the Sale Order.

S. The Debtors have caused notice of the Cash Collateral Motion and the Interim Hearing to be served by first class mail, email, or through the Court’s CM/ECF System on the following parties (the “Notice Parties”): (i) the U.S. Trustee; (ii) the Creditors’ Committee; (iii) the Lenders; (iv) the Insurers; (v) the Internal Revenue Service; (vi) any other taxing authority with a claim against any Debtor; (vii) each Debtor’s twenty largest unsecured creditors, (viii) the Office of the Attorney General for the Commonwealth of Massachusetts, and (ix) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Under the circumstances, the notice given by the Debtors of the Motion, the Interim Hearing and the proposed terms of this order complies with Bankruptcy Rules 2002, 4001(b), (c), and (d) and MLBR 4001-2(b).

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. Granting of Motion. The Cash Collateral Motion is granted on an interim basis as set forth in this order, and all objections to the Cash Collateral Motion were either withdrawn or are otherwise overruled.
2. Use of Cash Collateral. Between January 15, 2018 and January 31, 2018, the Debtors are authorized to use Cash Collateral pursuant to the budget approved by the Eighth Cash Collateral Order. Between February 1, 2018, and the Termination Date (as defined in paragraph 18) (the "Budget Period"), the Debtors are authorized to use Cash Collateral in accordance with the Budget (as it may be modified from time to time by the Debtors with the written approval of the Collateral Agent, all Lenders, and the Creditors' Committee), subject to the following conditions:
 - a. Actual-to-Budget Report. Commencing on January 18, 2018, and continuing every two (2) weeks thereafter, the Debtors shall deliver to each Lender, the Creditors' Committee and their respective counsel, not later than noon, a variance report for the two-week period ending the previous Sunday (the "Measurement Date") comparing the actual receipts and disbursements of the Debtors with the receipts and disbursements in the Budget (i) for such two-week period, and (ii) for the thirteen (13) weeks preceding the Measurement Date, including the sum of the Measured Disbursements (as defined below).
 - b. Restriction on Disbursements. The aggregate of the actual Operating Disbursements and Non-Operating Disbursements as described in the Budget, and specifically excluding US Trustee disbursements, payments to secured creditors, Interim Payments, heavy haul disbursements and extraordinary charter fit-out (after such exclusions, the "Measured Disbursements") for the thirteen (13) weeks preceding the Measurement Date shall not exceed the aggregate of the total Measured Disbursements set forth in the Budget for the thirteen (13) weeks preceding the Measurement Date by more than fifteen percent (15%).
 - c. Restriction on Payments to Professionals. Compensation and reimbursement of expenses for professionals of the Debtors or Creditors' Committee are authorized to be paid from Cash Collateral to the extent provided for in the Budget and subject to the overall fifteen percent (15%) variance in Measured Disbursements permitted under paragraph 2(b) of this order, and approved by this Court or payable pursuant to compensation procedures approved by this Court; *provided, however*, that no compensation or reimbursement of expenses for professionals of the Debtors or Creditors' Committee is authorized to be

paid from Cash Collateral relating, directly or indirectly, to any claim against or objection to the claims and liens asserted by any Lender. Nothing in this Order waives or impairs any right of any Lender, Rockland as Collateral Agent or any other party in interest to object to the reasonableness of professional fees and expenses.

3. Vessel Reports. Commencing on January 18, 2018, and continuing every two (2) weeks thereafter, the Debtors shall provide the following reporting to each Lender and counsel for the Creditors' Committee: (a) a report, for the period from January 1, 2018 to January 14, 2018 (and thereafter for each succeeding two (2) week period), on the collection of accounts receivable and charter hire based on which Lender holds a lien on the collected accounts receivable, (b) a report identifying, as to each vessel, accounts receivable generated during such two-week period, first mortgage holder (Lender or Collateral Agent), operating status of such vessel, and status of insurances; and (c) if not previously provided, a copy of each Debtor's last monthly operating report submitted to the Office of the United States Trustee.

4. Conference Calls. On Thursday, January 18, 2018, at 3:00 p.m., and at the same time on the same day every second week thereafter (as any such date and time might be rescheduled by agreement between the Debtors and the Collateral Agent on notice to the Lenders and the Creditors' Committee), the Debtors and their advisors shall conduct a case status call (including the Debtors' progress in selling vessels as authorized by the Sale Order) with the Creditors' Committee, the Lenders who wish to participate, and their respective counsel.

