

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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<i>In re:</i>	:	Chapter 11
	:	
ENDEAVOUR OPERATING CORPORATION, et al.,¹	:	Case No. 14-12308 ()
	:	
Debtors.	:	(Joint Administration Requested)
	:	
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**MOTION OF DEBTORS FOR ENTRY OF STIPULATED
ORDER GRANTING (I) ADEQUATE PROTECTION TO
PREPETITION NOTEHOLDERS AND (II) RELATED RELIEF PURSUANT
TO SECTIONS 105(a), 361, 362, 363(e) AND 507(b) OF THE BANKRUPTCY CODE**

Endeavour Operating Corporation (“*EOC*”) and its above-captioned debtor affiliates, as debtors and debtors in possession (collectively, the “*Debtors*”), respectfully represent:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Endeavour Operating Corporation (6552); Endeavour International Corporation (8389); Endeavour Colorado Corporation (0067); END Management Company (7578); Endeavour Energy New Ventures Inc. (7563); Endeavour Energy Luxembourg S.à r.l. (2113). The Debtors’ principal offices are located at 811 Main Street, Suite 2100, Houston, Texas 77002.



of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

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

Relief Requested

3. Pursuant to sections 105(a), 361, 362, 363(e) and 507(b) of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), the Debtors request authority to provide certain adequate protection (the “*Adequate Protection*”) and related relief to (i) the holders (collectively, the “*March 2018 Noteholders*”) of the 12% Notes due March 2018 (the “*March 2018 Notes*”); (ii) the holders (collectively, the “*June 2018 Noteholders*” and together with the March 2018 Noteholders, the “*Prepetition Noteholders*”) of the 12% Notes due June 2018 (the “*June 2018 Notes*” and together with the March 2018 Notes, the “*Prepetition Notes*”); (iii) Wells Fargo Bank, National Association (“*Wells Fargo*”), in its capacities as trustee under the March 2018 Notes and collateral agent (the “*Collateral Agent*”) with respect to the Prepetition Notes; and (iv) Wilmington Trust, N.A. (“*Wilmington Trust*” and together with Wells Fargo in its capacity as trustee under the March 2018 Notes, the “*Prepetition Notes Trustees*”), in its capacity as trustee under the June 2018 Notes, for any diminution in value of their respective interests in the Prepetition Assigned Property (as defined below).

4. A proposed form of stipulated order approving the relief requested herein is annexed hereto as **Exhibit A** (the “*Proposed Order*”).

Background

5. On the date hereof (the “*Petition Date*”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code in this Court. The Debtors are

authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. Contemporaneously herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1.

The Debtors' Businesses

7. The Debtors, together with their non-debtor affiliates, comprise an independent oil and gas company engaged in the acquisition, exploration and development of energy reserves and resources onshore in the United States (“*U.S.*”) and offshore in the United Kingdom (“*U.K.*”) North Sea. The Debtors manage their domestic and overseas businesses from their headquarters in Houston, Texas. Their U.S.-based businesses and assets include exploration licenses and/or producing properties located in Colorado, Louisiana, Montana, New Mexico, Pennsylvania and Texas and comprise approximately 8% of their proven reserves. The Debtors’ U.K.-based businesses and assets include exploration licenses and producing properties in the North Sea that comprise the remaining 92% of their proven reserves. Only certain of the U.S.-based entities and one non-operating foreign entity are Debtors in these proceedings. The Debtors’ other entities, which encompass their U.K.-based businesses, are not debtors in these cases and are continuing to conduct their businesses in the ordinary course.

8. Additional information about the Debtors’ businesses, capital structure and the circumstances leading to the commencement of these chapter 11 cases can be found in the *Declaration of William L. Transier in Support of the Debtors’ Chapter 11 Petitions and Request for First Day Relief* (the “*Transier Declaration*”), filed concurrently herewith.

The Prepetition Notes and the Prepetition Assigned Property

9. On February 23, 2012, Endeavour International Corporation (“*EIC*”), as primary obligor; EOC, END Management Company and Endeavour Energy New Ventures Inc., as guarantors (collectively, the “*Prepetition Notes Guarantors*”); and Wells Fargo, as trustee on behalf of the March 2018 Noteholders and Collateral Agent, entered into that certain indenture (the “*March 2018 Indenture*”) that closed the private placement of \$350 million aggregate principal amount of March 2018 Notes. On October 15, 2012, EIC and the Prepetition Notes Guarantors completed the private placement of an additional \$54 million aggregate principal amount of March 2018 Notes pursuant to the March 2018 Indenture, for a total aggregate principal amount of March 2018 Notes outstanding as of the Petition Date of \$404 million (the “*March 2018 Notes Obligation*”).

10. Also on February 23, 2012, EIC, as primary obligor; the Prepetition Notes Guarantors, as guarantors; Wilmington Trust, as trustee on behalf of the June 2018 Noteholders; and the Collateral Agent entered into that certain indenture (the “*June 2018 Indenture*” and together with the March 2018 Indenture, the “*Prepetition Notes Indentures*”) that closed the private placement of \$150 million aggregate principal amount of June 2018 Notes (the “*June 2018 Notes Obligation*” and together with the March 2018 Notes Obligations, the “*Prepetition Notes Obligations*”).

11. On May 31, 2012, EOC entered into those certain pledge and security agreements (the “*Prepetition Notes Security Agreements*”) with the Collateral Agent for the benefit of the Prepetition Noteholders, pursuant to which EOC granted to the Collateral Agent a security interest in its right, title and interest in certain property, *inter alia*, 65% of the equity of Non-Debtor Affiliate Endeavour International Holding B.V., a *besloten vennootschap* organized under the laws of the Netherlands, and a direct, wholly-owned subsidiary of EOC (“*EIHBV*”),

all indebtedness from time to time owed to EOC by a Foreign Subsidiary (as such term is defined in the Prepetition Notes Security Agreements) and any instruments or agreements evidencing such indebtedness, all as more fully described in the Prepetition Notes Security Agreements (collectively, the “*Prepetition Assigned Property*”).

12. EIC is not a party to the Prepetition Notes Security Agreements, and none of the Prepetition Assigned Property securing the Prepetition Notes Obligations is the property of, or an asset of, primary obligor EIC. Additionally, none of the cash, negotiable instruments, deposit accounts or other cash equivalents of EIC, EOC or any of the Debtors were granted as Prepetition Assigned Property securing the Prepetition Notes Obligations.

13. Debtors Endeavour Colorado Corporation (“*END Colorado*”) and Endeavour Energy Luxembourg, S.à r.l. (“*END LuxCo*”) are not parties to either the Prepetition Notes Indentures or the Prepetition Notes Security Agreements. None of the Prepetition Assigned Property securing the Prepetition Notes Obligations is the property of, or an asset of, END Colorado or END LuxCo.

