

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

In re:

EAGLE BULK SHIPPING INC.,

Debtor.

Chapter 11

Case No. 14-12303 (SHL)

**FINAL ORDER (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION
FINANCING AND TO USE CASH COLLATERAL; (II) GRANTING LIENS AND
PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS;
(III) GRANTING ADEQUATE PROTECTION; (IV) MODIFYING AUTOMATIC
STAY; AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”), dated August 6, 2014, of Eagle Bulk Shipping Inc., as debtor and debtor in possession (the “**Debtor**”), in the above-captioned case (this “**Case**”) pursuant to sections 105, 361, 362, 363(c), 364(d)(1), 364(e) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Local Bankruptcy Rules for the Southern District of New York (the “**SDNY Local Rules**”), including SDNY Local Rule 4001-2 , seeking, among other things:

(1) authorization for the Debtor to obtain postpetition financing in an aggregate principal amount of up to \$50 million, of which (a) \$25,000,000 was made available to the Debtor upon entry of the Interim Order¹ and (b) the remaining \$25,000,000 will be made available to the Debtor as a delayed draw

¹ “**Interim Order**” means the *Interim Order (I) Authorizing the Debtor to Obtain Postpetition Financing and to Use Cash Collateral; (II) Granting Liens and Providing Superpriority Administrative Expense Status; (III) Granting Adequate Protection; (IV) Modifying Automatic Stay; (V) Scheduling a Final Hearing to Consider Entry of a Final Order; and (VI) Granting Related Relief* entered by the Court on August 8, 2014 [Docket No. 37].



occurring after the entry of this Final Order and prior to Maturity Date (as defined in the DIP Documents (as defined below)) if the aggregate cash balances of the Debtor and the Guarantors (as defined below) fall below \$15,000,000 (the actual principal amount available to be borrowed at any time being subject to those conditions set forth in the DIP Documents (as defined below) and this Final Order), pursuant to a term loan facility (the “**DIP Facility**”, and the loans thereunder the “**DIP Loans**”), in which Wilmington Trust (London) Limited will act as sole Agent and Security Trustee (in such capacities, the “**DIP Agent**”), for a syndicate of banks, financial institutions and other institutional lenders party to the DIP Facility from time to time (together with the DIP Agent, the “**DIP Lenders**”), and arranged by Goldman Sachs Lending Partners LLC, as sole bookrunner and sole arranger (solely in its capacity as such, the “**Arranger**”);

(2) authorization for the Debtor to execute and enter into the DIP Documents and to perform all such other and further acts as may be required in connection with the DIP Documents;

(3) authorization for the Debtor to cause all of its non-debtor subsidiaries (the “**Guarantors**”) to (i) guarantee the Debtor’s obligations under the DIP Facility, (ii) execute and enter into guarantees (the “**Guarantees**”), (iii) grant security interests and liens thereunder, and (iv) perform all such other and further acts as may be required in connection with the DIP Documents;

(4) authorization for the granting of adequate protection to the Prepetition Secured Lenders (as defined below) under or in connection with that certain Fourth Amended and Restated Credit Agreement, dated as of June 20, 2012 (as

heretofore amended, supplemented or otherwise modified, the “**Prepetition Credit Agreement**”), among Eagle Bulk Shipping Inc. (the “**Prepetition Borrower**”), each of the Prepetition Borrower’s subsidiaries, as guarantors (the “**Prepetition Guarantors**” and, together with the Prepetition Borrower, the “**Prepetition Obligors**”), the lenders that are party thereto from time to time (the “**Prepetition Secured Lenders**”), Wilmington Trust (London) Limited (as successor to The Royal Bank of Scotland plc), as Agent (in such capacity, the “**Prepetition Agent**” and together with the Prepetition Secured Lenders, the “**Prepetition Secured Creditors**”), and that certain Security Agreement, dated as of June 20, 2012, between the Prepetition Borrower, the Prepetition Guarantors, and Wilmington Trust (London) Limited (as successor to The Royal Bank of Scotland plc), as security trustee (as heretofore amended, supplemented or otherwise modified, the “**Security Agreement**” and, collectively with the Prepetition Credit Agreement, and the mortgages and all other documentation executed in connection therewith, the “**Existing Agreements**”), whose liens and security interests are being primed by the DIP Facility;

(5) authorization for the Debtor to use Cash Collateral (as defined below) and all other collateral in which the Prepetition Secured Creditors have an interest, and the granting of adequate protection to the Prepetition Secured Lenders with respect to, *inter alia*, such use of their Cash Collateral and all use and diminution in the value of the Prepetition Collateral (as defined below);

(6) approval of certain stipulations by the Debtor with respect to the Existing Agreements and the respective liens and security interests arising therefrom;

(7) the granting of superpriority claims to the DIP Lenders and first priority priming liens in favor of the DIP Agent (for the benefit of the DIP Lenders) on all prepetition and postpetition property of the Debtor's estate and all proceeds thereof, excluding a lien on Avoidance Actions (as defined below) but, upon entry of this Final Order, including any Avoidance Proceeds (as defined below), subject to the Carve-Out (as defined below) and the terms of this Final Order;

(8) subject only to and effective upon entry of this Final Order granting the foregoing relief and such other relief as provided herein, the waiver of any right to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code;

(9) pursuant to Bankruptcy Rule 4001, that an interim hearing on the Motion be held before this Court to consider entry of the Interim Order (a) authorizing the Debtor, on an interim basis, to borrow from the DIP Lenders under the DIP Documents up to an aggregate principal or face amount not to exceed \$25,000,000 under the DIP Facility (w) for operational, working capital, and general corporate purposes of the Debtor, (x) to pay the fees, costs and expenses incurred by the Debtor in connection with this Case, (y) to pay the fees, costs and expenses incurred in connection with the foregoing, and (z) to provide liquidity to the Debtor's subsidiaries, (b) authorizing the Debtor's use of Cash

Collateral and all other collateral, and (c) granting the liens, superpriority claims and adequate protection described herein (such hearing, as held on August 6, 2014, the “**Interim Hearing**”); and

(10) that this Court schedule a final hearing (the “**Final Hearing**”) to be held no later than thirty-seven (37) days following the entry of the Interim Order to consider entry of this Final Order authorizing the balance of the borrowings under the DIP Documents on a final basis, as set forth in the Motion and the DIP Documents.

Due and appropriate notice of the Motion, the interim and final relief requested therein, the Interim Order and the Final Hearing and the *Notice of Entry of Interim Order and Notice of Hearing* [Docket No. 39] having been served by the Debtor on (a) the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”); (b) those creditors holding the twenty (20) largest unsecured claims against the Debtor’s estate; (c) the DIP Agent and its attorneys; (d) the Prepetition Agent and its attorneys; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; and (g) the United States Attorney for the Southern District of New York (collectively, the “**Notice Parties**”).

The Interim Hearing having been held by this Court on August 6, 2014, with appearances of parties in interest noted in the transcript thereof, and this Court having entered the Interim Order on August 8, 2014.