5. Replacement Liens on Cash Collateral. For the purposes of Sections 361, 363(e) and 507(b) of the Bankruptcy Code, as adequate protection to the Lenders for the Debtors' use of Cash Collateral, each Lender is hereby granted a replacement lien (each, a "Primary Replacement Lien") on the same type of post-petition property of the Debtors' estates against which such Lender held a lien as of the Petition Date. Each Lender's Primary Replacement Liens shall maintain the same priority, validity and enforceability as such Lender's pre-petition liens. To the extent that the

diminution of any Lender's interest in Cash Collateral after the Petition Date exceeds the value of such Lender's Primary Replacement Lien (including such liens granted pursuant to the Previous Interim Orders), such Lender is granted a lien (a "Supplemental Replacement Lien") on Cash Collateral junior to (a) existing liens as of the Petition Date, (b) Replacement Liens and Primary Replacement Liens, each as defined and granted pursuant to the Previous Interim Orders, and (c) Primary Replacement Liens granted pursuant to this order. Supplemental Replacement Liens granted pursuant to this order and any of the Previous Interim Orders shall be *pari passu*. Each Lender's Primary Replacement Lien and Supplemental Replacement Lien shall be valid only to the extent of the post-petition diminution in value of such Lender's pre-petition collateral resulting from the Debtors' use of the Cash Collateral.

6. Exclusion of Avoidance Powers. The Primary Replacement Liens and the Supplemental Replacement Liens shall not attach to any claims or causes of action asserting avoidance powers held by any of the Debtors or any trustee for the Debtors, including those avoidance powers set forth in Sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, or to the proceeds of any claims under or actions commenced pursuant to such powers (the "Excluded Claims").

7. Additional Adequate Protection Liens. For the purposes of Sections 361, 363(e) and 507(b) of the Bankruptcy Code, as further adequate protection to each Lender (subject, in the case of MARAD, to the following sentence) for any diminution in Cash Collateral of such Lender resulting from the Debtors' use of such Cash Collateral and as adequate protection to each Lender for any decline in value during the Budget Period of any and all other assets subject to the lien of such Lender, including Mortgaged Vessels ("Non-Cash Collateral"), the Collateral Agent, as agent for such Lender under the Intercreditor Agreement and for its own benefit and for the ratable

benefit of the Lenders, shall be and hereby are granted a lien, junior to the Permitted Liens (as defined below) for its own benefit and for the ratable benefit of the Lenders, on each of the Adequate Protection Mortgaged Vessels, and on all cash and non-cash proceeds of any sale or other disposition or liquidation (excluding any lease or charter or charter hire) thereof (collectively, the “Additional Adequate Protection Collateral”), subject to the terms of the Intercreditor Agreement (as defined in the Eighth Cash Collateral Order and as applicable), as security for (a) any such diminution or decline, and (b) all Agent Claims (as defined in the Intercreditor Agreement) (each, an “Additional Adequate Protection Lien”). For the avoidance of doubt, any vessels subject to liens held by MARAD and PacWest are not included in the term “Adequate Protection Mortgaged Vessels”; however, MARAD shall have an Additional Adequate Protection Lien if it elects to join the Intercreditor Agreement for that purpose. The Additional Adequate Protection Lien as to each item of Additional Adequate Protection Collateral is subject only to (x) the prepetition mortgage(s)/security interests of any applicable Lender(s) on such Adequate Protection Mortgaged Vessel, (y) any Priority Maritime Liens on such Adequate Protection Mortgaged Vessel as of the Petition Date, and (z) the Insurer Liens on such Adequate Protection Mortgaged Vessel (collectively the “Permitted Liens”). Any claim based on any such diminution or decline during the Budget Period (each, an “Adequate Protection Claim”) shall be subject to allowance by this Court after notice and a hearing. The Additional Adequate Protection Liens shall be *pari passu* with each other, shall be held by the Collateral Agent, and shall be governed by the Intercreditor Agreement, subject to the terms of this order; however, each Lender shall legally and beneficially hold its own Adequate Protection Claim (if any) and shall have sole standing to assert such claim. For the avoidance of doubt by the Creditors’ Committee, no Excluded Claims shall constitute Additional Adequate Protection Collateral.