The Term Loan and the Term Loan Debtor Collateral

14. On September 30, 2014, the Non-Debtor Affiliates EIHBV and End Finco LLC, as borrowers (collectively, the “*Term Loan Borrowers*”) entered into that certain amendment agreement amending and restating that certain Credit Agreement (as amended or otherwise modified from time to time, the “*Term Loan*”) dated as of January 24, 2014, by and among (i) the Term Loan Borrowers; (ii) Debtors EIC, EOC, Endeavour Energy New Ventures, Inc. and END Management Company, as guarantors (collectively, the “*Term Loan Debtor Guarantors*”); (iii) Non-Debtor Affiliates Endeavour Energy UK Limited, Endeavour Energy Netherlands B.V., Endeavour North Sea LLC, Endeavour North Sea, L.P., as guarantors (collectively, the “*Term Loan Non-Debtor Affiliate Guarantors*”) and together with the Debtor

Guarantors, the “*Term Loan Guarantors*”); (iv) Credit Suisse AG, Cayman Islands Branch (“*Credit Suisse*” or the “*Term Loan Prepetition Agent*”) as administrative agent; and (v) the certain lenders thereto (the “*Term Loan Secured Lenders*” and together with Credit Suisse, the “*Term Loan Secured Parties*”).

15. Additionally, on September 30, 2014, the Term Loan Borrowers and the Term Loan Guarantors amended and restated that certain credit party guaranty, dated January 24, 2014 (the “*Term Loan Guaranty*”), pursuant to which the Term Loan Guarantors guaranteed the certain obligations under the Term Loan. Concurrently, the Term Loan Borrowers and the Term Loan Debtor Guarantors amended and restated that certain U.S. security agreement dated January 24, 2014, among the Term Loan Borrowers, the Term Loan Debtor Guarantors and Credit Suisse as collateral agent (the “*Term Loan Security Agreement*”) for the benefit of the Term Loan Secured Parties. Pursuant to the Term Loan Security Agreement, the Term Loan Debtor Guarantors granted to the Term Loan Prepetition Agent a security interest in all the Term Loan Debtor Guarantors’ right, title and interest to the “Collateral” (as defined in the Term Loan Security Agreement) (collectively, the “*Term Loan Debtor Collateral*”), consisting of substantially all of the assets of the Term Loan Debtor Guarantors, but specifically excluding, *inter alia*:²

- a. the Prepetition Assigned Property;
- b. all proceeds of or income from the Prepetition Assigned Property;
- c. the cash, cash equivalents and deposit accounts of the Debtors;
- d. the Debtors’ oil and gas properties located in North America, to the extent such property has no proved reserves;

² The excluded assets listed here are provided for illustrative purposes only. To the extent any terms or conditions of these excluded assets are inconsistent with the “Excluded Assets” as defined in the Term Loan, the Excluded Assets defined in the Term Loan shall govern throughout this Stipulated Order.

- e. the Debtors' oil and gas properties located in North America to the extent that the aggregate PV-10 Value (as defined in the Term Loan) of the proved reserves attributable to such oil and gas properties is less than \$20,000,000; and
- f. any of the Debtors' individual oil and gas properties located in North America to the extent that the PV-10 Value of all proved reserves attributable to that property is less than \$1,500,000.

16. Of note, the cash, cash equivalents and deposit accounts of the Debtors are among the assets excluded from the Term Loan Debtor Collateral, and thus, the Term Loan Secured Lenders do not have a lien on the Debtors' cash, cash equivalents and deposit accounts in these chapter 11 cases.

Term Loan Secured Lenders' Protection Regarding Additional Liens

17. On October 11, 2014, as provided for in the Term Loan, the Debtors filed a motion seeking entry of the *Stipulated Order Granting (I) Adequate Protection to Certain of the Debtors' Prepetition Secured Lenders and (II) Related Relief Pursuant to Sections 105(a), 361, 362 and 363(e) and Bankruptcy Rules 2002 and 4001*, (the "***Term Loan Stipulated Protection Order***") granting certain lender protections to the Term Loan Secured Lenders and the Term Loan Secured Parties. Pursuant to the Term Loan and the Term Loan Stipulated Protection Order, the Debtors are restricted in their ability to grant certain adequate protection to the Prepetition Noteholders and Prepetition Notes Trustees.

18. Pursuant to the terms of the Term Loan and the Term Loan Stipulated Protection Order, the Term Loan Secured Lenders have agreed to permit the Debtors to grant additional liens on the Term Loan Debtor Collateral (i) for the purpose of providing certain secured creditors of the Debtors with "adequate protection" pursuant to sections 362, 363(c)(2) and 363(e) of the Bankruptcy Code, if applicable; (ii) securing debtor in possession financing ("***DIP Financing***"), if any, entered into pursuant to section 364 of the Bankruptcy Code; or (iii)

for the purpose of incurring indebtedness, if any, used to finance the costs of these chapter 11 cases in connection with the Debtors' emergence from chapter 11 ("*Exit Financing*").

19. Specifically, pursuant to the terms of the Term Loan and the Term Loan Stipulated Protection Order, with respect to liens granted for the purpose of providing "adequate protection" (as such term is defined in section 361 of the Bankruptcy Code) on the Term Loan Debtor Collateral, the Term Loans states, *inter alia*:

- a. Any such liens granted on the Term Loan Debtor Collateral shall be junior to the liens securing the Term Loan Obligations.
- b. If any such liens are granted on any unencumbered or under-encumbered property and assets of the Debtors that may become Term Loan Debtor Collateral in accordance with the terms of the Term Loan Documents, other than the property and assets of Endeavour Colorado Corporation ("*END Colorado*"), the Term Loan Prepetition Agent, for the benefit of the Term Loan Secured Lenders, shall be granted liens on such property and assets on a *pari passu* basis.³
- c. If any such liens are granted on the property and assets of END Colorado, the Term Loan Prepetition Agent, for the benefit of the Term Loan Secured Lenders, shall be granted liens on such property and assets on a senior basis.
- d. Any liens granted pursuant to this paragraph shall be automatically released upon the effective date of any chapter 11 plan of the Debtors so long as no default exists under the Term Loan at such time.

20. Additionally, with respect to liens granted by the Debtors for the purpose of securing DIP Financing or Exit Financing the Term Loan states that such liens may, at the option of EIHBV or End Finco LLC, be *pari passu* with, or senior to, the liens securing the Term

³ Under the terms of this provision, and based on the Adequate Protection the Debtors seek to provide pursuant to this Motion and the Stipulated Order, the Debtors are concurrently seeking to grant certain valid and perfected security interests in, and *pari passu* liens on, all of the right, title and interests of EIC and the Prepetition Notes Guarantors in, to and under (i) all unencumbered or under-encumbered property and assets of the EIC and the Prepetition Notes Guarantors and (ii) all property or assets of the EIC and the Prepetition Notes Guarantors that may become "Collateral" (as defined in the Term Loan) in accordance with the terms of the "Credit Documents" (as defined in the Term Loan) of any nature whatsoever, whether real or personal, tangible or intangible, wherever located in each case excluding cash, deposit accounts and other cash equivalents of the Term Loan Debtors Guarantors (collectively, the "*Pari Passu Collateral*"), to the Term Loan Prepetition Agent, in its capacity as collateral agent under the Term Loan.

Loan Obligations, other than liens on the property and assets of END Colorado, on which the Term Loan Prepetition Agent must have been granted liens on a senior basis. Pursuant to the Term Loan, the aggregate principal amount of each of the DIP Financing and the Exit Financing shall not exceed \$15 million and, at any time, the aggregate principal amounts under both the DIP Financing and the Exit Financing, taken as a whole, shall not exceed \$15 million.

Debtors Seek to Grant the Collateral Agent Certain Adequate Protection Liens

21. Subject to the Term Loan and the Term Loan Stipulated Protection Order, the Debtors have agreed that the Prepetition Noteholders and Prepetition Notes Trustees are entitled to receive the Adequate Protection for their respective interests in the Prepetition Assigned Property. As such, pursuant to the Stipulated Order, the Debtors seek to grant to the Collateral Agent, for an on behalf of the Prepetition Noteholders and the Prepetition Notes Trustees, the following as Adequate Protection for any diminution in value of their respective interests in the Prepetition Assigned Property:

- a. As Adequate Protection against diminution in value of the interests of the Prepetition Noteholders and the Prepetition Notes Trustees in the Prepetition Assigned Property, the Debtors seek to grant to the Collateral Agent (effective and perfected as of the Petition Date), subject to the limitations contained in the Term Loan and the Term Loan Stipulated Protections Order, valid and perfected replacement security interests in, and senior liens on (the “**Senior Replacement Liens**”), all right, title and interests of the Debtors in, to and under all present and after-acquired Prepetition Assigned Property, whether real or personal, tangible or intangible, wherever located, whether arising before or after the Petition Date, and any and all of the proceeds, products, offspring, rents and profits thereof, rights under letters of credit, capital stock and other equity or ownership interests held by the Debtors (collectively, the “**Assigned Collateral**”). Subject to the Carve-Out (as defined below) the Senior Replacement Liens shall be first priority perfected liens on all of the Assigned Collateral that is not otherwise encumbered by validly permitted and perfected, non-avoidable security interests or liens as of the Petition Date.

- b. As further Adequate Protection, the Debtors seek to grant to the Collateral Agent (effective and perfected as of the Petition Date), subject to the limitations contained in the Term Loan and the Term Loan Stipulated Protections Order, valid and perfected security interests in, and junior liens on (the “**Junior Adequate Protection Liens**”) all of the Term Loan Debtor Collateral held by the Debtors. Subject to the Carve-Out (as defined below) the Junior Adequate Protection Liens shall be second priority perfected liens on all of the Term Loan Debtor Collateral, subject to the valid and perfected security interests in, and senior liens on, the Term Loan Debtor Collateral in favor of the Term Loan Secured Parties. For the avoidance of doubt, nothing in this paragraph 2.b shall be construed as granting security interests in, or Junior Adequate Protection Liens on, any right, title or interests of any Non-Debtor Affiliates.
- c. As further Adequate Protection, the Debtors seek to grant to the Collateral Agent (effective and perfected as of the Petition Date), subject to the limitations contained in the Term Loan, the Term Loan Stipulated Protections Order and specifically excluding the Debtors’ cash, negotiable instruments, deposit accounts or other cash equivalents, valid and perfected security interests in, and *pari passu* liens on, (the “**Pari Passu Adequate Protection Liens**”) the Pari Passu Collateral, provided, however, that the Prepetition Noteholders and the Prepetition Notes Trustees shall not be granted security interests in or liens on the right, title or interest to the cash, negotiable instruments, deposit accounts or other cash equivalents of the Debtors or the Non-Debtor Affiliates. Subject to the Carve-Out (as defined below), the Pari Passu Adequate Protection Liens shall be priority perfected liens in Pari Passu Collateral that shall rank *pari passu* with the liens on the Pari Passu Collateral granted to the Term Loan Prepetition Agent pursuant to the Term Loan Stipulated Protection Order.
- d. As further Adequate Protection, the Prepetition Noteholders and the Prepetition Notes Trustees are each hereby granted an allowed super-priority administrative claim (the “**Prepetition Noteholders Administrative Claim**”) against the Debtors’ estates under section 507(b) of the Bankruptcy Code to the extent that the Senior Replacement Liens, Junior Adequate Protections Liens and the Pari Passu Adequate Protection Liens (collectively, the “**Adequate Protection Liens**”) do not adequately protect the diminution in the value of the Prepetition Noteholders’ interest in the Prepetition Assigned Property, which Prepetition Noteholders Administrative Claim, *if any*, shall be subject only to the Carve-Out and shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates.

- e. As further Adequate Protection, the Debtors have agreed to pay Wells Fargo, for itself and its professionals, ongoing payments in cash on a current basis, no less than monthly, in an amount equal to its reasonable and documented fees, costs, and expenses (including, without limitation, Wells Fargo's professionals' fees and expenses) incurred in connection with the Debtors' chapter 11 cases; provided, however, the amount of fees, costs, and expenses payable by the Debtors on a current basis under this paragraph shall not exceed \$200,000.00 for the first month following the Petition Date and \$100,000.00 for each month thereafter. All of the amounts to be paid pursuant to this paragraph 21(e) shall be paid regardless of whether such amounts accrued before or after the Petition Date, and shall be paid without further motion, fee application, or order of the Court. For the avoidance of doubt, nothing in this paragraph shall constitute a waiver of or limitation on Wells Fargo's right to payment of its fees and expenses in full or any of their rights, claims, liens, or security interests under any agreement or applicable law.
- f. As further Adequate Protection, the Debtors are authorized and directed to pay Wilmington Trust, for itself and its professionals, ongoing payments in cash on a current basis, no less than monthly, in an amount equal to its reasonable and documented fees, costs, and expenses (including, without limitation, Wilmington Trust's professionals' fees and expenses) incurred in connection with the Debtors' chapter 11 cases; provided, however, the amount of fees, costs, and expenses payable by the Debtors on a current basis under this paragraph shall not exceed \$150,000.00 for the first month following the Petition Date and \$75,000.00 for each month thereafter. All of the amounts to be paid pursuant to this paragraph 2(f) shall be paid regardless of whether such amounts accrued before or after the Petition Date, and shall be paid without further motion, fee application, or order of the Court. For the avoidance of doubt, nothing in this paragraph shall constitute a waiver of or limitation on Wilmington Trust's right to payment of its fees and expenses in full or any of their rights, claims, liens, or security interests under any agreement or applicable law.
- g. The Adequate Protection Liens granted pursuant to this paragraph shall be automatically released upon the effective date of any chapter 11 plan of the Debtors.

22. For the avoidance of doubt, nothing in the Stipulated Order shall (i) grant to any of the Collateral Agent, the Prepetition Noteholders or the Prepetition Notes Trustees a security interest in or a lien on the cash, negotiable instruments, deposit accounts or other cash

equivalents of the Debtors or their Non-Debtor Affiliates or (ii) waive any rights of the Collateral Agent or the Prepetition Notes Trustees to request that the Court provide additional or further adequate protection for any further diminution in value of their respective interests in the Prepetition Assigned Property.

23. The Debtors respectfully request that the Court modify the automatic stay under Bankruptcy Code section 362(a) as necessary to effectuate all of the terms and provisions of the Stipulated Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens or other Adequate Protection and (b) permit the Debtors to perform such acts as the Prepetition Notes Trustees may request in their sole discretion to assure the perfection and priority of the liens granted herein.

The Carve-Out

24. Subject to the terms and conditions contained in this paragraph and the Stipulated Orders, the Debtors are also seeking relief in the form of a carve-out (the “*Carve-Out*”). By its terms, the Carve-Out requested in the Stipulated Order states that the claims held by the Prepetition Noteholders and the Prepetition Notes Trustees, shall, in any event, and in all cases, be subject and subordinate to the Carve-Out, which shall be comprised of the following: (i) all fees required to be paid to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) and (ii) accrued but unpaid professional fees and expenses of the Debtors and any committee (if appointed) (collectively, the “*Professional Fees*”), to the extent finally allowed by the Court under sections 105(a) and 330 of the Bankruptcy Code, of Wells Fargo and its professionals for any amounts due under paragraph 21(e) hereof, and of Wilmington Trust and its professionals for any amounts due under paragraph 21(f) hereof. Neither the Prepetition Noteholders nor the Prepetition Notes Trustees shall be responsible for the direct payment or reimbursement of any Professional Fees incurred in connection with the chapter 11 cases.

The Proposed Adequate Protection Should Be Approved

25. Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used . . . or proposed to be used by a debtor in possession, the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). If a secured creditor objects to the debtor’s proposed use of its collateral, the court must ensure that the creditor’s interests are adequately protected. *Id.* Thus, courts are required to balance the protection offered to a secured creditor against the debtor’s need to use collateral of its prepetition lenders in its reorganization effort. *Stein v. U.S. Farmers Home Admin. (In re Stein)*, 19 B.R. 458, 459 (Bankr. E.D. Pa. 1982) (stating that the purpose of chapter 11 is to rehabilitate debtors and generally, access to collateral is necessary in order to facilitate that purpose); *See also In re Jug End in the Berkshires*, 46 Bankr. 892, 898-899 (Bankr. D.Mass 1985), citing H. Rep. No. 595, 95th Cong. 1st Sess. 343-44 (1977) (“Adequate protection, as derived from the fifth amendment protection of property interests, reconciles the competing interests of the debtor, on the one hand, who needs time to reorganize free from harassing creditors, and the secured creditor, on the other hand, who is entitled to constitutional protection for his bargained for property interest.”). In determining whether a creditor is adequately protected, courts “will generally permit the business operation to continue, at least to the point of plan formulation, if the debtors make a solid evidentiary showing to support their projections” *In re Dynaco*, 162 B.R. 389, 395 (Bankr. D. N.H. 1993).

26. “The concept of ‘adequate protection’ is not defined in the [Bankruptcy] Code except by the implications of the examples of adequate protection listed in § 361.” *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986). Section 361 of the Bankruptcy Code contains a non-exhaustive list of acceptable forms of adequate protection, including a cash

payment or periodic cash payments, additional liens, replacement liens, and the “indubitable equivalent of such entity’s interest in such property.” 11 U.S.C. § 361.

27. Inasmuch as value is the essential consideration in making an adequate protection determination, adequate protection is a question of fact. *Martin v. U.S. (In re Martin)*, 761 F.2d 472 (8th Cir. 1985). What constitutes adequate protection must be decided on a case-by-case basis. See *MBank Dallas*, 808 F.2d at 1396; *Martin*, 761 F.2d at 472; *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003). The focus of the requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. See *In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 554 (3d Cir. 1994) (“The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.”) (internal citations omitted). *Beker*, 58 B.R. at 736; see *In re WorldCom, Inc.*, 304 B.R. 611, 618-19 (Bankr. S.D.N.Y. 2004) (“The legislative history for section 361 of the Bankruptcy Code, which sets forth how adequate protection may be provided under section 363, makes clear that the purpose is to insure that the secured creditor receives the value for which the creditor bargained for prior to the debtor’s bankruptcy.”). “However, neither the legislative history nor the Bankruptcy Code require the Court to protect a creditor beyond what was bargained for by the parties.” *Id.* at 619; see *Beker*, 58 B.R. at 741 (“Adequate protection, not absolute protection, is the statutory standard.”) (emphasis added).

28. The proposed Adequate Protections offered by the Debtors to the Collateral Agent and the Prepetition Notes Trustees is sufficient, appropriate, and the result of a consensual prepetition agreement among sophisticated parties negotiating at arm’s-length. In this case, Wells Fargo and Wilmington Trust have acquiesced to the Debtors’ use of the Prepetition Assigned Property during the pendency of these chapter 11 cases. The Debtors

respectfully submit that the Adequate Protection is reasonable and will allow the Debtors to operate in the U.S. during the pendency of these chapter 11 cases, to the benefit of all of their creditors.

Reservation of Rights

29. Except as specifically provided for in the Debtors' Stipulations, subject to the entry of the Proposed Order by this Court, nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors or their Non-Debtor Affiliates, (ii) an admission as to the validity of any lien against the assets of the Debtors of their Non-Debtor Affiliates, (iii) a waiver of the Debtors,' their Non-Debtor Affiliates, or any party in interest's rights to dispute the amount of, basis for or validity of any claim of the Term Loan Secured Lenders or Credit Suisse, under applicable nonbankruptcy law, (iv) a waiver of any claims or causes of action which may exist against any Term Loan Secured Lenders or Credit Suisse or (v) an assumption, adoption or rejection of any agreement, contract or lease between the Debtors and any third party under section 365 of the Bankruptcy Code. The Debtors are in the process of reviewing these matters and reserve all of their rights under the Bankruptcy Code.

Notice

30. No trustee, examiner or creditors' committee has been appointed in these chapter 11 cases. Notice of this Motion shall be given to: (i) the Office of the United States Trustee for the District of Delaware, (ii) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis), (iii) Reed Smith LLP, 225 Fifth Avenue, Suite 1200, Pittsburgh, PA 15222 (Attn: Eric A. Schaffer, Esq.), counsel to Wells Fargo Bank, National Association, in its capacity as trustee under the 12% Notes due March 2018, (iv) Alston & Bird LLP, One Atlantic Center, 1201 West Peachtree Street, Atlanta, GA 30309

(Attn: Jason J. Solomon, Esq. and David A. Wender, Esq.), counsel to Wilmington Trust, National Association, in its capacity as trustee under the 12% Notes due June 2018, (v) Wilmington Savings Fund Society, FSB, in its capacity as trustee under the 5.5% Convertible Senior Notes due 2016, (vi) Wilmington Savings Fund Society, FSB, in its capacity as trustee under the 6.5% Convertible Senior Notes due 2016, (vii) BNY Corporate Trustee Services Limited, in its capacity as trustee under the 7.5% Guaranteed Convertible Bonds due 2016, (viii) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005 (Attn: Dennis F. Dunne, Esq., Matthew S. Barr, Esq. and Michael E. Comerford, Esq.), counsel to certain of the holders of the 12% Notes due March 2018 and the 12% Notes due June 2018, (ix) Brown Rudnick LLP, Seven Times Square, New York, NY 10036 (Attn: Robert J. Stark, Esq.), counsel to certain of the holders of the 5.5% Convertible Senior Notes Due 2016 and the 6.5% Convertible Senior Notes due 2016, (x) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036 (Attn: Keith H. Wofford, Esq.), counsel to the holder of the 7.5% Guaranteed Convertible Bonds due 2016, (xi) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, Bank of America Tower, New York, NY 10036 (Attn: Michael Stamer, Esq. and Meredith Lahaie, Esq.), counsel to certain secured lenders under the EEUK Term Loan, (xii) National Association of Attorneys General, 2030 M Street NW, 8th Floor, Washington, DC 20036 (Attn: Karen Cordry, Esq.), (xiii) the Office of the Attorney General in each state in which the Debtors operate, (xiv) the Office of the Delaware Secretary of State, (xv) the Delaware State Treasury, (xvi) the Securities and Exchange Commission, (xvii) the Internal Revenue Service and (xviii) Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022 (Attn: Mitchell Seider, Esq. and David Hammerman, Esq.), counsel to the Term Loan Prepetition Agent.

No Previous Request

31. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: October 11, 2014
Wilmington, Delaware

/s/ Zachary I. Shapiro

RICHARDS, LAYTON & FINGER, P.A.

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Proposed Attorneys for Debtors and Debtors in Possession

EXHIBIT A

Stipulated Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
<i>In re:</i>	:	Chapter 11
	:	
ENDEAVOUR OPERATING CORPORATION, et al.,¹	:	Case No. 14-12308 ()
	:	
Debtors.	:	(Joint Administration Requested)
	:	
	X	Re: D.I. ____

**STIPULATED ORDER GRANTING
(I) ADEQUATE PROTECTION TO PREPETITION
NOTEHOLDERS AND (II) RELATED RELIEF PURSUANT TO
SECTIONS 105(a), 361, 362, 363(e) AND 507(b) OF THE BANKRUPTCY CODE**

Upon the Motion, dated October 11, 2014 (the “*Motion*”),² of Endeavour Operating Corporation (“*EOC*”) and its above-captioned debtor affiliates, as debtors and debtors in possession (collectively, the “*Debtors*”), for a stipulated order pursuant to sections 105, 361, 362, 363(e) and 507(b) of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) granting adequate protection (the “*Adequate Protection*”) and related relief to (i) the holders (collectively, the “*March 2018 Noteholders*”) of the 12% Notes due March 2018 (the “*March 2018 Notes*”); (ii) the holders (collectively, the “*June 2018 Noteholders*” and together with the March 2018 Noteholders, the “*Prepetition Noteholders*”) of the 12% Notes due June 2018 (the “*June 2018 Notes*” and together with the March 2018 Notes, the “*Prepetition Notes*”); (iii) Wells Fargo

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Endeavour Operating Corporation (6552); Endeavour International Corporation (8389); Endeavour Colorado Corporation (0067); END Management Company (7578); Endeavour Energy New Ventures Inc. (7563); Endeavour Energy Luxembourg S.à r.l. (2113). The Debtors’ principal offices are located at 811 Main Street, Suite 2100, Houston, Texas 77002.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Bank, National Association (“*Wells Fargo*”), in its capacities as trustee under the March 2018 Notes and collateral agent (the “*Collateral Agent*”) with respect to the Prepetition Notes; and (iv) Wilmington Trust, N.A. (“*Wilmington Trust*” and together with Wells Fargo in its capacity as trustee under the March 2018 Notes, the “*Prepetition Notes Trustees*”), in its capacity as trustee under the June 2018 Notes, for any diminution in value of their respective interests in the Prepetition Assigned Property, all as more fully described in the Motion; and upon the record of the Hearing; and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF
FACT AND CONCLUSIONS OF LAW:**

A. On October 10, 2014 (the “*Petition Date*”), the Debtors commenced in this Court cases under chapter 11 of the Bankruptcy Code. The Debtors are continuing to manage and operate their businesses and property as debtors and debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. This Court has jurisdiction over these proceedings, and over the property affected hereby, pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding as defined in and pursuant to 28 U.S.C. § 157(b)(2). Venue for the chapter 11 cases and for proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. On October 11, 2014, the Debtors filed the Motion with this Court and pursuant to Bankruptcy Rules 2002, 4001 and 9014 the Debtors have provided due and proper

notice of the Motion to the following parties and/or to their counsel as indicated: (i) the Office of the United States Trustee for the District of Delaware (the “*U.S. Trustee*”), (ii) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis), (iii) Reed Smith LLP, 225 Fifth Avenue, Suite 1200, Pittsburgh, PA 15222 (Attn: Eric A. Schaffer, Esq.), counsel to Wells Fargo, in its capacities as trustee under the March 2018 Notes and Collateral Agent, (iv) Alston & Bird LLP, One Atlantic Center, 1201 West Peachtree Street, Atlanta, GA 30309 (Attn: Jason J. Solomon, Esq. and David A. Wender, Esq.), counsel to Wilmington Trust, National Association, in its capacity as trustee under the 12% Notes due June 2018, (v) Wilmington Savings Fund Society, FSB, in its capacity as trustee under the 5.5% Convertible Senior Notes due 2016, (vi) Wilmington Savings Fund Society, FSB, in its capacity as trustee under the 6.5% Convertible Senior Notes due 2016, (vii) BNY Corporate Trustee Services Limited, in its capacity as trustee under the 7.5% Guaranteed Convertible Bonds due 2016, (viii) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005 (Attn: Dennis F. Dunne, Esq., Matthew S. Barr, Esq. and Michael E. Comerford, Esq.), counsel to certain of the holders of the 12% Notes due March 2018 and the 12% Notes due June 2018 (the “*Ad Hoc Prepetition Noteholders Group*”), (ix) Brown Rudnick LLP, Seven Times Square, New York, NY 10036 (Attn: Robert J. Stark, Esq.), counsel to certain of the holders of the 5.5% Convertible Senior Notes Due 2016 and the 6.5% Convertible Senior Notes due 2016, (x) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036 (Attn: Keith H. Wofford, Esq.), counsel to the holder of the 7.5% Guaranteed Convertible Bonds due 2016, (xi) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036 (Attn: Michael Stamer, Esq. and Meredith Lahaie, Esq.), counsel to the ad hoc group of Term Loan Secured Lenders, (xii) National Association of Attorneys General, 2030 M Street NW, 8th Floor,

Washington, DC 20036 (Attn: Karen Cordry, Esq.), (xiii) the Office of the Attorney General in each state in which the Debtors operate, (xiv) the Delaware State Treasury, (xv) the Securities and Exchange Commission, (xvi) the Internal Revenue Service and (xvii) Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022 (Attn: Mitchell Seider, Esq. and David Hammerman, Esq.), counsel to the Term Loan Prepetition Agent (collectively, the “**Notice Parties**”). Given the nature of the relief sought in the Motion, this Court concludes that the foregoing notice was sufficient and adequate under the circumstances and complies with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law, and no further notice relating to this proceeding is necessary or required.

D. Endeavour International Corporation (“**EIC**”), as primary obligor; EOC, END Management Company and Endeavour Energy New Ventures Inc., as guarantors (collectively, the “**Prepetition Notes Guarantors**”); and Wells Fargo, as trustee on behalf of the March 2018 Noteholders and Collateral Agent, entered into that certain indenture, dated February 23, 2012 (the “**March 2018 Indenture**”) that closed the private placement of \$350 million aggregate principal amount of March 2018 Notes. On October 15, 2012, EIC and the Prepetition Notes Guarantors completed the private placement of an additional \$54 million aggregate principal amount of March 2018 Notes pursuant to the March 2018 Indenture, for a total aggregate principal amount of March 2018 Notes outstanding as of the Petition Date of \$404 million (the “**March 2018 Notes Obligation**”).

E. EIC, as primary obligor; the Prepetition Notes Guarantors, as guarantors; Wilmington Trust, as trustee on behalf of the June 2018 Noteholders; and the Collateral Agent entered into that certain indenture, dated February 23, 2012 (the “**June 2018 Indenture**” and together with the March 2018 Indenture, the “**Prepetition Notes Indentures**”) that closed the

private placement of \$150 million aggregate principal amount of June 2018 Notes (the “**June 2018 Notes Obligation**” and together with the March 2018 Notes Obligations, the “**Prepetition Notes Obligations**”).

F. On May 31, 2012, EOC entered into those certain pledge and security agreements (the “**Prepetition Notes Security Agreements**”) with the Collateral Agent, pursuant to which EOC granted to the Collateral Agent a security interest in its right, title and interest in certain property, *inter alia*, 65% of the equity of Non-Debtor Affiliate Endeavour International Holding B.V., a *besloten vennootschap* organized under the laws of the Netherlands, and a direct, wholly-owned subsidiary of EOC (“**EIH BV**”), all indebtedness from time to time owed to EOC by a Foreign Subsidiary (as such term is defined in the Prepetition Notes Security Agreements) and any instruments or agreements evidencing such indebtedness, all as more fully described in the Prepetition Notes Security Agreements (collectively, the “**Prepetition Assigned Property**”).

G. EIC is not a party to the Prepetition Notes Security Agreements, and none of the Prepetition Assigned Property securing the Prepetition Notes Obligations is the property of, or an asset of, primary obligor EIC. Additionally, none of the cash, negotiable instruments, deposit accounts or other cash equivalents of EIC, EOC or any of the Debtors were granted as Prepetition Assigned Property securing the Prepetition Notes Obligations.

H. Debtors Endeavour Colorado Corporation (“**END Colorado**”) and Endeavour Energy Luxembourg, S.à r.l. (“**END LuxCo**”) are not parties to either the Prepetition Notes Indentures or the Prepetition Notes Security Agreements. None of the Prepetition Assigned Property securing the Prepetition Notes Obligations is the property of, or an asset of, END Colorado or END LuxCo.

I. On September 30, 2014, the Non-Debtor Affiliates EIHBV and End Finco LLC, as borrowers (collectively, the “*Term Loan Borrowers*”) entered into that certain Amendment Agreement amending and restating that certain Credit Agreement (as amended or otherwise modified from time to time, the “*Term Loan*”) dated as of January 24, 2014, by and among (i) the Term Loan Borrowers; (ii) Debtors EIC, EOC, Endeavour Energy New Ventures, Inc. and END Management Company, as guarantors (collectively, the “*Term Loan Debtor Guarantors*”); (iii) Non-Debtor Affiliates Endeavour Energy UK Limited, Endeavour Energy Netherlands B.V., Endeavour North Sea LLC, Endeavour North Sea, L.P., as guarantors (collectively, the “*Term Loan Non-Debtor Affiliate Guarantors*” and together with the Debtor Guarantors, the “*Term Loan Guarantors*”); (iv) Credit Suisse AG, Cayman Islands Branch (“*Term Loan Prepetition Agent*”) as administrative agent; and (v) the certain lenders thereto (the “*Term Loan Secured Lenders*” and together with Credit Suisse, the “*Term Loan Secured Parties*”).

J. Additionally, on September 30, 2014, the Term Loan Borrowers and the Term Loan Guarantors amended and restated that certain credit party guaranty, dated January 24, 2014 (the “*Term Loan Guaranty*”), pursuant to which the Term Loan Guarantors guaranteed the certain obligations under the Term Loan. Concurrently, the Term Loan Borrowers and the Term Loan Debtor Guarantors amended and restated that certain U.S. security agreement dated January 24, 2014, among the Term Loan Borrowers, the Term Loan Debtor Guarantors and Credit Suisse as collateral agent (the “*Term Loan Security Agreement*”) for the benefit of Term Loan Secured Parties. Pursuant to the Term Loan Security Agreement, the Term Loan Debtor Guarantors granted to the Term Loan Prepetition Agent a security interest in all the Term Loan Debtor Guarantors’ right, title and interest to the “Collateral” (as defined in the Term Loan

Security Agreement) (collectively, the “***Term Loan Debtor Collateral***”), consisting of substantially all of the assets of the Term Loan Debtor Guarantors, but specifically excluding, *inter alia*:³

- a. the Prepetition Assigned Property;
- b. all proceeds of or income from the Prepetition Assigned Property;
- c. the cash, cash equivalents and deposit accounts of the Debtors;
- d. the Debtors’ oil and gas properties located in North America, to the extent such property has no proved reserves;
- e. the Debtors’ oil and gas properties located in North America to the extent that the aggregate PV-10 Value (as defined in the Term Loan) of the proved reserves on such oil and gas properties is less than \$20,000,000; and
- f. any of the Debtors’ individual oil and gas properties located in North America to the extent that the PV-10 Value of all proved reserves attributable to that property is less than \$1,500,000.

K. On October 11, 2014, as provided for in the Term Loan, the Debtors filed a motion seeking entry of the *Stipulated Order Granting (I) Adequate Protection to Certain of the Debtors’ Prepetition Secured Lenders and (II) Related Relief Pursuant to Sections 105(a), 361, 362 and 363(e) and Bankruptcy Rules 2002 and 4001*, (the “***Term Loan Stipulated Protection Order***”) granting certain lender protections to the Term Loan Secured Lenders and the Term Loan Secured Parties. Pursuant to the Term Loan and the Term Loan Stipulated Protection Order, the Debtors are restricted in their ability to grant certain adequate protection to the Prepetition Noteholders and Prepetition Notes Trustees. Pursuant to the Term Loan Stipulated Protection Order, the Debtors seek to grant certain valid and perfected *pari passu* security interests in, and *pari passu* liens on, all of the right, title and interests of EIC and the Prepetition

³ The excluded assets listed here are provided for illustrative purposes only. To the extent any terms or conditions of these excluded assets are inconsistent with the “Excluded Assets” as defined in the Term Loan, the Excluded Assets defined in the Term Loan shall govern throughout this Stipulated Order.

Notes Guarantors in, to and under (i) all unencumbered or under-encumbered property and assets of EIC and the Prepetition Notes Guarantors and (ii) all property or assets of EIC and the Prepetition Notes Guarantors that may become “Collateral” (as defined in the Term Loan) in accordance with the terms of the “Credit Documents” (as defined in the Term Loan) of any nature whatsoever, whether real or personal, tangible or intangible, wherever located, in each case, excluding the cash, deposit accounts and other cash equivalents of the EIC and the Prepetition Notes Guarantors (collectively, the “*Pari Passu Collateral*”) to the Term Loan Prepetition Agent, in its capacity as collateral agent under the Term Loan. The Adequate Protection provided in this Stipulated Order is consistent with the restrictions and limitations placed on the Debtors by the Term Loan and the Term Loan Stipulated Protection Order.

L. Subject to the Term Loan and the Term Loan Stipulated Protection Order, the Debtors have agreed that the Prepetition Noteholders and Prepetition Notes Trustees are entitled to receive the Adequate Protection for their respective interests in the Prepetition Assigned Property, as set forth in this Stipulated Order.

Neither Wells Fargo nor Wilmington Trust have opposed the terms and conditions of this Stipulated Order. The consent of the Wells Fargo and the Wilmington Trust granted herein is expressly limited to the extent, and on the terms and conditions, set forth in this Stipulated Order. Based upon the foregoing findings and conclusions, the Motion and the record before this Court with respect to the Motion, and good and sufficient cause appearing therefor, NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Motion is granted to the extent set forth herein, and all objections to the entry of this Stipulated Order, to the extent not withdrawn or resolved, if any, are expressly overruled.

2. The Collateral Agent, for an on behalf of the Prepetition Noteholders and the Prepetition Notes Trustees, shall receive the following as Adequate Protection for any diminution in value of their respective interests in the Prepetition Assigned Property:

- a. As Adequate Protection against diminution in value of the interests of the Prepetition Noteholders and the Prepetition Notes Trustees in the Prepetition Assigned Property, the Collateral Agent is hereby granted, (effective and perfected as of the Petition Date) subject to the limitations contained in the Term Loan and the Term Loan Stipulated Protections Order, valid and perfected replacement security interests in, and senior liens on (the “**Senior Replacement Liens**”), all right, title and interests of the Debtors in, to and under all present and after-acquired Prepetition Assigned Property, whether real or personal, tangible or intangible, wherever located, whether arising before or after the Petition Date, and any and all of the proceeds, products, offspring, rents and profits thereof, rights under letters of credit, capital stock and other equity or ownership interests held by the Debtors (collectively, the “**Assigned Collateral**”). Subject to the Carve-Out (as defined below) the Senior Replacement Liens shall be first priority perfected liens on all of the Assigned Collateral that is not otherwise encumbered by validly permitted and perfected, non-avoidable security interests or liens as of the Petition Date.
- b. As further Adequate Protection, the Collateral Agent is hereby granted (effective and perfected as of the Petition Date), subject to the limitations contained in the Term Loan and the Term Loan Stipulated Protections Order, valid and perfected security interests in, and junior liens on (the “**Junior Adequate Protection Liens**”) all of the Term Loan Debtor Collateral held by the Debtors. Subject to the Carve-Out (as defined below) the Junior Adequate Protection Liens shall be second priority perfected liens on all of the Term Loan Debtor Collateral, subject to the valid and perfected security interests in, and senior liens on, the Term Loan Debtor Collateral in favor of the Term Loan Secured Parties. For the avoidance of doubt, nothing in this paragraph 2.b shall be construed as granting security interests in, or Junior Adequate Protection Liens on, any right, title or interests of any Non-Debtor Affiliates.
- c. As further Adequate Protection, the Collateral Agent is hereby granted (effective and perfected as of the Petition Date), subject to the limitations contained in the Term Loan, the Term Loan Stipulated Protections Order and specifically excluding the Debtors’ cash, negotiable instruments, deposit accounts or other

cash equivalents, valid and perfected security interests in, and *pari passu* liens on, (the “***Pari Passu Adequate Protection Liens***”) the Pari Passu Collateral, provided, however, that the Prepetition Noteholders and the Prepetition Notes Trustees shall not be granted security interests in or liens on the right, title or interest to the cash, negotiable instruments, deposit accounts or other cash equivalents of the Debtors or the Non-Debtor Affiliates. Subject to the Carve-Out (as defined below), the Pari Passu Adequate Protection Liens shall be priority perfected liens in Pari Passu Collateral that shall rank *pari passu* with the liens on the Pari Passu Collateral granted to the Term Loan Prepetition Agent pursuant to the Term Loan Stipulated Protection Order.

- d. As further Adequate Protection, the Prepetition Noteholders and the Prepetition Notes Trustees are each hereby granted an allowed super-priority administrative claim (the “***Prepetition Noteholders Administrative Claim***”) against the Debtors’ estates under section 507(b) of the Bankruptcy Code to the extent that the Senior Replacement Liens, Junior Adequate Protections Liens and the Pari Passu Adequate Protection Liens (collectively, the “***Adequate Protection Liens***”) do not adequately protect the diminution in the value of the Prepetition Noteholders’ interest in the Prepetition Assigned Property, which Prepetition Noteholders Administrative Claim, *if any*, shall be subject only to the Carve-Out and shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates.
- e. As further Adequate Protection, the Debtors are authorized and directed to pay Wells Fargo, for itself and its professionals, ongoing payments in cash on a current basis, no less than monthly, in an amount equal to its reasonable and documented fees, costs, and expenses (including, without limitation, Wells Fargo’s professionals’ fees and expenses) incurred in connection with the Debtors’ chapter 11 cases; provided, however, the amount of fees, costs, and expenses payable by the Debtors on a current basis under this paragraph shall not exceed \$200,000.00 for the first month following the Petition Date and \$100,000.00 for each month thereafter. All of the amounts to be paid pursuant to this paragraph 2(e) shall be paid regardless of whether such amounts accrued before or after the Petition Date, and shall be paid without further motion, fee application, or order of the Court. For the avoidance of doubt, nothing in this paragraph shall constitute a waiver of or limitation on Wells Fargo’s right to payment of its fees and expenses in full or any of their rights, claims, liens, or security interests under any agreement or applicable law.

- f. As further Adequate Protection, the Debtors are authorized and directed to pay Wilmington Trust, for itself and its professionals, ongoing payments in cash on a current basis, no less than monthly, in an amount equal to its reasonable and documented fees, costs, and expenses (including, without limitation, Wilmington Trust's professionals' fees and expenses) incurred in connection with the Debtors' chapter 11 cases; provided, however, the amount of fees, costs, and expenses payable by the Debtors on a current basis under this paragraph shall not exceed \$150,000.00 for the first month following the Petition Date and \$75,000.00 for each month thereafter. All of the amounts to be paid pursuant to this paragraph 2(f) shall be paid regardless of whether such amounts accrued before or after the Petition Date, and shall be paid without further motion, fee application, or order of the Court. For the avoidance of doubt, nothing in this paragraph shall constitute a waiver of or limitation on Wilmington Trust's right to payment of its fees and expenses in full or any of their rights, claims, liens, or security interests under any agreement or applicable law.
- g. The Adequate Protection Liens granted pursuant to this paragraph 2 shall be automatically released upon the effective date of any chapter 11 plan of the Debtors.

3. For the avoidance of doubt, nothing in this Stipulated Order shall (i) grant to any of the Collateral Agent, the Prepetition Noteholders or the Prepetition Notes Trustees a security interest in or a lien on the cash, negotiable instruments, deposit accounts or other cash equivalents of the Debtors or their Non-Debtor Affiliates or (ii) waive any rights of the Collateral Agent or the Prepetition Notes Trustees to request that the Court provide additional or further adequate protection for any further diminution in value of their respective interests in the Prepetition Assigned Property.

4. The automatic stay under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Stipulated Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens or other Adequate Protection and (b) permit the Debtors to perform such acts as the Prepetition

Notes Trustees may request in their sole discretion to assure the perfection and priority of the liens granted herein.

5. This Stipulated Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the security interests and liens granted under this Stipulated Order, without the necessity of filing or recording any mortgage, financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action to validate or perfect (in accordance with applicable non-bankruptcy law) the security interests and liens granted herein, or to entitle the Prepetition Noteholders and Prepetition Notes Trustees to the priorities granted herein. Notwithstanding the foregoing, the Prepetition Notes Trustees may, in their sole discretion, file such financing statements, mortgages, deeds of trust, notices of lien, or similar instruments or otherwise confirm perfection of such liens, security interests, and mortgages without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, and all such documents shall be deemed to have been filed or recorded at the time of and on the applicable Petition Date.

6. Except as explicitly provided for herein, this Stipulated Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

7. The Prepetition Noteholders and Prepetition Notes Trustees have acted in good faith in connection with this Stipulated Order and their reliance on this Stipulated Order is in good faith.

8. Subject to the terms and conditions contained in this paragraph, the claims held by the Prepetition Noteholders and the Prepetition Notes Trustees, which have the relative lien and payment priorities as set forth herein, shall, in any event, in all cases be subject and

subordinate to a carve-out (the “*Carve-Out*”), which shall be comprised of the following: (i) all fees required to be paid to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); and (ii) accrued but unpaid professional fees and expenses of the Debtors and any committee (if appointed) (collectively, the “*Professional Fees*”), to the extent finally allowed by the Court under sections 105(a) and 330 of the Bankruptcy Code, of Wells Fargo and its professionals for any amounts due under paragraph 2(e) hereof, and of Wilmington Trust and its professionals for any amounts due under paragraph 2(f) hereof. Neither the Prepetition Noteholders nor the Prepetition Notes Trustees shall be responsible for the direct payment or reimbursement of any Professional Fees incurred in connection with the chapter 11 cases.

9. The provisions of this Stipulated Order and any actions taken pursuant hereto shall survive and shall not be modified by the entry of any order: (i) confirming any plan of reorganization in any of the chapter 11 cases; (ii) converting any of the chapter 11 cases to a chapter 7 case; (iii) dismissing any of the chapter 11 cases or (iv) withdrawing the reference with respect to any of the chapter 11 cases. The terms and provisions of this Stipulated Order as well as the Adequate Protection granted pursuant to this Stipulated Order shall continue in full force and effect notwithstanding the entry of any such order.

10. Except as expressly set forth herein, the provisions of this Stipulated Order shall not be modified, impaired, or superseded by any subsequent order of this Court, and this Stipulated Order shall survive entry of, and shall govern with respect to any conflict with, any subsequent order of this Court, including the terms, conditions, and provisions of any plan of reorganization or liquidation.

11. This Stipulated Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon entry thereof.

12. Notwithstanding any applicability of Bankruptcy Rules 6004(h), 7062 or 9014, the terms and conditions of this Stipulated Order shall be immediately effective and enforceable upon its entry.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Stipulated Order in accordance with the Motion.

14. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Stipulated Order.

Dated: October 10, 2014

AGREED TO AND ACCEPTED:

REED SMITH LLP

By: /s/ Eric A. Schaffer

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*Counsel to Wells Fargo Bank, National
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Prepetition Notes Trustees and the
Prepetition Noteholders*

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*Counsel to Wilmington Trust, National
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June 2018 Notes*

WEIL, GOTSHAL & MANGES LLP

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*Proposed Counsel to Debtors and
Debtors in Possession*

SO ORDERED:

this ___ day of _____, 2014
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE