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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

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

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BANKRUPTCY COURT
N.D. OF NY
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**FINAL ORDER PURSUANT TO SECTIONS 105, 361, 362
AND 363 OF THE BANKRUPTCY CODE AND FED. R. BANKR.
P. 2002, 4001 AND 9014: (I) AUTHORIZING DEBTORS TO USE
CASH COLLATERAL AND (II) GRANTING ADEQUATE PROTECTION**

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

This matter comes on 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, for entry of an interim order and a final order (this "Final Order") pursuant to sections 105, 361, 362 and 363 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) authorizing the use of cash collateral, substantially all of which Cash Collateral² is presently subject to the security interests held by the prepetition lender, the Federal Deposit Insurance Corporation (the "FDIC-Receiver"), as receiver for Tennessee Commerce Bank ("TCB" or the "Prepetition Lender"), (ii) granting adequate protection to the FDIC-Receiver, and (iii) scheduling a final hearing on the Motion; and upon the interim hearings on the relief requested in the Motion on an interim basis conducted by the Court

¹ 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).
² All capitalized terms not defined herein have the meaning ascribed to them in the Motion.

on August 2, 2012 and August 23, 2012 (the “Interim Hearings”); and upon the Interim Order Pursuant to Sections 105, 361, 362 and 363 of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 4001 and 9014: (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection Pending Final Hearing; and (III) Scheduling Final Hearing entered by the Court on August 2, 2012 (Docket No. 21, the “Interim Order”); and upon the Bridge Order (A) Amending Interim Order Pursuant to Sections 105, 361, 362 and 363 of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 4001 and 9014: (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection Pending Final Hearing; and (III) Scheduling Final Hearing and (B) Continuing Final Hearing entered by the Court on August 27, 2012 (Docket No. 74, the “Bridge Order”); and upon the final hearing on the Motion that took place on September 11, 2012 (the “Final Hearing” and, collectively with the Interim Hearings, the “Hearing”); and upon the record herein and at the Hearing; and after due deliberation thereon; and good and sufficient cause appearing therefore,

IT IS HEREBY FOUND AND ORDERED THAT:

A. Petition Date. On the Petition 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 appointed an official committee of unsecured creditors (the “Committee”) in connection with these 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).

C. Loan Documents. Prior to the Petition Date, the Debtors operated under the terms of various financing agreements (the “Prepetition Loan Documents”) with TCB, the Debtors’ senior secured prepetition lender, as evidenced by the documents listed on Exhibit “A” attached hereto, pursuant to which TCB provided secured financing to the Debtors in the approximate amount of \$47,000,000.00 (the “Prepetition Loans”). Pursuant to the Prepetition Loan Documents, the Debtors granted TCB first-priority security interests in and liens upon (the “Prepetition Secured Liens”) substantially all of the Debtors’ assets (the “Prepetition Collateral”). Prior to the Petition Date, the Debtors were unable to meet their obligations under the Prepetition Loan Documents and are currently in default thereunder.

D. DIP Financing. As set forth in that certain debtor in possession financing motion filed by the Debtors on August 1, 2012 (Docket No. 8, the “DIP Motion”), the DIP Lender has provided and will continue to provide a debtor in possession financing facility (the “DIP Financing”) to the Debtors on the terms and conditions set forth in that certain final order dated as of the date hereof pertaining to the DIP Financing (the “Final DIP Order”) and in that certain Stipulation and Agreement Regarding Post-Petition Debtor in Possession Financing (together with all documents, agreements and certificates related thereto, the “DIP Agreement” and, collectively with the Final DIP Order, the “Final DIP Documents”). The Debtors and the FDIC-Receiver have agreed for purposes of this Final Order that the schedule of revenues and expenditures (the “Budget”) attached hereto as Exhibit B shall apply to the use of Cash Collateral under this Final Order.

E. Certain Findings.

(i) A need exists for the Debtors to use Cash Collateral (as defined herein) to continue to operate on a going concern basis strictly in compliance with the Budget and in order

to, *inter alia*, pay wages, and generally conduct their business affairs so as to avoid harm to their estates and preserve the going concern value of their assets.

(ii) The Debtors require cash on hand to fund the administrative costs of these chapter 11 cases and to successfully reorganize. All of the Debtors' deposit accounts, cash and cash proceeds are encumbered by security interests in favor of the FDIC-Receiver and, as such, constitute "cash collateral" (as such term is defined in section 363(a) of the Bankruptcy Code) of the FDIC-Receiver.

