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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re: :  
PEAK RESORTS, INC., ET AL.,<sup>1</sup> :  
Debtors. :  
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Case No. 12-31471  
(Jointly Administered)

CLERK OF THE  
BANKRUPTCY COURT  
N.D. OF NY  
SYRACUSE

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BANKRUPTCY COURT  
N.D. OF NY  
SYRACUSE

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**FINAL ORDER (I) AUTHORIZING DEBTORS  
TO OBTAIN POSTPETITION FINANCING ON A  
SENIOR SECURED SUPERPRIORITY BASIS PURSUANT TO  
11 U.S.C. §§ 105, 361, 362, 363, AND 364, AND (II) GRANTING RELATED RELIEF**

At Syracuse, New York, in said District this 20 day of September, 2012.

Upon the motion (the "Motion") of Peak Resorts, Inc., Hope Lake Investors, LLC, VRPD II, L.P., REDI, L.L.C., and ARK Enterprises, Inc. (collectively, the "Debtors"), by their counsel, Harris Beach PLLC, pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") seeking, among other things, entry of an interim order (the "Interim Order")<sup>2</sup> and a final order (the "Final Order") authorizing the Debtors to borrow money and obtain other financial accommodations (the "Financing" or "DIP Loan") from the Federal Deposit Insurance Corporation, in its capacity as Receiver for Tennessee Commerce Bank (the "DIP Lender") and to give security therefor, as more fully described in the Motion; and upon consideration of the Stipulation and Agreement between the Debtors and the DIP Lender, attached hereto as Exhibit

<sup>1</sup> The Debtors and the last four digits of their taxpayer identification numbers are: (i) Peak Resorts, Inc. (8584); (ii) Hope Lake Investors, LLC (0178); (iii) V.R.P.D. II, L.P. (7425); (iv) REDI, L.L.C. (9420); and (v) ARK Enterprises, Inc. (2413).

<sup>2</sup> The Interim Order was entered by this Court on August 2, 2012. A second interim order (the "Bridge Order") was entered by this Court on August 23, 2012.

“A” (the “DIP Agreement”)<sup>3</sup>; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the circumstances; and the Court having considered the statements of counsel regarding the relief requested in the Motion at the hearings before the Court on August 2, 2012 and August 23, 2012 (the “Interim Hearings”); and upon the final hearing on the Motion conducted on September 11, 2012 (the “Final Hearing” and collectively with the Interim Hearings, the “Hearing”); and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors and all parties in interest; and the Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, the Court hereby makes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. Filing Date. On August 1, 2012 (the “Filing Date”), the Debtors filed the above-referenced petitions for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Bankruptcy Code sections 1107 and 1108, the Debtors’ retained possession of their assets and continue to operate their businesses as debtors in possession. On August 16, 2012, the Office of the United States Trustee (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) in connection with the Chapter 11 Cases.

B. Jurisdiction. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

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<sup>3</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the DIP Agreement.

C. Notice. Due and appropriate notice of the Motion, the relief requested therein and the Final Hearing having been served by the Debtors on: (i) the U.S. Trustee, (ii) counsel to the Committee, (iii) counsel to the DIP Lender, and (iv) any additional known lienholders whose liens are being primed under the Financing in compliance with Bankruptcy Rule 4001(b) and (c).

D. Opportunity to be Heard. Pursuant to Bankruptcy Rule 4001, the Interim Hearings on the Motion were held before this Court to consider entry of an interim order on August 2, 2012 and August 23, 2012 and the Final Hearing on the Motion was held before this Court to consider entry of this Final Order on September 11, 2012.

E. Disposition. The Motion is granted on a final basis in accordance with the terms of this Final Order. Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled for purposes of this Final Order.

F. Lender's Protections. The DIP Lender is willing to lend money and provide other financial accommodations to the Debtors only on the terms and conditions and with the protections provided herein and in the DIP Agreement and is relying on such terms, conditions, and protections in agreeing to lend money and provide financial accommodations to the Debtors hereunder.

G. Immediate Entry of the Order. The Debtors have requested that this Final Order become immediately effective and enforceable upon entry, notwithstanding any provisions that may apply in Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure. The Debtors have demonstrated good cause for the entry of this Final Order and for this Final Order to become immediately effective and enforceable upon entry. Among other things, entry of this Final Order and the immediate effectiveness and enforceability of this Final Order upon entry will minimize the

disruption of the Debtors' business operations and permit the Debtors to satisfy their operating expenses, will increase the possibilities for confirmation of a successful chapter 11 plan for the Debtors, and is in the best interests of the Debtors, their creditors and the Debtors' bankruptcy estates. The terms of the borrowing and other financial accommodations authorized hereby are fair and reasonable under the circumstances and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

H. Findings Regarding the Financing.

- (i) Good cause has been shown for the entry of this Final Order;
- (ii) The Debtors have an immediate need to obtain the Financing, to the extent set forth in the Budget (as defined in the DIP Agreement), to (a) fund the postpetition operating expenses of the Debtors incurred in the ordinary course of business and (b) pay certain other costs and expenses of administration of these chapter 11 cases. The access of the Debtors to sufficient working capital and liquidity through the incurrence of new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern value of the Debtors and to a successful reorganization of the Debtors;
- (iii) The Debtors currently are unable to obtain financing on more favorable terms from sources other than the DIP Lender under the DIP Agreement and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Agreement without the Debtors granting to the DIP Lender, subject to the Carve Out, the DIP

Liens and the Superpriority Claim under the terms and conditions set forth in this Final Order and in the DIP Agreement;

(iv) The terms of the Financing are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration;

(v) The Financing has been negotiated in good faith and at arm's length among the Debtors and the DIP Lender, and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the Financing and the DIP Agreement, including without limitation, all loans pursuant to the DIP Agreement, any other expenses or obligations under the DIP Agreement and the Protective Advances (all of the foregoing collectively, the "DIP Obligations"), shall be deemed to have been extended by the DIP Lender and its 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 the DIP Obligations, the DIP Liens and 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;

(vi) Entering into the Financing and the DIP Agreement reflects the Debtors' exercise of prudent business judgment consistent with their fiduciary duties; and

(vii) The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent granting the relief sought by this Final Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the Financing in accordance with this Final Order and

the DIP Agreement is therefore in the best interests of the Debtors' estates consistent with their fiduciary duties.

**ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

1. The Debtors are hereby authorized to execute and enter into the DIP Agreement on a final basis and to the extent consistent with the terms of this Final Order.

2. The Debtors and the DIP Lender are hereby authorized and directed to take all necessary actions to implement the DIP Motion and DIP Agreement, as set forth therein.

3. Notwithstanding anything to the contrary in the DIP Agreement (including paragraphs 7 and 8), Interim Order, Bridge Order or this Final Order, the liens, claims, rights and remedies of:

(i) First Niagara Funding, Inc. ("FNF"), as set forth in that certain Mortgage and Modification and Consolidation Agreement dated as of April 13, 2010, recorded as instrument number 2010-01865 in the office of Cortland County Clerk on April 14, 2010; Assignment of Leases and Rents dated as of April 13, 2010 and recorded as instrument number 2010-01866 in the office of the Cortland County Clerk on April 14, 2010; a Security Agreement dated June 7, 2004 and a Security Agreement dated April 13, 2010; and UCC-1 financing statements and UCC-3 continuations thereof on file in the office of the New York Secretary of State; and all other loan documents by and between FNF and Debtors,

(ii) Republic Bank & Trust Company, as assignee or successor, or its assignees and successors ("Republic Bank"), with respect to the assets and estate of V.R.P.D. II, LP, and

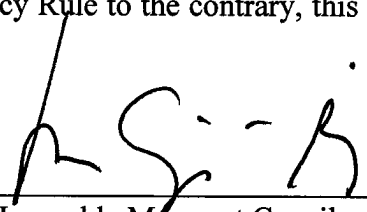
(iii) CFCU Community Credit Union (“CFCU” and together with FNF and Republic Bank, the “Secured Parties” and individually each a “Secured Party”), as set forth in that certain mortgage in the principal amount of \$120,800.00, dated December 19, 2008, recorded in the Cortland County Clerk’s Office on December 23, 2008 as instrument number 2008-07439 and covering real property commonly known as 1831 Route 392, Cortland, New York,

shall not be impaired, to the extent that each Secured Party is determined to hold a valid and enforceable first priority prepetition lien with respect to certain of the DIP Collateral. For the avoidance of doubt, notwithstanding the lien priming and superpriority claim provisions set forth in the DIP Agreement and herein, the liens, claims, rights and remedies of the Secured Parties shall have the same extent, validity, priority and enforceability that existed prior to the commencement of these cases *vis a vis* the liens, claims, rights and remedies granted to the DIP Lender in the DIP Agreement and hereunder, and all rights and remedies attendant to the positions of the respective Secured Parties are hereby reserved.

4. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation and/or implementation of this Final Order.

5. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall take effect immediately upon its entry.

Dated: September 20, 2012

  
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Honorable Margaret Cangilos-Ruiz  
United States Bankruptcy Judge