8. Proceeds of Additional Adequate Protection Liens. Cash proceeds (if any) of the Additional Adequate Protection Lien shall be retained by the Debtors for use in accordance with any cash collateral orders entered by this Court, subject to: (i) the payment of Agent Claims (as that term is defined in the Intercreditor Agreement) as the first item of priority, (ii) the payment of Adequate Protection Claims allowed at the time of the Debtors' receipt of such proceeds; (iii) the establishment of reserves, in an amount agreed to by the applicable Lender and the Debtors or determined by order of this Court, for any asserted (but not allowed) Adequate Protection Claims at the time of the Debtors' receipt of such proceeds; (iv) the ratable payment and funding, respectively, of such allowed Adequate Protection Claims and such reserves if such proceeds are insufficient to pay all of such allowed Adequate Protection Claims and to fund all of such reserves (for the avoidance of doubt, the Additional Adequate Protection Lien attaches to all such proceeds until disbursed by the Debtors).

9. Interim Payments. The Debtors are authorized to make Interim Payments to Assenting Lenders (each as defined below) commencing on February 1, 2018, and continuing on the first business day of each succeeding month during the Budget Period, provided, however, that Debtors shall make an additional Interim Payment on or prior to February 1, 2018. "Interim Payment" means a monthly payment in an amount equal to the non-default interest provided for in the Assenting Lender's loan documents. "Assenting Lender" means those Lenders who assent to the Cash Collateral Motion and waive claims to default interest and late fees for the period covered by the Interim Payments. The Interim Payments shall be paid on account, and all rights, claims and defenses of all parties with respect to the application of the Interim Payments are fully preserved, including, without limitation, the right of the Debtors and/or the Committee to seek a determination that any payments made during the Cases to any Lender that is determined to be

under-secured be recharacterized as payments to any such Lenders on account of prepetition principal, interest, and/or other fees, expenses, and costs as a dollar-for dollar reduction of the allowed amount of any such Lender's prepetition claim. As of the date of this order, Santander has not elected to be an Assenting Lender and, absent further order of the Court, is not entitled to receive Interim Payments during the Budget Period. Santander is not subject to the restrictions on Assenting Lenders set forth in paragraph 19, and retains its rights to seek contractual and default interest, as well as late fees, costs and attorneys' fees under Santander's loan agreements and applicable law, whether during the Budget Period or otherwise. Without limiting the generality of the foregoing, Santander retains the right, at any time, to bring a motion for adequate protection, or a motion for payment of interest, costs, attorneys' fees and other charges properly payable under 11 U.S.C. § 506(b) (a "Supplemental Payment Motion"). The Debtors and the Official Committee of Unsecured Creditors shall retain all rights, claims, defenses and objections to any Supplemental Payment Motion that may be filed. Other than the foregoing restrictions and reserved rights with respect to Interim Payments, Supplemental Payment Motions, default interest and adequate protection, Santander retains the same rights as and shall be treated the same as all other Lenders for all other purposes under the terms of this order and the Sale Order. Prior to the earlier to occur of (a) the filing of a Supplemental Payment Motion and (b) the Termination Date, Santander may inform the Debtors in writing that it has elected to become an Assenting Lender, in which case Santander shall be entitled to receive Interim Payments on the same schedules as all other Assenting Lenders (with catch-up payments of any Interim Payments previously made), shall waive claims to default interest and late fees for the period covered by the Interim Payments Santander receives, and shall be subject to the restrictions on Assenting Lenders as set forth in paragraph 19.

10. Retained Proceeds Lien. For the purposes of Sections 361, 363(e) and 507(b) of the Bankruptcy Code, as adequate protection to the Lenders (other than MARAD) for the Debtors' use of Retained Proceeds (as defined in the Sale Order), the Collateral Agent, as agent for each Lender under the Intercreditor Agreement, shall and hereby is granted the Retained Proceeds Lien (as defined in the Sale Order).

11. Intercreditor Agreement. The Intercreditor Agreement remains valid and in full force and effect, *provided, however*, that at any time when the Cases remain pending, the Collateral Agent shall not (and notwithstanding anything to the contrary in the Intercreditor Agreement, shall not under any circumstances have any obligation or duty to any Lender to) foreclose the Adequate Protection Lien or the Retained Proceeds Lien as to any particular Adequate Protection Mortgaged Vessel or Unencumbered Vessel without first having obtained relief from the automatic stay of section 362(a) of the Bankruptcy Code as to such Adequate Protection Mortgaged Vessel or Unencumbered Vessel, which relief may be requested on an emergency basis (with three business days' notice of the hearing to the Notice Parties being sufficient) upon appropriate motion. Without limiting the generality of the foregoing, no Retained Proceeds Vessels Advance, pursuant to and as defined in the Intercreditor Agreement and/or in each Vessel Mortgage (as defined in the Sale Order), shall be made without an order of this Court (at any time when the Cases remain pending) and compliance with the notice procedures in the Intercreditor Agreement and/or in each Vessel Mortgage. Neither this order nor the Intercreditor Agreement shall have any effect on Existing Intercreditor Agreements (as that term is defined in the Eighth Cash Collateral Order).

12. Liens Immediately Effective. Notwithstanding anything to the contrary contained in this order, the Retained Proceeds Lien and the Additional Adequate Protection Liens (as well as the Primary Replacement Liens and Supplemental Replacement Liens) shall be immediately

effective upon, and based solely on, entry of this order and without need for any further documentation, notice, recordation or other act, with the same effect as though all steps permitted or required under applicable non-bankruptcy law to obtain a valid, perfected and enforceable lien were taken simultaneously with the entry of this order. Without derogating in any way from the effect of the preceding sentence, (a) the Collateral Agent and each Lender, as the case may be, may take such further steps as it may in its reasonable discretion wish to take by way of documentation, notice or recordation, (b) the Debtor shall provide reasonable cooperation, which shall include executing each and every proper document, in form and substance reasonably acceptable to the Debtors, presented for the Debtors' signature by the Collateral Agent or any Lender, in connection with the documentation, notice or recordation of the Retained Proceeds Lien, Adequate Protection Liens, Primary Replacement Liens and Supplemental Replacement Liens, and (c) without limiting the generality of the foregoing, the Debtors are authorized to execute, and the Collateral Agent is authorized to record (if applicable) the documents reasonably necessary, if any, to effectuate the Retained Proceeds Lien and the Additional Adequate Protection Liens.

13. Section 506(c) Waiver; Acknowledgements and Retained Challenge Rights. On a final basis for purposes in the Cases, the Debtors on behalf of themselves and their respective bankruptcy estates and any successors to those estates, hereby waive all rights against each Lender under 506(c) of the Bankruptcy Code as to any and all liabilities incurred by the Debtors during the Budget Period, except for expenses (including compensation and reimbursement of expenses of professionals) projected under the Budget to accrue prior to the end of the Budget Period but become payable thereafter (for the avoidance of doubt, any expense first arising after the end of the Budget Period is also excluded from this waiver).

14. Affiliate Transfers. The Debtors shall account for transfers and accruals among Debtors and with non-Debtor insiders and affiliates. No funds shall be transferred by any Debtor to or for the benefit of Debtor James M. Cashman, except amounts in payment of his salary and benefits and reimbursement of reasonable expenses in connection with his employment that may accrue in the ordinary course after the Petition Date.

15. Insurance. The Debtors shall maintain in effect all insurance currently in effect, as disclosed to the U.S. Trustee and the Lenders.

16. Lawful Operations. The Debtors shall operate their vessels in accordance with the law of all applicable jurisdictions, subject to a twenty (20) day notice period and opportunity to cure (regardless of whether the vessel is subject to a Vessel Mortgage).

17. Retained Proceeds. The Debtors shall keep all Retained Proceeds in a separate debtor-in-possession bank account, but may use such proceeds (a) before the Termination Date, in accordance with the Budget, or (b) after the Termination Date, in accordance with any subsequent budget approved by the Lenders, or by this Court on proper notice to the Notice Parties.

18. Termination Date. The “Termination Date” shall be May 31, 2018, or such earlier date (if any) as the Debtors are in default in any obligation under the Sale Order or under paragraph 2(a), (b) or (c), or 14 of this order, or as the Debtors are in default in any other obligation under this order and such default has not been cured within three (3) business days following notice by the Collateral Agent or any Lender to the Debtors and the Creditors’ Committee, or (without derogating from paragraph 19 of this order) as any of the Cases are dismissed or converted to Chapter 7, or as any examiner with special powers or trustee is appointed in any of the Cases, or as this Court determines at the request of the Collateral Agent or any Lender that the Debtors are not paying their undisputed ordinary course expenses (which determination may be requested on an

emergency basis, with ten (10) days' notice to the Notice Parties of the hearing being sufficient). Upon any of the occurrences specified in the preceding sentence, the Collateral Agent and any Lender (subject in all cases to all the provisions of the Intercreditor Agreement and the respective rights, remedies and undertakings of each of the Collateral Agent and each Lender thereunder) may (a) if the Cases remain pending, seek relief from the automatic stay of section 362(a) of the Bankruptcy Code (including relief to allow enforcement of the Retained Proceeds Lien and/or Adequate Protection Lien as to any Adequate Protection Mortgaged Vessel and/or Unencumbered Vessel), which relief may be requested on an emergency basis (with three business days' notice to the Notice Parties of the hearing being sufficient) by filing an appropriate motion, provided that all rights, claims and defenses of the Debtors and/or the Creditors' Committee with respect to any such request for relief are fully preserved, and (b) if the Cases are no longer pending (including by reason of an order of this Court as to which an appeal is pending but which has not been stayed), exercise their rights and remedies under the Eighth Cash Collateral Order, the Sale Order and the documents executed in conjunction with those orders, as well as all rights and remedies that would have been available to the Lenders but for the automatic stay.

19. Assenting Lender Restrictions Through Termination Date. Subject to Rockland's reservation of rights stated on the record at the Interim Hearing, unless by reason of a cause arising after the entry of this order, the Assenting Lenders shall not, prior to the Termination Date, whether by pleading filed with the Bankruptcy Court or otherwise, (a) request additional adequate protection, (b) seek relief from the automatic stay or to compel abandonment of estate property, (c) challenge the Debtors' use of Cash Collateral (other than by reason of any violation of this order), or (d) seek any examination under F.R.B.P. 2004, the appointment of a trustee or examiner, to convert the Cases to cases under Chapter 7 of the Bankruptcy Code, or to shorten any period under

the Exclusivity Order. For the avoidance of doubt, the restrictions set forth in this paragraph shall not apply to Santander except as expressly provided in the last sentence of paragraph 9.

20. Survival of Certain Provisions. All liens and interests granted in or pursuant to this order, the Sale Order and the Previous Interim Orders shall survive the Termination Date; provided that any adequate protection liens granted by this Court, including the Additional Adequate Protection Lien, shall not cover any diminution in any Lenders' collateral that occurs after the Termination Date.

21. Reservation of Rights. After the Termination Date, subject to the preceding paragraph of this order, all parties reserve all rights under applicable bankruptcy and non-bankruptcy law, under Chapter 11 or otherwise, including, without limitation, in respect of adequate protection, stay relief, the use of Cash Collateral, and the sale of property under Section 363(b) or 363(c) of the Bankruptcy Code.

22. Parties Bound by this order. This Order shall bind the Debtors, debtor James M. Cashman, the Insurers, the Collateral Agent, the Lenders, all other creditors of the Debtors, the Creditors' Committee, any trustee or other estate representative appointed in the Debtors' cases, and all other parties in interest in the Cases.

23. Notice of this order. Within three (3) business days after entry of this order, the Debtors shall serve, or cause to be served, by the Court's CM/ECF system, first class mail or other appropriate method of service, a copy of this order on the Notice Parties and on all known parties asserting maritime liens against the Debtors' vessels.

24. Continued Hearing. A continued hearing on the Debtors' request for entry of an interim order on the use of Cash Collateral is scheduled for May 23, 2018, at 10:00 a.m. (prevailing Eastern Time), before this Court.

25. Objections. Any further responses or objections to the Cash Collateral Motion shall be made in writing, conform to the applicable Federal Rules of Bankruptcy Procedure and the local rules of this Court (“Bankruptcy Rules”), be filed with this Court no later than May 18, 2018, at 4:00 p.m. (prevailing Eastern time) and served on the Notice Parties, and set forth the name of the objecting party, the basis for the objection, and the specific grounds therefor.

26. Reservation of Rights as to Insiders and Affiliates. Anything in this order to the contrary notwithstanding, the claims of any insider and/or an affiliate of any Debtor or of James M. Cashman asserted against the Estates (a) in subrogation shall be subject to Section 509(b) of the Bankruptcy Code, and/or (b) as a successor to any Lender shall be subject to Section 510(c) of the Bankruptcy Code. For the avoidance of doubt, the claims of any person or entity who or that is not insider and/or an affiliate of any Debtor or of James M. Cashman asserted against the Estates as a successor to any Lender shall be fully entitled to each and all of the Lender protections and benefits set forth in this order.

27. Immediate Effect. Notwithstanding any applicable Bankruptcy Rules, this order shall be immediately effective and enforceable upon being entered on the docket of this Court. Nothing in this order shall be construed to modify or otherwise affect the Eighth Cash Collateral Order.

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28. Retained Jurisdiction. This Court has and will retain jurisdiction and power to enforce this order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this order.

BY THE COURT

A handwritten signature in black ink, appearing to read "Melvin S. Hoffman", written in a cursive style.

Hon. Melvin S. Hoffman
Chief United States Bankruptcy Judge

DATED: January 17, 2018