(iii) The Debtors have a need for the use of Cash Collateral to effectively and expeditiously manage these chapter 11 cases. Absent the use of Cash Collateral (in addition to the DIP Financing), the Debtors would be forced to cease operations of their business. Such an abrupt cessation of the Debtors' business would have devastating effects on the Debtors' ongoing operations and would leave the Debtors in a complete state of disarray.

(iv) As set forth in the Interim Order, notice of the Interim Hearing and the relief requested in the Motion on an interim basis provided by the Debtors constituted due and sufficient notice of the relief requested in the Motion and on an interim basis and of the Interim Hearing. On August 10, 2012, the Debtors filed and served on the parties listed therein that certain Certificate of Service of the entry of the Interim Order (Docket No. 40). On August 29, 2012, the Debtors filed and served on the parties listed therein that certain Certificate of Service of the entry of the Bridge Order (Docket No. 78). Accordingly, notice of the entry of the Interim Order, Bridge Order, the Final Hearing and the relief requested in the Motion provided by the Debtors constitutes due and sufficient notice of the Motion and of the Final Hearing.

(v) Good cause has been shown for the entry of this Final Order. Among other things, entry of this Final Order will minimize disruption of the Debtors' business and

operations and permit them to meet operating expenses. Allowing the use of Cash Collateral therefore is in the best interests of the Debtors' estates and their creditors.

(vi) The Cash Collateral use and adequate protection arrangements authorized hereunder, and the terms of such Cash Collateral use and adequate protection arrangements, are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment and are supported by reasonably equivalent value and fair consideration.

(vii) The Court concludes that entry of this Final Order is in the best interests of the Debtors, their estates and their creditors as its implementation will allow for the continued operation of the Debtors' existing businesses.

F. The Cash Collateral. The FDIC-Receiver's security interests and liens have attached to the Prepetition Collateral including the product, issues, rents, profits and other proceeds of the Prepetition Collateral and the FDIC-Receiver's security interests and liens will, notwithstanding the commencement of these Chapter 11 Cases, as of the Petition Date and thereafter, attach to product, issues, rents, profits and other proceeds of the Prepetition Collateral. Without limiting the foregoing, the FDIC-Receiver's security interests and liens attach to all cash (whether as original collateral or cash proceeds of the Prepetition Collateral), negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents now or hereafter in the possession, custody or control of the Debtors in the same extent, validity, and priority as such security interests and liens attached prepetition (as defined in section 363(a) of the Bankruptcy Code, the "Cash Collateral").

G. Authorization to Use Cash Collateral. Subject to the terms and conditions set forth in this Final Order, the Debtors are, through and including the earlier of (a) March 31, 2013, or (b) termination of this Final Order following issuance of a Termination Notice (as

defined herein) as set forth in paragraph V below, authorized to use Cash Collateral solely in accordance with the Budget; provided, however, that any amendment or modification of the terms and conditions, or any amendment, modification, roll-forward or replacement of the Budget itself, shall be subject to the prior written consent of the FDIC-Receiver. The Debtors shall use the proceeds of the Postpetition Indebtedness (as defined in the DIP Agreement) only for payment of such items as is set forth in the Budgets within a 5% overage expense variance of said budgeted items. Payment by the Debtors of amounts or expenses other than those specifically set forth in the Budget shall constitute cause to lift the automatic stay upon five (5) days written notice to the Debtors, the Debtors' attorneys, the United States Trustee and counsel for the Committee, providing the Debtors with an opportunity to cure and to object to the relief requested, in accordance with the provisions of the DIP Agreement, unless the FDIC-Receiver consents to those changes in writing. In accepting the Budget and by taking any other actions pursuant to the DIP Agreement, the FDIC-Receiver shall not have any liability to any third party and shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" with respect to the operation or management of the Debtors. The Debtors reserve the right to request that the FDIC-Receiver waive any potential overage expense variances, which waiver shall be subject to the FDIC-Receiver's sole discretion. The Debtors are further authorized to continue to operate under the terms of the Prepetition Loan Documents. The FDIC-Receiver has acted in good faith in declining to object to the use of Cash Collateral on the terms of this Final Order and to the terms of the Final DIP Order.

H. Budgets. On the two (2) week anniversary of the Petition Date (or, if such anniversary is not a Business Day, on the next succeeding Business Day), and every thirty (30) days thereafter, the Debtors, after review and approval by the Management Company, shall

submit a 13-week Budget to the FDIC-Receiver and the Committee for the FDIC-Receiver's approval, in its sole discretion. For the avoidance of doubt, each subsequent Budget shall be comprised of the last nine (9) weeks from the previously approved Budget and an additional four (4) week period. Any previously approved time period shall remain unchanged by any subsequent Budget.

I. Adequate Protection. The FDIC-Receiver is entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the Prepetition Collateral, including, but not limited to, the Cash Collateral, for any diminution in value of its interests in the Prepetition Collateral, including, without limitation, any such diminution resulting from the Debtors' use of Cash Collateral and any other Prepetition Collateral and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

(i) Liens. As adequate protection for any diminution in value of the FDIC-Receiver's interests in the Prepetition Collateral from and after the Petition Date, effective upon the date of this Final Order and without the necessity of the execution by the Debtors of any security agreements, pledge agreements, mortgages, financing statements or otherwise, and subject to the Carve Outs (as defined herein), the following replacement security interests, mortgages and liens, with the same nature, validity and to the same extent as the Prepetition Secured Liens, are hereby granted to the FDIC-Receiver (collectively, the "Replacement Lien"), which Replacement Lien shall (a) be junior to any properly perfected, unavoidable liens (and any claims secured thereby) that, as of the Petition Date, are senior and prior to the Prepetition Secured Liens and the liens granted to the DIP Lender (the "DIP Lender's Liens") with respect to the DIP Financing and DIP Collateral as provided herein, (b) be senior to any other liens, claims, encumbrances and other interests and (c) grant the FDIC-Receiver a perfected second-priority

senior security interest in and lien upon all existing and after-acquired tangible and intangible personal property and assets of the Debtors, with the same validity and to the same extent as the Prepetition Secured Liens, including the proceeds thereof acquired on or after the Petition Date (collectively, the "Postpetition Collateral"). For the avoidance of doubt, the Postpetition Collateral shall not include: (i) any avoidance actions or claims arising under sections 502(d), 510, 544, 547, 548, 550 or 553 of the Bankruptcy Code including the proceeds or property recovered thereof ("Avoidance Actions"), except that "Postpetition Collateral" shall include any avoidance actions arising under section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral and the proceeds thereof, (ii) claims, if any, against the Debtors' officers and directors or any commercial tort claims (as defined in the Uniform Commercial Code) of the Debtors arising from events or transactions occurring on or after the Petition Date, or proceeds thereof, unless valid liens in favor of the FDIC-Receiver existed thereon prior to the Petition Date, or (iii) the Trust Funds (as defined in the DIP Agreement).

J. Postpetition Effect of Security Interest. Notwithstanding anything to the contrary set forth herein or in section 552 of the Bankruptcy Code, the Prepetition Secured Liens and the Replacement Lien shall also be deemed to be perfected in the Cash Collateral collected and/or received by the Debtor after the Petition Date (the "Postpetition Cash Collateral").

K. Section 507(b) Claim. The FDIC-Receiver is hereby granted, subject to the Carve Outs, a superpriority claim, with the same validity and to the same extent as the claims of the FDIC-Receiver arising as a result of the Prepetition Secured Liens, in the Debtors' chapter 11 cases as provided for in sections 503(b) and/or 507(b) of the Bankruptcy Code with priority over any and all other administrative expenses in the Debtors' chapter 11 cases of any kind payable or allowed pursuant to any provision of the Bankruptcy Code, including, but not limited to, sections

105, 326, 328, 330, 365, 503(a) 503(b), 507(a), 507(b), 546, 551, 552, 726(d), 1113 and/or 1114 of the Bankruptcy Code.

L. Interest, Fees and Expenses. Subject to the reservation of the right of any interested party to later assert that such payments should be re-allocated to principal in accordance with section 506 of the Bankruptcy Code, the FDIC-Receiver shall receive, as additional adequate protection, reimbursement from the Debtors and their estates of all fees, costs and expenses incurred after the Petition Date payable to the FDIC-Receiver under the Prepetition Loan Documents, including, but not limited to, cash payments expressly provided for pursuant to the Budget. Notwithstanding the foregoing, the FDIC-Receiver reserves its rights to assert claims for the payment of additional amounts provided for in the Prepetition Loan Documents.

M. Additional Adequate Protection. As additional adequate protection for the FDIC-Receiver: (i) the Debtors shall continue to prepare and deliver to the FDIC-Receiver, with a copy to the Committee, all documents and reports required to be prepared and delivered to the FDIC-Receiver under the Prepetition Loan Documents, in each case at the times and in the manner and form set forth therein; provided, however, all monthly reports required to be delivered pursuant to the Prepetition Loan Documents will be required to be delivered within thirty (30) days after the end of each month; (ii) the Debtors shall deliver to the FDIC-Receiver, with a copy to the Committee, a report with respect to the Debtors' compliance with the Budget on the same basis as provided for in the Final DIP Order; (iii) the FDIC-Receiver, in its sole discretion and in consultation with the Committee, shall have the right to approve the form and substance of any motion for approval of bidding procedures, any order approving bid procedures and any order approving a sale (as set forth in the DIP Agreement); (iv) subject to the terms and

conditions of the Prepetition Loan Documents, the FDIC-Receiver shall retain and is hereby authorized to exercise all appraisal and inspection rights with respect to the Prepetition Collateral and the Cash Collateral; and (v) the Debtors shall maintain with respect to the Prepetition Collateral insurance of the type and in the amount as the Debtors maintained as of the Petition Date, and as required under the Prepetition Loan Documents.

N. Credit Bid. The FDIC-Receiver shall, to the extent it holds a valid, enforceable and unavoidable lien or security interest in the Prepetition Collateral, have the unqualified ability to credit bid for any assets of the Debtors that are subject to the Prepetition Secured Liens, offered at any sale, lease, or other disposition outside the ordinary course of business, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any reorganization plan subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code. In the event that there is an outstanding Challenge (as defined in the DIP Agreement) prior to the Investigation Termination Date (as defined below) to the amount, validity, extent, perfection, priority, or enforceability of any portion of the Prepetition Secured Liens, the FDIC-Receiver shall not be allowed to credit bid the contested portion of such liens pending a final determination, but shall be allowed to credit bid the uncontested portion of such liens. For the avoidance of doubt, any Challenge after the Investigation Termination Date will not affect the FDIC-Receiver's right to credit bid its Prepetition Indebtedness and/or Superpriority Claim.

O. Perfection of Adequate Protection Liens. The FDIC-Receiver shall not be required to file or record financing statements, mortgages, notices of lien, or similar instruments in any jurisdiction or take any other action in order to validate and perfect the security interests and liens granted to them pursuant to this Final Order. If the FDIC-Receiver shall, in its sole

discretion, choose to file such financing statements, mortgages, notices of lien or similar instruments or otherwise confirm perfection of such security interests and liens, the liens and security interests granted herein shall be deemed perfected at the time and on the date of entry of this Final Order. Upon request by the FDIC-Receiver, the Debtors shall, without the further consent of any party, take any actions and execute and deliver such instruments (in each case without representation or warranty of any kind) as may be necessary to enable the FDIC-Receiver to further perfect, preserve and enforce the security interests, mortgages and liens granted to the FDIC-Receiver by this Final Order.

P. Limitation on Charging Expenses Against Collateral. From and after entry of this Final Order with respect to the use of Cash Collateral, no expenses of administration of these chapter 11 cases 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 Prepetition Collateral or the Cash Collateral, pursuant to section 506(c) of the Bankruptcy Code or any similar principal of law, without the FDIC-Receiver's prior written consent, and no such consent will be implied from any action, inaction, or acquiescence by the FDIC-Receiver.

Q. Limitations on Use of Cash Collateral. Except as set forth in paragraph R below, no Cash Collateral may be used to (i) object, contest or raise any defense to, the validity, authorization perfection, priority, extent, or enforceability of the Prepetition Loans, the Prepetition Secured Liens, or the Replacement Lien granted by this Final Order, (ii) assert any claims or causes of action against the FDIC-Receiver, or (iii) as long as the Debtors are authorized or able to continue to use Cash Collateral pursuant to the terms of this Final Order, attempt to obtain, without the consent of the FDIC-Receiver, or over the objection of the FDIC-

Receiver, the Court's authorization to use Cash Collateral under terms other than those provided herein or the Court's authorization to grant any priming, senior (other than with respect to the DIP Financing as set forth herein) security interest in or lien on the Prepetition Collateral, Postpetition Collateral or the Cash Collateral.

R. Investigation. The Committee is hereby granted standing and the authority to investigate, on behalf of the Debtors' estates, the extent, validity, amount, perfection, priority, or enforceability of the Prepetition Secured Liens and Prepetition Indebtedness, through and including the Investigation Termination Date (as defined in the DIP Agreement) in accordance with the Budget.

S. Automatic Stay. The automatic stay under section 362(a) of the Bankruptcy Code shall be, and it hereby is, modified to the extent necessary to permit (i) the FDIC-Receiver to apply payments made pursuant to this Final Order in accordance with the terms and provisions of this Final Order and the Budget and (ii) the FDIC-Receiver to send the Termination Notice (as defined herein) and exercise any rights and remedies set forth herein.

T. Reservation of Rights of the FDIC-Receiver. The FDIC-Receiver reserves the right to request further or different adequate protection in the future, and the Debtors or any other party may contest any such request. In addition, the FDIC-Receiver reserves all rights and defenses, including, without limitation, with respect to any final order or final relief pertaining to the Prepetition Collateral.

U. Events of Default. Each of the following shall constitute an "Event of Default" hereunder: (i) use of Cash Collateral other than as set forth herein and in compliance with the Budget; (ii) entry of an order, absent the DIP Lender's consent, authorizing the use of Cash Collateral or that grants a priming, senior (other than with respect to the DIP Financing as set

forth herein) security interest in or lien upon Cash Collateral, the Prepetition Collateral or Postpetition Collateral; (iii) the filing by the Debtors or any other party of any pleading objecting to or challenging the FDIC-Receiver's claims with respect to the Prepetition Loans or the FDIC-Receiver's lien upon the Cash Collateral, Postpetition Collateral or the Prepetition Collateral or otherwise asserting rights, claims or causes of action against the FDIC-Receiver with respect to the Prepetition Loans; (iv) the breach by the Debtors of their obligations under this Final Order; (v) any stay, reversal, vacatur or rescission of this Final Order; (vi) the dismissal of, conversion of or appointment of an examiner with expanded powers in these Chapter 11 Cases; (vii) the sale of a controlling interest in any of the Debtors; (viii) the issuance of a Termination Notice (as defined herein); (ix) failure of the Debtors to continue to engage a management company, as set forth in the DIP Agreement; (x) the filing by the Debtors of any Final DIP Documents or any final documents pertaining to the DIP Financing not acceptable to and not supported by the FDIC-Receiver; (xi) the filing by the Debtors of any bid procedure and/or sale documents relating to the sale of the Prepetition Collateral, Postpetition Collateral and/or Cash Collateral not acceptable to and not supported by the FDIC-Receiver in its sole discretion (and in consultation with the Committee) or (xii) the occurrence of any Default or Event of Default (each as defined in the Final DIP Documents) under the Final DIP Documents.

V. Termination Notice. Immediately upon the occurrence or existence of an Event of Default, the FDIC-Receiver shall be authorized to issue a notice (a "Termination Notice") (which Termination Notice may be delivered by electronic mail) thereof to the Debtors, their counsel, counsel to the Committee and the U.S. Trustee. Unless, within two (2) business days after the issuance of such notice, the Court determines that the applicable Event of Default has not occurred or does not exist, the Debtors' authority to use Cash Collateral shall terminate.

W. Carve Out. The Replacement Liens and superpriority claims granted hereunder shall be junior and subordinate to the following fees and expenses: (i) professional fees or expenses for the Debtors' attorneys ("Debtors' Professional Fees") as outlined in the Budget for postpetition services up to an aggregate amount of \$225,000.00, (ii) professional fees or expenses for the Committee ("Committee's Professional Fees"), including counsel and professionals which may be retained by the Committee, up to an aggregate amount of \$125,000.00 (clauses (i) and (ii) collectively, the "Professional Fee Carve Out"); (iii) fees pursuant to 28 U.S.C. § 1930 and 28 U.S.C. § 156(c), and any interest thereon and (iv) pursuant to Bankruptcy Code section 726, in the event these cases are converted to chapter 7, a separate and additional amount of \$25,000.00 in the aggregate that may be used for the reasonable fees and expenses of a chapter 7 trustee (clauses (i), (ii), (iii) and (iv) together, the "Carve Outs"). Notwithstanding anything to the contrary herein, the Carve Outs set forth herein are the same "Carve Outs" set forth in the DIP Agreement and no Carve Outs amounts set forth herein shall be in addition to the Carve Outs amounts provided for in the DIP Agreement.