Upon the record made by the Debtor in the Motion, the *Declaration of Adir Katzav, Chief Financial Officer of Eagle Bulk Shipping Inc., Pursuant to Local Bankruptcy Rule 1007-2 and in Support of First Day Filings* [Docket No. 2] and the *Declaration of Thane Carlston in Support of Debtor’s Motion for Entry of an Interim Order Pursuant to Sections 105, 361, 362, 363, 364,*

and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014, and Local Rule 4001-2 (A) Authorizing the Debtor to Obtain Postpetition DIP Facility and to Use Cash Collateral; (B) Granting Liens and Providing Superpriority Administrative Expense Status; (C) Granting Adequate Protection; (D) Modifying Automatic Stay; and (E) Scheduling a Final Hearing to Consider Entry of a Final Order [Docket No. 12], and at the Interim Hearing and at the Final Hearing, and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Disposition.* No objections to this Motion have been made and the Motion is granted on a final basis in accordance with the terms of this Final Order. This Final Order shall become effective immediately upon its entry.

2. *Petition Date.* On August 6, 2014 (the “**Petition Date**”), the Debtor commenced the Case under chapter 11 of the Bankruptcy Code before this Court. The Debtor is authorized to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. *Jurisdiction.* This Court has core jurisdiction over this Case, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The Guarantors submit to the jurisdiction of this Court with respect to any and all matters arising under the Existing Agreements and the DIP Documents (each as defined below), and any and all disputes with the Debtor or a Guarantor arising in connection with the Existing Agreements or actions taken thereunder with the Debtor or a Guarantor shall be resolved by this Court.

4. *Notice.* Notice of the Motion, the relief requested therein on a final basis, the Interim Order and the Final Hearing was served by the Debtor on the Notice Parties as described herein. Under the circumstances, the notice given by the Debtor of the Motion, the relief requested therein on a final basis, the Interim Order and the Final Hearing constitutes appropriate, due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c) and the SDNY Local Rules. No further notice of the relief sought at the Final Hearing and the relief granted herein is necessary or required.

5. *Debtor's Stipulations.* Without prejudice to the rights of any other party (but subject to the limitations thereon contained in paragraphs 23 and 24 below), the Debtor admits, stipulates and agrees that:

(a) *Prepetition Debt.* (i) As of the Petition Date, the Prepetition Obligors were indebted and liable to the Prepetition Secured Lenders, without defense, counterclaim or offset of any kind, in the aggregate amount of (A) approximately \$1,200,000,000 in principal amount owing under the Prepetition Credit Agreement, and (B) all accrued and unpaid interest and fees thereon and any additional accrued and unpaid fees, expenses (including any reasonable and documented attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable or reimbursable under the Existing Agreements), charges and other amounts, in each case, due under the Existing Agreements (collectively, the "**Prepetition Debt**"), (ii) the Prepetition Debt constitutes the legal, valid and binding obligation of the Debtor, enforceable in accordance with the terms of the Existing Agreements (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and (iii) no portion of the Prepetition Debt is subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law;

(b) the Existing Agreements are valid, binding and enforceable;

(c) the liens and security interests granted to the Prepetition Agent pursuant to and in connection with the Existing Agreements (including, without limitation, all security agreements, pledge agreements, mortgages, deeds of trust, account control agreements and other security documents executed by the Debtor or any other loan party thereto in favor of the Prepetition Agent, for its benefit and for the benefit of the Prepetition Secured Lenders) (the “**Prepetition Liens**”), (i) are valid, binding, perfected, enforceable, first-priority liens and security interests in the personal and real property described in the Existing Agreements (the “**Prepetition Collateral**”), (ii) were granted to, or for the benefit of, the Prepetition Secured Creditors for fair consideration and reasonably equivalent value, (iii) are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (iv) are subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below) to which the DIP Liens are subject and (C) valid, perfected and unavoidable liens permitted under the Existing Agreements to the extent that such permitted liens are senior to or *pari passu* with the liens of the Prepetition Agent on the Prepetition Collateral;

(d) the Debtor’s borrowings from the DIP Lenders under the DIP Facility and this Final Order will be used in a manner consistent with the terms and conditions of the DIP Documents, solely for (a) working capital and other general corporate purposes, (b) permitted payment of costs of administration of this Case, and (c) providing liquidity to the Debtor’s subsidiaries;

(e) (i) the proceeds from the DIP Loans shall not be loaned or advanced to, or invested in (in each case, directly or indirectly), any entity that is not a subsidiary of the Debtor

or a Guarantor, (ii) the proceeds from the DIP Facility loaned or advanced to, or invested in, any subsidiary of the Debtor or a Guarantor shall be evidenced by an intercompany note, in form and substance reasonably satisfactory to the DIP Agent, for the full amount of the proceeds so loaned, advanced or invested, (iii) such intercompany note shall be pledged to the DIP Agent, for the benefit of the DIP Lenders, to secure the DIP Obligations (as defined herein), and (iv) all intercompany liens of the Debtor and the Guarantors, if any, will be contractually subordinated to the liens securing the DIP Facility and to the Adequate Protection Liens (as defined herein) on terms satisfactory to the DIP Agent; and

(f) subject to the reservation of rights set forth in paragraph 24 below, each Obligor (as defined in the Prepetition Credit Agreement) shall be deemed to have forever waived, discharged and released each of the Prepetition Secured Creditors and their respective affiliates and each of the respective members, managers, equity holders, agents, attorneys, financial advisors, consultants, officers, directors, employees and other representatives thereof (all of the foregoing, solely in their respective capacities as such, collectively, the **“Prepetition Secured Lender Releasees”**) of any and all “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action (including, without limitation, causes of action in the nature of “lender liability”), defenses, setoff, recoupment or other offset rights against any and all of the Prepetition Secured Lender Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the Prepetition Obligations, the Prepetition Liens or the debtor-creditor relationship between any of the Prepetition Agent or the Prepetition Secured Lenders, on the one hand, and the Debtor and each Obligor (as defined in the Prepetition Credit Agreement), on the other hand, from the beginning of time through the date hereof, including, without limitation, (i) any recharacterization, subordination, avoidance or other claim arising under or pursuant to section

105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state law, federal law or municipal law and (ii) any right or basis to challenge or object to the amount, validity or enforceability of the Prepetition Obligations or any payments made on account of the Prepetition Obligations, or the validity, enforceability, priority or non-avoidability of the Prepetition Liens securing the Prepetition Obligations. For the avoidance of doubt, the foregoing release shall not act to release any independent, non-derivative claims of third parties against the Prepetition Secured Lender Releasees.

6. *Findings Regarding the DIP Facility.* Based on representations of the Debtor, including, but not limited to, those made in the Motion, the First Day Declaration, and the declaration of Thane Carlston, the Debtor's investment banker, in support of the Motion, the Court makes the following findings of fact and conclusions of law:

- (a) Good cause has been shown for the entry of this Final Order.
- (b) The Debtor has a need to obtain the full amount of the DIP Facility subject to the conditions set forth in the DIP Documents and this Final Order and use Cash Collateral in order to permit, among other things, the orderly continuation of the operation of its business, to maintain business relationships with vendors, suppliers and customers, to make capital expenditures, and to satisfy other working capital and operational needs. The access of the Debtor to sufficient working capital and liquidity made available through the use of Cash Collateral, incurrence of new indebtedness for borrowed money and other financial accommodations provided for, under or in connection with the DIP Facility is vital to the preservation and maintenance of the value of the Debtor and to a successful reorganization of the Debtor or sale of the Debtor's assets as a going concern or otherwise.

(c) The Debtor is unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Facility and is unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtor is also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtor granting to the DIP Agent and the DIP Lenders, subject to the Carve-Out as provided for herein, the DIP Liens and the Superpriority Claims (as defined below) under the terms and conditions set forth in this Final Order and in the DIP Documents, as well as any and all other protections provided to the DIP Agent and the DIP Lenders herein and therein.

(d) The terms of the DIP Facility and the use of Cash Collateral are fair and reasonable and reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties.

(e) The DIP Facility has been negotiated in good faith and at arm's length among the Debtor, the DIP Agent, the Arranger and the DIP Lenders, and all of the Debtor's obligations and indebtedness arising under, in respect of or in connection with the DIP Facility and the DIP Documents, including without limitation, (i) all loans made to the Debtor pursuant to the superpriority secured debtor-in-possession credit agreement, substantially in the form attached as Exhibit B to the Motion (as may be amended from time to time pursuant to the provisions of this Final Order, the "**DIP Credit Agreement**"), and (ii) all other "**Obligations**" (as defined in the DIP Credit Agreement) of the Debtor, in each case owing to the DIP Agent, any DIP Lender or any of their respective affiliates, in accordance with the terms of the DIP Documents (all of the foregoing, collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Agent and the DIP Lenders and their affiliates in good faith, as that

term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to full protection thereunder.

(f) Based upon the record before the Court, the terms of the DIP Facility, the use of Cash Collateral and the adequate protection granted in the Interim Order and this Final Order have been negotiated at arm's length and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtor and its estate and creditors and are consistent with the Debtor's fiduciary duties.

(g) In light of the subordination of the Prepetition Liens to the Carve-Out and the DIP Liens, the Debtor and the Guarantors consent and agree that the Prepetition Secured Creditors are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and that the "equities of the case" exception shall not apply.

7. *Authorization of the DIP Facility and the DIP Documents.*

(a) The Debtor was, pursuant to the Interim Order, and is hereby authorized to enter into and perform all obligations under the DIP Documents. The Debtor is hereby authorized to borrow the full amount of money pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized to guarantee the full amount of such borrowings and the Debtor's obligations with respect to such borrowings, up to an aggregate principal amount of \$50,000,000, of which (a) \$25,000,000 was made available to the Debtor upon entry of the Interim Order and (b) the remaining \$25,000,000 will be made available to the Debtor as a delayed draw occurring after the entry of this Final Order and prior to Maturity Date if the aggregate cash balances of the Debtor and the Guarantors fall below \$15,000,000, the actual principal amount available to be borrowed at any time being subject to conditions set forth in the

DIP Documents and this Final Order (plus interest, fees, amounts paid-in-kind, expenses (including reasonable professional fees and expenses) and other amounts, in each case, as provided for in the DIP Documents) under the DIP Facility, in accordance with the terms of this Final Order and the DIP Documents, which borrowings shall be used for all purposes permitted under the DIP Documents, including, without limitation, to provide working capital for the Debtor and to pay interest, fees and expenses in accordance with this Final Order and the DIP Documents.

(b) In furtherance of the foregoing and without further approval of this Court, the Debtor was, pursuant to the Interim Order, and hereby is authorized and directed to perform (or cause a non-Debtor subsidiary to perform, as necessary) all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees and expenses, that may be required or reasonably necessary for the Debtor's performance of its obligations under or related to the DIP Facility, including, without limitation:

(i) the execution, delivery and performance of the Loan Documents (as defined in the DIP Credit Agreement) and any exhibits attached thereto, including, without limitation, the DIP Credit Agreement, the Security Agreement (as defined in the DIP Credit Agreement), any account control agreements and all other related documents contemplated by the foregoing (collectively, and together with the letter agreements referred to in clause (iii) below, the "**DIP Documents**");

(ii) the execution, delivery and performance of one or more amendments to or waivers of the requirements of the DIP Documents, including the DIP Credit

Agreement for, among other things, the purpose of adding additional financial institutions as DIP Lenders and reallocating the commitments for the DIP Facility among the DIP Lenders, in each case in such form as the Debtor, the DIP Agent and the applicable DIP Lenders may agree (it being understood that no further approval of the Court shall be required for non-material amendments to the DIP Credit Agreement (and any fees paid in connection therewith), including those that do not shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder;

(iii) the non-refundable payment to the DIP Agent, the Arranger or the DIP Lenders, as the case may be, of any fees and other amounts due, including any reimbursement of indemnified obligations referred to in the DIP Credit Agreement (and in any separate letter agreements between such applicable parties and the Debtor in connection with the DIP Facility) and reasonable costs and expenses as may be due from time to time, including, without limitation, the reasonable fees and expenses of the professionals retained as provided for in the DIP Documents, without the need to file retention motions or fee applications but subject to paragraph 25, in each case, solely to the extent provided for in the DIP Credit Agreement;

(iv) the performance of all other acts required under or in connection with the DIP Documents, including the granting and perfection of the DIP Liens and the Superpriority Claims as permitted herein and therein; and

(v) cause the execution and delivery of and performance under the Guarantees.

(c) Upon execution and delivery of the DIP Documents, pursuant to the provisions of the Interim Order, the DIP Documents constituted, and by the provisions of this Final Order shall constitute, valid and binding obligations of the Debtor, enforceable against the

Debtor in accordance with the terms of such DIP Documents, the Interim Order (as applicable) and this Final Order.

8. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed claims (the “**Superpriority Claims**”) against the Debtor (without the need to file any proof of claim) with priority over any and all administrative expenses, diminution claims (including all Adequate Protection Obligations (as defined below)) and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Debtor and all proceeds thereof, excluding all Avoidance Actions, but including all Avoidance Proceeds (each as defined below), subject only to the payment of the Carve-Out to the extent specifically provided for herein. Any payments, distributions or other proceeds received on account of such Superpriority Claims shall be promptly delivered to the DIP Agent to be applied or further distributed by the DIP Agent on account of the DIP Obligations in such order as is specified in the DIP Documents. The Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(b) For purposes hereof, the “**Carve-Out**” means (i) all fees required to be paid pursuant to 28 U.S.C. §1930 and 31 U.S.C. §3717, (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an amount not to exceed \$50,000, (iii) to the extent allowed at any time whether by interim order, procedural order, or otherwise, but subject in all respects to the Budget (as defined in the DIP Credit Agreement), all accrued and unpaid fees, disbursements, costs and expenses (“**Professional Fees**”) (other than any restructuring fee, sale fee or other success fee of any investment bankers or financial advisors of the Debtor (except the Debtor’s current financial advisor Moelis & Company engaged pursuant to its existing engagement letter with the Debtor) or the Creditors’ Committee (as defined below)), incurred by professionals or professional firms whose retention has been approved by the Court during this Case pursuant to sections 327 and 1103 of the Bankruptcy Code (collectively, “**Professional Persons**”) retained by the Debtor and the official committee of unsecured creditors appointed in this Case (the “**Creditors’ Committee**”), if any, at any time before or on the first business day following delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below), to the extent such Professional Fees are allowed by this Court whether by interim order, procedural order or otherwise, prior to or after delivery of a Carve Out Trigger Notice; and (iv) after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed by this Court whether by interim order, procedural order or otherwise, prior to or after delivery of a Carve Out Trigger Notice, all unpaid fees, disbursements, costs and expenses incurred by Professional Persons, in an aggregate amount not to exceed \$2,500,000 (the amount set forth in this clause (iv) being the “**Carve-Out Cap**”); *provided, however*, that any use of the Prepetition Collateral, the Cash Collateral, the Collateral, the DIP Facility or borrowings thereunder, the Carve-Out, the Carve-Out Cap or any portion or proceeds