X. Parties in Interest Bound.

(i) The admissions contained in this Final Order shall be binding on the Debtors under all circumstances and shall be binding upon all other parties in interest, including, without limitation, the Committee and any chapter 7 or chapter 11 trustee that may be appointed or elected on behalf of the estate of the Debtors, except to the extent that (i) the Committee timely files a Challenge (as defined in the DIP Agreement) on or before October 19, 2012 (the "Investigation Termination Date") and (ii) the Court rules in favor of the plaintiff in any such timely filed adversary proceeding or contested matter. If any such adversary proceeding or contested matter is timely commenced prior to the Investigation Termination Date, the

admissions contained in this Final Order shall nonetheless remain binding and preclusive (as provided in this paragraph) except to the extent that such acknowledgments and agreements are expressly challenged in such adversary proceeding or contested matter.

(ii) If no such adversary proceeding or contested matter is commenced as of such date, then (i) the Prepetition Loans shall constitute allowed secured claims, not subject to subordination, other than as set forth herein and in the Final DIP Order, and otherwise unavoidable, for all purposes in these chapter 11 cases and any subsequent chapter 7 cases, (ii) the liens securing the Prepetition Loans on the Prepetition Collateral shall be deemed legal, valid, binding, duly authorized, perfected, not subject to defense, counterclaim, recharacterization, offset of any kind, subordination, other than as set forth herein and in the Final DIP Order, and otherwise unavoidable, (iii) the FDIC-Receiver, the Prepetition Loans and the liens on the Prepetition Collateral securing the Prepetition Loans shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto, and (iv) the FDIC-Receiver shall be deemed released from any and all rights, claims, causes of action and liabilities arising from or in connection with the Prepetition Loans, the Prepetition Collateral, the Prepetition Loan Documents and/or the extension of credit or other financial accommodations thereunder or with respect thereto.

Y. Successors and Assigns. The provisions of this Final Order shall be binding upon the FDIC-Receiver, the Debtors, and their respective successors and assigns (including any trustee hereinafter appointed or elected for the Debtors' estates) and inure to the benefit of the FDIC-Receiver and the Debtors and (except with respect to any trustees hereinafter appointed or elected for the estates of the Debtors) its respective successors and assigns.

Z. Priority of Certain Liens. Except as provided in paragraph I hereof, the Replacement Liens granted to the FDIC-Receiver by this Final Order shall not be deemed to (i) prime any preexisting, valid, and perfected liens or security interests in or against any assets of the Debtors, subject to further order of this Court; or (ii) attach to any of the Debtors' assets on which the FDIC-Receiver (or its predecessor) did not have a lien on prior to the filing of these bankruptcy cases.

AA. Attachment of Liens. This Court shall not, based on the "equities of the case" or otherwise, rule or otherwise order that the Prepetition Secured Liens or the Replacement Liens do not attach to the proceeds of collateral to which such liens would attach under applicable law and this Final Order.

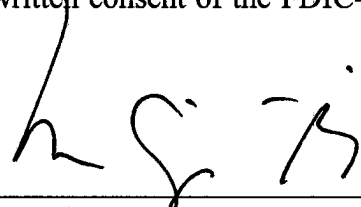
BB. Notice. A copy of this Final Order, together with the papers upon which it is based, shall be served by first-class mail no later than 5:00 p.m. on September 26, 2012, upon (a) the Office of the United States Trustee for the Northern District of New York, (b) the Federal Deposit Insurance Corporation, in its capacity as Receiver for Tennessee Commerce Bank, 1601 Bryan Street, 35th Floor, Dallas, Texas 75201 (Attn: Edward M. Mertic and Robert H. Carpenter, Jr.), with copy to the Federal Deposit Insurance Corporation, 3501 Fairfax Drive, Arlington, Virginia 22226 (Attn: Jeffrey E. Schmitt), (c) DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020 (Attn: Thomas R. Califano, Esq.), counsel for the FDIC-Receiver, and (d) Cole, Schotz, Meisel, Forman & Leonard, P.A., 300 East Lombard Street, Suite 2000, Baltimore, Maryland 21202 (Attn: Gary H. Leibowitz, Esq.), counsel to the Committee.

CC. Rights of FDIC-Receiver. Nothing in this Final Order shall, or shall be deemed to, derogate any right, protection or privilege granted to the DIP Lender under the terms

of the Final DIP Order or the DIP Agreement or the other documents evidencing or securing the
DIP Financing.

DD. Further Relief. Any further request or application by the Debtors to extend the
relief granted herein with respect to the use of Cash Collateral shall require the Debtors'
consultation with the Committee and the prior written consent of the FDIC-Receiver, in its sole
discretion.

Dated: September 20, 2012



Honorable Margaret Cangilos-Ruiz
United States Bankruptcy Judge