of the foregoing, for any purpose, shall be subject in all respects to paragraph 19. For purposes of the foregoing, the term “**Carve-Out Trigger Notice**” shall mean a written notice delivered by the DIP Agent to the Debtor and its lead counsel, the U.S. Trustee and lead counsel to the Creditors’ Committee, if any, which notice may be delivered following the occurrence and during the continuation of an Event of Default under the DIP Documents, expressly stating that the Carve-Out Cap is invoked and the Event of Default that is alleged to have occurred and be continuing.

(c) The DIP Agent, DIP Lenders, Prepetition Agent, and Prepetition Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Professional Persons incurred in connection with this Case or any successor case under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed (i) to obligate the DIP Agent, DIP Lenders, Prepetition Agent or Prepetition Lenders, in any way to pay compensation to or to reimburse expenses of any Professional Persons, or to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve Out if actual Allowed Professional Fees are higher in fact than reflected in the Budget (as defined in the DIP Credit Agreement); or (iii) as consent to the allowance of any professional fees or expenses of any Professional Persons. Any funding of the Carve Out shall be added to and made a part of the DIP Obligations and secured by the Collateral and otherwise entitled to the protections granted under this Final Order, the DIP Documents, the Bankruptcy Code and applicable law. The DIP Agents’ and DIP Lenders’ liens and claims shall, however, be subject to the Carve Out as set forth in this Final Order.

9. *DIP Liens.*

As security for the DIP Obligations, effective and perfected upon the date of the Interim Order and without the necessity of the execution, recordation of filings by the Debtor of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent of, or over, any Collateral (including Cash Collateral), the security interests and liens identified in clauses (a), (b) and (c) below are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders (all property identified in clauses (a), (b) and (c) below, together with all other property to which the DIP Agent is granted a lien under the DIP Documents (other than as expressly excluded pursuant to this Final Order), being collectively referred to as the “**Collateral**”), subject, only in the event of the occurrence and during the continuance of an Event of Default, to the payment of the Carve-Out as provided herein (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Final Order and the DIP Documents, the “**DIP Liens**”). Notwithstanding the foregoing, the DIP Agent and the DIP Lenders may take any action (and are, to the extent necessary in connection therewith, hereby granted relief from the automatic stay), to evidence, confirm, validate or perfect, or to ensure the contemplated priority of, such liens, and the Debtor shall execute and deliver to the DIP Agent and the DIP Lenders all such financing statements, notices and other documents as the DIP Agent or any DIP Lender may reasonably request in connection therewith and shall deliver account control agreements or other documentation in respect of and evidencing perfection of all collection and deposit accounts to the extent required by the DIP Documents.

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority

senior security interest in and lien upon all pre- and postpetition tangible and intangible property of the Debtor and the Debtor's estate, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens, other than the junior and subordinated Adequate Protection Liens (or to valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code) (collectively, "**Unencumbered Property**"), including without limitation, all inventory, accounts receivable, general intangibles, chattel paper, contracts, owned real estate, real and personal property leaseholds, property, plants, fixtures and machinery and equipment, vehicles, vessels, deposit accounts, cash and cash collateral of the Debtor (whether maintained with the DIP Agent or otherwise) and any investment of such cash and cash collateral, including Cash Collateral, letter of credit rights, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property and capital stock of subsidiaries of the Debtor. Unencumbered Property shall exclude the Debtor's claims and causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "**Avoidance Actions**"), but shall include any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement or otherwise ("**Avoidance Proceeds**").

(b) Liens Priming Prepetition Secured Lenders' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and postpetition property of the Debtor (including, without limitation, cash and cash collateral of the Debtor (whether maintained with the DIP Agent or otherwise), including Cash Collateral, and any investment of such cash and cash collateral, inventory, accounts receivable, letter of credit rights and other rights to

payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, vehicles, vessels, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries and the proceeds, product, offspring of profits of all the foregoing), whether now existing or hereafter acquired, that is subject to the existing liens presently securing the Prepetition Debt. Such security interests and liens shall be senior in all respects to the interests in such property of the Prepetition Secured Creditors arising from current and future liens of the Prepetition Secured Creditors (including, without limitation, the Adequate Protection Liens granted hereunder), but shall not be senior to (i) any valid, perfected and unavoidable interests of other secured parties arising out of liens, if any, on such property existing immediately prior to the Petition Date, or (ii) any valid, perfected and unavoidable interests in such property arising out of liens to which the liens of the Prepetition Secured Creditors become subject subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all pre- and postpetition tangible and intangible property of the Debtor and the Debtor's estate (other than the property described in clauses (a), (b) or (d) of this paragraph 9, as to which the liens and security interests in favor of the DIP Agent will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date, or to any valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) (in each case, other than the Prepetition Liens and the Adequate Protection Liens) of the Bankruptcy Code, which security

interests and liens in favor of the DIP Agent are junior to such valid, perfected and unavoidable liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens and the Adequate Protection Liens (as defined below) shall not be subject or subordinate to any lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code.

10. Protection of DIP Lenders' Rights.

(a) So long as there are any borrowings or other amounts (other than contingent indemnity obligations as to which no claim has been asserted when all other amounts have been indefeasibly paid in full in cash) outstanding, or the DIP Lenders have any outstanding Commitments (as defined in the DIP Credit Agreement), under the DIP Credit Agreement, the Prepetition Secured Creditors shall (i) have no right to and shall take no action to foreclose upon or recover in connection with the liens granted on the Collateral thereto pursuant to the Existing Agreements, the Interim Order or this Final Order, or otherwise seek to exercise or exercise any enforcement rights or remedies against any Collateral, including in connection with the Adequate Protection Liens, (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, Collateral, to the extent such transfer, disposition, sale or release is authorized under the DIP Documents, (iii) not file any financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the Collateral unless, solely as to this clause (iii) (other than with respect to mortgages, which shall not be filed), prior to the expiration of the Challenge Period, there has been a Successful Challenge (as defined below) and (iv) deliver or cause to be delivered, at the Debtor's cost and expense, any termination statements, releases and/or

assignments in favor of the DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment (to the extent provided herein) of liens on any portion of the Collateral that is sold or otherwise disposed, including the Prepetition Liens or Adequate Protection Liens upon the sale or disposition of such Collateral or upon the expiration of the Challenge Period (without the occurrence of a Successful Challenge).

(b) Notwithstanding section 362 of the Bankruptcy Code, the automatic stay provisions of section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise all rights and remedies provided for in the DIP Documents and this Final Order, including to take any or all of the following actions, without further order of or application or motion to this Court, immediately upon the occurrence of the Termination Date (as defined in the DIP Credit Agreement) and, but subject in all respects to clause (b) of paragraph 17 and the Carve Out Cap as set forth in clause (b) of paragraph 8, upon seven days' prior written notice (which seven days' notice period (the "**Notice Period**") shall run concurrently with any notice provided under the DIP Documents) to the Debtor and the Creditors' Committee, if any, of the DIP Agent's intent to exercise such rights and remedies: (i) immediately terminate the Debtor's use of any Cash Collateral; (ii) freeze monies or balances in the Debtor's accounts and sweep all funds contained therein and apply the same to pay the DIP Obligations; (iii) declare all DIP Obligations to be immediately due and payable; (iv) immediately set-off any and all amounts in accounts maintained by the Debtor with the DIP Agent or any DIP Lender or on their behalf against the DIP Obligations, or otherwise enforce any and all rights against the Collateral in the possession of the DIP Agent or any of the DIP Lenders or being held on their behalf, including, without limitation, disposition of the Collateral solely for application towards the DIP Obligations; and (v) take any other actions or

exercise any other rights or remedies permitted under this Final Order, the DIP Documents or applicable law to effect the repayment of the DIP Obligations; *provided* that neither the Debtor nor the Guarantors shall have the right to contest the enforcement of the remedies set forth in this Final Order and the DIP Documents on any basis other than an assertion that an Event of Default has not occurred or has been cured within the cure periods expressly set forth herein or in the applicable DIP Documents; and *provided* further that during the Notice Period, but subject in all respects to clause (b) of paragraph 17 and paragraph 19, the Debtor shall have no authority to borrow under the DIP Facility, and the DIP Agent may terminate the DIP Facility and declare all DIP Obligation to be immediately due and payable, and the Debtor's authority to use Cash Collateral shall be as set forth in the Budget (as defined in the DIP Credit Agreement) and limited solely to payment of expenses critical to preservation of the Debtor's estate and the payment of the fees, costs and expenses to administer this Case, as agreed by the DIP Agent in its sole discretion. The Debtor, the Prepetition Agent and the Prepetition Secured Creditors shall waive any right to seek relief under the Bankruptcy Code, including under section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the DIP Agent and the DIP Lenders set forth in this Final Order and in the DIP Documents. The Debtor, the DIP Agent and the DIP Lenders shall waive any right to seek relief under the Bankruptcy Code, including under section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the Prepetition Agent set forth in this Final Order.

(c) In no event shall the DIP Agent, the DIP Lenders, the Prepetition Agent or any of the Prepetition Secured Creditors be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

(d) No rights, protections, or remedies of the DIP Agent or the DIP Lenders granted by the provisions of this Final Order or the DIP Documents shall be limited, modified, or impaired in any way by (i) any actual or purported withdrawal of the consent of any party to the Debtor's authority to use Cash Collateral or to grant the DIP Liens and the Superiority Claims or (ii) any actual or purported termination of the Debtor's authority to use Cash Collateral or to grant the DIP Liens and the Superiority Claims.

11. *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve-Out, no expenses of administration of this Case, any successor case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent (acting with the consent of the Required Lenders (as defined in the DIP Credit Agreement)), the Prepetition Agent and the Prepetition Secured Lenders, as the case may be with respect to their respective interests, and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Agent, the DIP Lenders, the Prepetition Agent or the Prepetition Secured Lenders, respectively.

12. *The Cash Collateral.* The Prepetition Collateral includes cash collateral within the meaning of section 363(a) of the Bankruptcy Code. Any cash and cash equivalent proceeds of the Prepetition Collateral, including any cash and cash equivalent proceeds located in deposit or securities accounts subject to control agreements or otherwise, are cash collateral of the Prepetition Secured Creditors within the meaning of section 363(a) of the Bankruptcy Code. Except as otherwise specifically provided for herein, cash collateral of any of the Prepetition Secured Creditors within the meaning of section 363(a) of the Bankruptcy Code (including,

without limitation, all proceeds of Prepetition Collateral) is collectively referred to herein as “**Cash Collateral**”.

13. *Use of Cash Collateral.* The Debtor was, pursuant to the Interim Order, and is hereby authorized, subject to the terms and conditions of the DIP Documents and this Final Order, to use all Cash Collateral, and each of the Prepetition Secured Creditors is directed promptly to turn over to the Debtor all Cash Collateral received or held by them; *provided* that the Prepetition Secured Creditors are granted adequate protection as provided herein. Unless and to the extent otherwise consented to by the Required Lenders (as defined in the DIP Credit Agreement) in accordance with the DIP Documents, the Debtor’s right to use Cash Collateral hereunder shall terminate automatically on the Termination Date upon the giving of five business days’ prior written notice (which shall run concurrently with any notice provided under the DIP Documents) to the Debtor and the Creditors’ Committee, if any, subject to the Carve Out Cap as set forth in paragraph 8(b), the second proviso in paragraph 10(b) and paragraph 17(b) hereof. Notwithstanding the foregoing, the Debtor will apply the collections and proceeds from asset sales, debt or equity issuances, and insurance recoveries to reduce the DIP Obligations, in each case, to the extent required by the terms of the DIP Credit Agreement.

14. *Adequate Protection.* The Prepetition Secured Lenders are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral, including the Cash Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Secured Lenders’ interest in the Prepetition Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtor (or other decline in value) of Cash Collateral and any other Prepetition Collateral, the priming of the Prepetition Agent’s security interests and liens in the Prepetition

Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and this Final Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Prepetition Agent and the Prepetition Secured Lenders are hereby granted the following (collectively, the “**Adequate Protection Obligations**”):

(a) Adequate Protection Liens. The Prepetition Agent (for itself and for the benefit of the Prepetition Secured Lenders) was, pursuant to the Interim Order, and hereby is granted on a final basis (effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of such diminution, (1) a replacement security interest in and lien upon all the Collateral (such liens securing the Adequate Protection Obligations, the “**Adequate Protection Liens**”), subject and subordinate only to (i) the DIP Liens and any liens on the Collateral to which such DIP Liens are junior and (ii) the Carve-Out and (2) (A) until such time as all of the DIP Obligations are indefeasibly paid in full in cash in accordance with the DIP Documents and this Final Order, the Prepetition Agent and the Prepetition Secured Creditors shall have no right to seek or exercise any enforcement rights or remedies in connection with the Adequate Protection Liens, including, without limitation, in respect of the occurrence or continuance of any Event of Default (as defined in the Prepetition Credit Agreement); (B) the Prepetition Agent and the Prepetition Secured Creditors shall be deemed to have consented to any sale or disposition of Collateral permitted under the DIP Credit Agreement or approved, arranged for or by the DIP Agent or the Required Lenders (as defined in the DIP Credit Agreement), and shall terminate and release upon any such sale or disposition all of its liens on and security interests in such Collateral (where the DIP Agent also releases any DIP Liens as necessary); (C) the Prepetition Agent and/or the Prepetition Secured Creditors shall

deliver or cause to be delivered, at the Debtor's costs and expense (for which the Prepetition Agent and/or the Prepetition Secured Creditors, as the case may be, shall be reimbursed upon submission to the Debtor of invoices or billing statements), any termination statements, releases or other documents necessary to effectuate and/or evidence the release and termination of any Prepetition Secured Creditors' liens on or security interests in any portion of the Collateral subject to any sale or disposition permitted under the DIP Credit Agreement or approved or arranged for by the DIP Agent or any of the DIP Lenders (where the DIP Agent also releases any DIP Liens as necessary); and (D) upon this Final Order becoming a final and nonappealable order and the expiration of the Challenge Period (as defined below) with no challenge having been brought, or if such a challenge is brought, until the entry of a final judgment and the payment to the Prepetition Agent and the Prepetition Secured Creditors of all amounts owed by the Debtor under the Existing Agreements, the Interim Order and this Final Order, the Adequate Protection Liens shall terminate and be released (automatically and without further action of the parties), and the Prepetition Secured Creditors shall execute and deliver such agreements to evidence and effectuate such termination and release as the Debtor or the DIP Agent may request, and the Debtor and the DIP Agent shall be authorized to file on behalf of the Prepetition Secured Creditors such UCC termination statements or such other filings as may be applicable to the extent such authorization is required under the Uniform Commercial Code of the applicable jurisdiction. Without limiting the generality of the foregoing, the Adequate Protection Liens granted to the Prepetition Agent shall be junior and subordinate in all respects to the DIP Liens and the Carve Out.

(b) Section 507(b) Claim. The Prepetition Agent and the Prepetition Secured Creditors were, pursuant to the Interim Order, and are hereby granted on a final basis, subject

only to the Superpriority Claims and the Carve-Out, a superpriority claim, as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the Superpriority Claims and any other claims under section 364(c)(1) of the Bankruptcy Code held by the DIP Agent and the DIP Lenders, and payable from and having recourse to all prepetition and postpetition property of the Debtor and all proceeds thereof, excluding Avoidance Actions, but including any Avoidance Proceeds; *provided, however*, that the Prepetition Agent and the Prepetition Secured Creditors shall not receive or retain any payments, property or other amounts in respect of the superpriority claims under section 507(b) of the Bankruptcy Code granted hereunder or under the Existing Agreements unless and until the DIP Obligations have indefeasibly been paid in full in cash in accordance with the DIP Documents.

(c) Fees and Expenses. As further adequate protection, the Debtor is authorized and directed to provide adequate protection to the Prepetition Agent and the Prepetition Lenders, in the form of: (i) current cash payments of all reasonable out-of-pocket costs, fees and expenses payable to the Prepetition Agent under the Existing Agreements as may hereafter be incurred in accordance with the Existing Agreements, (ii) the reasonable fees and expenses of the following legal, financial and other professionals collectively retained by the Prepetition Agent and certain Prepetition Lenders: (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, legal counsel, (b) Houlihan Lokey Capital, Inc., financial advisor, (c) maritime counsel; (d) foreign counsel for each applicable jurisdiction, and (e) one local counsel to the Prepetition Agent upon any change of venue, in each case in cash within ten (10) calendar days of receipt of an invoice therefor without the need to file retention motions or fee applications, (iii) continued maintenance and insurance of the Prepetition Collateral in amounts and for the risks, and by the entities, as required under the Existing Agreements; (iv) financial and other

reporting substantially in compliance with the Existing Agreements, and (v) all obligations, including accrued but unpaid interest, under the Existing Agreements owing by the Debtor thereunder and other fees owing by the Debtor thereunder shall continue to accrue interest (and interest on interest) at the default rate applicable on the Petition Date under the Existing Agreements, but shall not be payable in cash. Payments in clause (ii) above are subject to paragraph 25 of this Final Order.

(d) Notwithstanding anything in this paragraph 14 to the contrary, following delivery of a Carve-Out Trigger Notice and prior to the payment to the Prepetition Agent or any Prepetition Secured Creditor on account of any adequate protection or otherwise, the Carve-Out Reserve (as defined in the DIP Credit Agreement) shall have been fully funded and the DIP Obligations shall have been paid in full.

(e) The Debtor and the Guarantors consent and agree that the Adequate Protection Obligations (A) shall not be subject to sections 510, 549, 550 or 551 of the Bankruptcy Code or section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any lien that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code or otherwise or (y) any intercompany or affiliate liens or claims of the Debtor, and (C) shall be valid and enforceable against any trustee or any other estate representative appointed in this Case or any successor cases, and/or upon the dismissal of this Case.

15. *Sufficiency of Adequate Protection.* Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section

506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Lenders.

16. *Perfection of DIP Liens.*

(a) The DIP Agent and the DIP Lenders are hereby authorized, but not required, to file or record financing statements or take control over deposit accounts and securities accounts, in each case, in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agent on behalf of the DIP Lenders in its discretion, chooses to file such financing statements or take control over deposit accounts and securities accounts, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of the Interim Order. Upon the request of the DIP Agent, without any further consent of any party, the DIP Agent, the Debtor and each DIP Lender are authorized and directed to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further perfect the DIP Liens.

(b) A certified copy of this Final Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order for filing and recording. For the avoidance of doubt, the automatic stay provisions of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Agent to take all actions, as applicable, referenced in this subparagraph (b) and in the immediately preceding subparagraph (a).

17. *Preservation of Rights Granted Under this Final Order.*

(a) Except as otherwise provided for herein, or permitted under the DIP Credit Agreement, no claim or lien having a priority superior to or *pari passu* with those granted by this Final Order to the DIP Agent and the DIP Lenders or to the Prepetition Agent and the Prepetition Secured Lenders, respectively, shall be granted or allowed while any portion of the DIP Facility (or any refinancing thereof) or the Commitments thereunder or the DIP Obligations or the Adequate Protection Obligations remain outstanding, and the DIP Liens and the Adequate Protection Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtor's estate under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise, in each case other than the Carve-Out; *provided, however*, a claim or lien granted by this Final Order to the Prepetition Agent and the Prepetition Secured Lenders shall be subordinated to any claim or lien that may be granted from time to time having a priority superior to or *pari passu* with those liens or claims granted under the DIP Documents and/or by this Final Order to the DIP Agent and the DIP Lenders, solely to the extent the DIP Agent and DIP Lenders consent to the granting of any such claim or lien.

(b) In addition to the Events of Default set forth in the DIP Documents, unless all DIP Obligations shall have been indefeasibly paid in full in cash, and the Prepetition Debt and the Adequate Protection Obligations (if any) shall have been paid in full, the Debtor shall not seek, and it shall constitute an Event of Default and terminate the right of the Debtor to use Cash Collateral if the Debtor seeks, or there is entered, unless the DIP Agent has otherwise consented, (i) any modification or extension of the Interim Order or this Final Order without the prior written consent of the DIP Agent, and no such consent shall be implied by any other action,

inaction or acquiescence by the DIP Agent, (ii) any modification or extension of this Final Order with respect to the Prepetition Debt or the Adequate Protection Obligations without the prior written consent of the Prepetition Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the Prepetition Agent, (iii) an order converting or dismissing this Case and such order shall not have been reversed or vacated within ten (10) days; (iv) an order appointing a chapter 11 trustee in this Case and such order shall not have been reversed or vacated within ten (10) days, and (v) an order approving a plan of reorganization or the sale of all or substantially all of the Collateral shall have been entered which does not provide for the repayment in full in cash of the DIP Obligations (other than any contingent obligations not yet due and payable) upon the consummation thereof. If an order dismissing this Case under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (x) the Superpriority Claims, priming liens, security interests and replacement security interests granted to the DIP Agent and the DIP Lenders, including the DIP Liens, and, as applicable, the Prepetition Agent and the Prepetition Secured Lenders pursuant to this Final Order shall continue in full force and effect and shall maintain their priorities as provided in this Final Order (and that such Superpriority Claims, priming liens and replacement security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest, including the priorities set forth herein and in the DIP Documents) until all DIP Obligations and the Adequate Protection Obligations, as applicable, shall have been paid and satisfied in full and (y) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

(c) Notwithstanding the foregoing, any modification or extension of this Final Order with respect to the Adequate Protection Obligations or the Prepetition Debt, shall require the prior written consent of the Prepetition Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the Prepetition Agent.

(d) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity of any DIP Obligations or Adequate Protection Obligations incurred prior to the effective date of such reversal, modification, vacation or stay or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Documents with respect to any DIP Obligations or Adequate Protection Obligations. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral, or DIP Obligations or Adequate Protection Obligations incurred by the Debtor to the DIP Agent, the DIP Lenders, the Prepetition Agent or the Prepetition Secured Lenders prior to the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Secured Lenders shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Final Order and pursuant to the DIP Documents with respect to all uses of Cash Collateral and proceeds of the DIP Facility, DIP Obligations and Adequate Protection Obligations.

(e) Except as expressly provided in this Final Order or in the DIP Documents, the DIP Liens, the Superpriority Claims and all other rights and remedies of the DIP Agent and the DIP Lenders, and the Adequate Protection Liens granted by the provisions of this Final Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by the

entry of an order converting this Case to a case under chapter 7, dismissing this Case, approving the sale of any Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents) or the entry of an order confirming a plan of reorganization in this Case (except as provided for herein) and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtor has waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Final Order and the DIP Documents shall continue in this Case, in any successor case, or in any superseding chapter 7 case under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims, all other rights and remedies of the DIP Agent and the DIP Lenders, the DIP Documents, the Adequate Protection Liens granted by the provisions of this Final Order shall continue in full force and effect until (i) the DIP Obligations are indefeasibly paid in full in cash and (ii) the Adequate Protection Obligations (if any) are paid in full in cash.

(f) The Prepetition Agent, on behalf of itself and the Prepetition Secured Creditors, will not be required to file proofs of claim in this Case or successor cases for any prepetition claim arising under the Existing Agreements allowed herein. The Debtor's stipulations herein shall be deemed to constitute a timely filed proof of claim for any prepetition claims arising under the Existing Agreements. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in this Case or successor cases to the contrary, the Prepetition Agent, for the benefit of itself and the Prepetition Secured Lenders, is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in this Case or successor cases for any claim allowed herein.

18. *Exculpation.* Nothing in the Interim Order, this Final Order, the DIP Documents, or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Agent or any DIP Lender any liability for any claims arising from the prepetition or postpetition activities of the Debtor in the operation of its businesses, or in connection with its restructuring efforts. In addition, (a) the DIP Agent and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Debtor; *provided that*, (i) the foregoing shall not apply to any act or omission by the DIP Agent or the DIP Lenders that constitutes gross negligence or willful misconduct by the DIP Agent or the DIP Lenders as finally determined by a court of competent jurisdiction.

19. *Limitation on Use of DIP Facility Proceeds and Collateral.*

(a) Notwithstanding anything herein or in any other order by this Court to the contrary, none of the Prepetition Collateral, the Cash Collateral, the Collateral, the DIP Facility or borrowings thereunder, the Carve-Out, the Carve-Out Cap or any portion or proceeds of the foregoing may be used by any party in connection with (i) investigating, objecting to, challenging or contesting in any manner, or in raising any defenses to, the amount, validity, extent, perfection, priority or enforceability of the Interim Order or this Final Order, any obligations outstanding under the DIP Documents or the Existing Agreements, or any liens or security interests with respect thereto, or any other rights or interests of any of the DIP Agent, the DIP Lenders, the Prepetition Agent or any Prepetition Lender or their respective agents,

affiliates, representatives, attorneys or advisors (whether in their capacity as such or otherwise), including with respect to the Adequate Protection Liens (as defined herein), or in asserting any claims or causes of action against any of the DIP Agent, the DIP Lenders, the Prepetition Agent or any Prepetition Lender or their respective agents, affiliates, representatives, attorneys or advisors (whether in their capacity as such or otherwise), including, without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise, provided that the Debtor may use the Carve-Out Cap as set forth in paragraph 8(b) of this Final Order to contest or dispute whether an Event of Default has occurred as provided for in paragraph 10 of this Final Order; (ii) making any payment in settlement or satisfaction of any prepetition or administrative expense claim, unless in compliance with the DIP Documents and, with respect to the payment of any prepetition claim or non-ordinary course administrative expense claim, separately approved by the Court pursuant to a filing in form and substance acceptable to the DIP Agent and the Required Lenders (as defined in the DIP Credit Agreement), provided that the motions filed by the Debtor on the Petition Date shall be deemed to be so acceptable; (iii) objecting to or interfering with the exercise of rights and remedies by the DIP Agent and the DIP Lenders with respect to the Collateral once an Event of Default has occurred, provided that the Debtor may use the Carve-Out Cap as set forth in paragraph 8(b) of this Final Order to contest or dispute whether an Event of Default has occurred as provided for in paragraph 10 of this Final Order; (iv) except as expressly provided by the DIP Documents, making any payment or distribution to any affiliate, equity holder, or insider of the Debtor outside of the ordinary course of business; (v) using or seeking to use any insurance proceeds related to the Collateral except as permitted by the DIP Documents or otherwise with the consent of the DIP Agent and, to the extent provided in the DIP

Credit Agreement, the DIP Lenders; (vi) a request, without the prior consent of the DIP Agent, and, to the extent provided in the DIP Credit Agreement, the DIP Lenders, for authorization to obtain debtor in possession financing pursuant to section 364(c) or (d) of the Bankruptcy Code that does not indefeasibly discharge in full in cash the DIP Obligations immediately upon the closing of such financing, (vii) paying any amount on account of any claims arising prior to the Petition Date unless such payments are (x) approved by an order of this Court and (y) in accordance with the DIP Credit Agreement and the Budget (as defined in the DIP Credit Agreement), (viii) using or seeking to use Cash Collateral except to the extent permitted under the DIP Documents and not otherwise prohibited hereunder, or (ix) selling or otherwise disposing of the Collateral except as permitted by the DIP Documents or otherwise with the consent of the DIP Agent or the Required Lenders (as defined in the DIP Credit Agreement).

(b) Notwithstanding the foregoing, professionals to any committee appointed in this Case may investigate claims and liens under the Existing Agreements during the Challenge Period at an aggregate expense for such investigation not to exceed \$75,000.

20. *Priorities Among Prepetition Secured Lenders.* Notwithstanding anything to the contrary herein or in any other order of this Court, in determining the relative priorities and rights of the Prepetition Secured Lenders (including, without limitation, the relative priorities and rights of the Prepetition Secured Lenders with respect to the Adequate Protection Obligations granted hereunder), such priorities and rights shall continue to be governed by the Existing Agreements.

21. *Retention of Jurisdiction.* This Court has and will retain exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Documents or this Final Order.

22. *Final Order Governs.* In the event of any inconsistency between the provisions of this Final Order, the Interim Order and the DIP Documents, the provisions of this Final Order or the Interim Order, as applicable, shall govern. Additionally, to the extent that there may be an inconsistency between the terms of the Interim Order or this Final Order and the *Order Establishing Case Management Procedures and Granting Related Relief* [Docket No. 31], the terms of this Final Order or the Interim Order, as applicable, shall govern. Except as specifically amended, supplemented or otherwise modified hereby, all of the provisions of the Interim Order shall remain in effect and are hereby ratified by this Final Order.

23. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in this Case, including, without limitation, the DIP Agent, the DIP Lenders, the Prepetition Agent, the Prepetition Secured Lenders, any statutory or nonstatutory committee appointed or formed in this Case, and the Debtor and its successors and assigns (including any chapter 7 trustee, chapter 11 trustee or similar responsible person or similar designee or litigation trust hereinafter appointed or elected for the estate of the Debtor) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Prepetition Agent, the Prepetition Secured Lenders and the Debtor and their respective successors and assigns; *provided, however*, that the DIP Agent and the DIP Lenders shall have no obligation to extend any financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person or similar designee or litigation trust hereunder appointed or elected for the estate of the Debtor. In determining to make any loan under the DIP Credit Agreement or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Documents, the DIP Agent and the DIP Lenders shall not be deemed to be in control of the operations of or participating in the management of the Debtor or to be acting as an “owner or

operator” with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

24. *Effect of Stipulations on Third Parties.* The stipulations and admissions contained in the Interim Order and this Final Order, including, without limitation, in paragraph 5 of this Final Order, shall be binding upon the Debtor and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtor) in all circumstances. Unless (a) a party in interest has timely and properly filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in paragraph 17) by no later than (A) the earlier of the date that is sixty (60) calendar days after the date of entry of this Final Order or the date on which the effective date of the *Debtor's Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 15] occurs or (B) such later date (x) as has been agreed to, in writing, by the Prepetition Agent, in its sole discretion or (y) as has been ordered by the Court (the “**Challenge Period**”), (i) challenging the validity, enforceability, priority or extent of the Prepetition Debt or the Prepetition Agent’s or the Prepetition Secured Creditors’ liens on the Prepetition Collateral or (ii) otherwise asserting or prosecuting any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, “**Claims and Defenses**”) against the Prepetition Agent or any of the Prepetition Secured Creditors or any of such parties’ affiliates, representatives, attorneys or advisors in connection with matters related to the Existing Agreements, the Prepetition Debt, the Prepetition Collateral, and (b) there is a final order in favor of the plaintiff sustaining any

such challenge or claim in any such timely filed adversary proceeding or contested matter (a “**Successful Challenge**”), the stipulations and admissions contained in the Interim Order and this Final Order, including, without limitation, in paragraph 5 of this Final Order and in the proviso to this sentence, shall be binding upon the Debtor, the Guarantors and all other parties in interest, including, without limitation, any statutory or nonstatutory committees appointed or formed in this Case (including the Creditors’ Committee) and any other person or entity acting on behalf of the Debtor’s estate; *provided* that all such Claims and Defenses are hereby irrevocably waived and relinquished by the Debtor and the Guarantors as of the Petition Date. If the Challenge Period expires and a Successful Challenge has not occurred, (w) the Prepetition Debt and all related obligations of the Debtor (the “**Prepetition Obligations**”) shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in this Case, any successor case and any subsequent chapter 7 case, and (x) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected, not subject to recharacterization, subordination or avoidance, (y) the Prepetition Obligations, the Prepetition Liens on the Prepetition Collateral and the Prepetition Agent and the Prepetition Secured Lenders shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtor’s estate, including, without limitation, any successor thereto (including, without limitation, any chapter 7 or 11 trustee appointed or elected for the Debtor). If any such adversary proceeding or contested matter is timely and properly filed, the stipulations and admissions contained in paragraph 5 of this Final Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any statutory or nonstatutory committee appointed or formed in this Case (including the Creditors’ Committee) and on any other person or entity, except to the

extent that such findings and admissions were expressly challenged in such adversary proceeding or contested matter. Nothing in the Interim Order or this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any statutory or nonstatutory committees appointed or formed in this Case (including the Creditors' Committee), standing or authority to pursue any cause of action belonging to the Debtor or its estate, including, without limitation, Claims and Defenses with respect to the Existing Agreements or the Prepetition Obligations.

25. *Notice of Professional Fees.* Except as set forth in this paragraph 25, no payments (including professional fees and expenses) with respect to the DIP Obligations, the Prepetition Obligations, or the Adequate Protection Obligations, including pursuant to paragraphs 7(iii) and 14(c) of this Final Order, shall be subject to Court approval or required to be maintained in accordance with the U.S. Trustee Guidelines, and no recipient of any such payments shall be required to file any interim or final fee applications with the Court or otherwise seek Court's approval of any such payments. A copy of each invoice submitted to the Debtor for the professional fees and expenses to the extent incurred by such professionals after the Petition Date shall be provided by the Debtor to the U.S. Trustee contemporaneously with the delivery of such invoice to the Debtor. Any such invoice shall include the number of hours billed and a reasonably detailed description of the services provided and the expenses incurred by the applicable professional; *provided, however*, that any such invoice may be redacted to protect privileged, confidential or proprietary information. To the extent that the U.S. Trustee has an objection to the fees and expenses of any such professional, the U.S. Trustee shall be afforded ten (10) calendar days after receipt of such invoice to submit to the applicable professional, the Debtor, counsel to the DIP Agent and counsel to the Creditors' Committee, if any, a written objection to the reasonableness of such fees, which must contain a specific basis for the objection.

If any objection is properly submitted as set forth above and cannot be resolved and/or withdrawn within ten (10) calendar days after such objection has been properly submitted, the Court shall adjudicate the matter and fashion an appropriate remedy. Payment of any such costs, fees and expenses shall not be delayed based on any objections thereto, and the relevant agent or professional shall only be required to disgorge amounts objected to upon being “so ordered” pursuant to a final non-appealable order of the Bankruptcy Court.

26. *Fee Letter.* The Fee Letter (as defined in the DIP Credit Agreement) shall be filed in redacted form and unredacted copies shall be provided solely to (i) the U.S. Trustee, (ii) counsel to the Creditors’ Committee, if any, and (iii) any other party as may be ordered by the Court or agreed by the Debtor and the DIP Agent (collectively, the “**Limited Notice Parties**”). The Limited Notice Parties shall at all times keep the Fee Letter strictly confidential and shall not disclose the contents of the Fee Letter to any party whatsoever, including but not limited to their respective clients. Any pleadings filed in this Case that reference or disclose information that is redacted from the Fee Letter shall be filed under seal or redacted accordingly.

SO ORDERED by the Court this 19th day of September, 2014.

/s/ Sean H. Lane
THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE