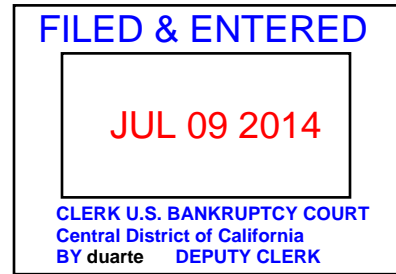


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Proposed Attorneys for Debtors and
Debtors in Possession



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:

S.B. Restaurant Co., et al.,¹

Debtors.

Affects:

- ☒ All Debtors
☐ S.B. Restaurant Co.
☐ S.B. Restaurant Co. of Kansas LLC
☐ S.B. Restaurant Co. of Central Florida, LLC

Debtors.

Case No.: 14-13778 (ES)

Chapter 11

Jointly Administered with Case Nos.:
14-13780 (ES); and 14-13781 (ES)

**FINAL ORDER (1) AUTHORIZING
POST-PETITION FINANCING
PURSUANT TO 11 U.S.C. §§ 105, 361, 362,
364(c)(1), 364(c)(2), 364(c)(3) AND
364(d)(1); (2) AUTHORIZING THE USE
OF CASH COLLATERAL;
(3) GRANTING SECURITY INTERESTS
AND SUPERPRIORITY CLAIMS;
(4) PROVIDING ADEQUATE
PROTECTION; (5) MODIFYING THE
AUTOMATIC STAY; AND
(6) GRANTING RELATED RELIEF**

Date: July 7, 2014
Time: 1:30 p.m.
Place: Courtroom 5A
411 West Fourth Street
Santa Ana, CA
Judge: Honorable Erithe A. Smith

¹ The Debtors and the last four digits of each Debtor's federal tax identification numbers are S.B Restaurant Co. (3572); S.B. Restaurant Co. of Kansas LLC (3291); and S.B. Restaurant Co. of Central Florida, LLC (0207). The Debtors' address is: 200 E. Baker Street, Suite 201, Costa Mesa, CA 92626.

1 Upon the motion (the "**Motion**"), dated June 16, 2014, of S.B. Restaurant Co., S.B.
2 Restaurant Co. of Kansas LLC and S.B. Restaurant Co. of Central Florida, LLC (together, the
3 "**Borrowers**" or the "**Debtors**"), each as a debtor and debtor-in-possession in the above-captioned
4 Chapter 11 cases (collectively, the "**Cases**"), pursuant to Sections 105, 361, 362, 364(c)(1),
5 364(c)(2), 364(c)(3) and 364(d)(1) of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq.
6 (the "**Bankruptcy Code**") and Rules 2002, 4001(c), and 9014 of the Federal Rules of Bankruptcy
7 Procedure (the "**Bankruptcy Rules**"), seeking, among other things:

8 (1) authorization for the Borrowers to obtain post-petition loans, advances
9 and other financial accommodations on a final basis from Cerberus Business Finance, LLC, in its
10 capacities as administrative agent and collateral agent (in such capacities, collectively, the "**DIP**
11 **Agent**") for itself and the DIP Lenders (as defined below) in accordance with all of the lending
12 formulae, sublimits, terms and conditions set forth in the DIP Credit Agreement (as defined below),
13 and in accordance with this Order, secured by security interests in and liens upon all of the Collateral
14 (as defined below) pursuant to Sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code;

15 (2) authorization for the Debtors to enter into, be bound by, and perform
16 under the revolving debtor-in-possession credit facility (the "**DIP Facility**"), entitled "Senior
17 Secured and Superpriority Financing Agreement" dated June 16, 2014 by and among the Debtors,
18 the DIP Agent, and the lenders from time to time party thereto (the "**DIP Lenders**"), which
19 agreement is attached to the Motion as Exhibit B (as it may be modified, supplemented, amended or
20 restated from time to time, the "**DIP Credit Agreement**", and together with the other Loan
21 Documents, as defined in the DIP Credit Agreement, the "**DIP Loan Documents**");

22 (3) modification of the automatic stay to the extent hereinafter set forth;

23 (4) the grant to the DIP Agent, for the benefit of the DIP Lenders, of
24 superpriority administrative claim status pursuant to Section 364(c)(1) of the Bankruptcy Code in
25 respect of all claims and other obligations under the DIP Credit Agreement and the other DIP Loan
26 Documents (the "**DIP Obligations**");

27 (5) authorization for the Debtors to use the Collateral (including Cash
28 Collateral (as defined below)) subject to the existing liens and security interests in favor of the First

Lien Agent on behalf of the First Lien Lenders and the Second Lien Agent on behalf of the Second Lien Lenders (as each of those terms is defined below), and granting adequate protection to these parties as set forth herein; and

The initial hearing on the Motion having been held by this Court on June 19, 2014 (the "**Interim Hearing**") and an order having been entered on that date granting the Motion on an interim basis [Docket No. 59] (the "**Interim Order**" and together with this Order, the "**Financing Orders**"); and

The final hearing on the Motion having been held by this Court on July 7, 2014 (the "**Final Hearing**"); and

It appearing that due and appropriate notice of the Motion, the relief requested therein, and the Interim Hearing and the Final Hearing (the "**Notice**") was served by the Debtors in accordance with Bankruptcy Rule 4001(c) on (i) the First Lien Agent, (ii) the First Lien Lenders, (iii) the Second Lien Agent, (iv) the Second Lien Lenders, (v) the United States Trustee for the Central District of California (the "**U.S. Trustee**"), (vi) the holders of the thirty (30) largest unsecured claims against the Debtors' estates and (vii) all other parties entitled to notice; and

This Court having reviewed the Motion and any responses and objections thereto, the *Declaration of T. Scott Avila, Proposed Chief Restructuring Officer, in Support of Emergency First Day Motions* filed concurrently with the Motion, the other filings and pleadings made by the Debtors, the evidence and testimony presented at the Interim Hearing and the Final Hearing, and after due deliberation and consideration and good and sufficient cause appearing therefor,

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

A. Petition. On June 16, 2014 (the "**Petition Date**"), each Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. On June 24, 2014, the U.S. Trustee appointed an official committee of unsecured creditors (the "**Committee**").

1 B. Jurisdiction and Venue. The Court has jurisdiction over this proceeding and
2 the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The Motion is a
3 "core" proceeding as defined in 28 U.S.C. §§ 157(b)(2)(A), (D), (G) and (M). Venue in this Court
4 over the Cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory or
5 other predicates for the relief sought herein are Sections 105, 361, 362, 363, 364, 507, and 552 of the
6 Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014, and the Local Rules.

7 C. Notice. Under the circumstances, the Notice given by the Debtors of the
8 Motion, the Interim Hearing, the Final Hearing, and the relief granted under the Interim Order and
9 this Order constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001(c).

10 D. Findings Regarding the First Lien Lenders, the Pre-Petition Collateral and the
11 First Lien Obligations. The Debtors and their estates admit, stipulate, acknowledge and agree that:

12 (i) *First Lien Credit Agreement*: As of the Petition Date, the Borrowers,
13 the financial institutions parties thereto from time to time as lenders (the "**First Lien Lenders**"), and
14 Cerberus Business Finance, LLC as first lien administrative agent and first lien collateral agent (in
15 such capacities and together with any successors thereto, the "**First Lien Agent**") are parties to that
16 certain "Financing Agreement" dated as of July 10, 2012 (as amended, amended and restated,
17 supplemented or otherwise modified, refinanced or replaced prior to the Petition Date, the "**First**
18 **Lien Credit Agreement**" and together with the other Loan Documents (as defined in the First Lien
19 Credit Agreement), in each case as amended, amended and restated, supplemented or otherwise
20 modified, refinanced or replaced prior to the Petition Date, collectively, the "**First Lien Loan**
21 **Documents**"). The First Lien Loan Documents provide that (a) the Debtors are obligated for
22 principal, accrued and unpaid interest (including default interest), charges, expenses, fees, attorney's
23 fees and disbursements, indemnities, and other amounts arising under or payable under the First Lien
24 Loan Documents (the "**First Lien Obligations**"), and (b) all of the First Lien Obligations are secured
25 by first priority liens granted to the First Lien Agent for the benefit of the First Lien Lenders (the
26 "**Senior Liens**") on all of the personal and real property and other assets or interests of the Debtors
27 and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or
28 existing or thereafter acquired or arising, other than the Estate Assets (the "**Pre-Petition Collateral**"),

1 which includes cash collateral within the meaning of Bankruptcy Code 363(a) ("**Cash Collateral**");
2 provided, however, that the Pre-Petition Collateral does not include the Estate Assets (as defined
3 below) or any and all proceeds related thereto.

4 (ii) *Stipulations Regarding the First Lien Obligations and the Senior*
5 *Liens*: As of the Petition Date, the outstanding First Lien Obligations totaled no less than
6 \$27,375,000.00, exclusive of all accrued and unpaid interest, costs, expenses, and fees owed to the
7 First Lien Agent and First Lien Lenders. The Debtors and their estates further admit, acknowledge,
8 agree and stipulate that (a) the Senior Liens (1) are legal, valid, binding, enforceable and perfected
9 liens in the Pre-Petition Collateral, (2) were granted to the First Lien Agent for the benefit of the
10 First Lien Lenders for fair consideration and reasonably equivalent value, (3) are not subject to
11 avoidance, disallowance, impairment, recharacterization or subordination pursuant to the Bankruptcy
12 Code or applicable non-bankruptcy law, and (4) are subject and subordinate only to valid, perfected
13 and unavoidable liens permitted under the applicable First Lien Loan Documents, but only to the
14 extent that (x) such liens are in existence as of the Petition Date and are permitted by the applicable
15 First Lien Loan Documents to be senior to the applicable Senior Liens and (y) such liens are actually
16 senior to the applicable Senior Liens under applicable law ((x) and (y) together, the "**Permitted**
17 **Priority Liens**"), and (b)(1) all of the First Lien Obligations constitute legal, valid and binding
18 obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable
19 First Lien Loan Documents, (2) no setoffs, recoupments, offsets, objections, defenses or
20 counterclaims to any of the First Lien Obligations exist, and (3) no portion of the First Lien
21 Obligations or any payments made to or for the benefit of the First Lien Agent or any of the First
22 Lien Lenders are subject to avoidance, disallowance, impairment, recharacterization, recovery,
23 disgorgement, subordination, attack, setoff, offset, recoupment, counterclaim, defense, or "claim" (as
24 defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-
25 bankruptcy law.

26 (iii) *Proof of Claim*. The admission, stipulation, acknowledgment and
27 agreement by the Debtors and their estates of the First Lien Obligations and the rights, priorities and
28 protections granted to the First Lien Agent for the benefit of the First Lien Lenders pursuant to the

1 First Lien Loan Documents were, upon entry of the Interim Order, deemed a timely filed and
2 allowed proof of claim on behalf of the First Lien Lenders in these Cases and neither the First Lien
3 Agent nor the First Lien Lenders are or shall be required to file any additional proofs of claim with
4 respect to the First Lien Obligations.

5 E. Findings Regarding the Debtors' Other Pre-Petition Secured Debt. The
6 Second Lien Agent (as defined below) and Second Lien Lenders (as defined below) assert:

7 (i) *Second Lien Credit Agreement:* As of the Petition Date, the
8 Borrowers, the financial institutions parties thereto from time to time as lenders (the "**Second Lien**
9 **Lenders**"), and Fidus Mezzanine Capital, L.P. as collateral agent (in such capacity and together with
10 any successors thereto, the "**Second Lien Agent**") are parties to that certain "Senior Subordinated
11 Financing Agreement" dated as of July 10, 2012 (as amended, amended and restated, supplemented
12 or otherwise modified, refinanced or replaced prior to the Petition Date, including, without limitation
13 by that certain First Amendment to Senior Subordinated Financing Agreement dated as of November
14 27, 2013, the "**Second Lien Credit Agreement**" and together with the other Loan Documents (as
15 defined in the Second Lien Credit Agreement), in each case as amended, amended and restated,
16 supplemented or otherwise modified, refinanced or replaced prior to the Petition Date, collectively,
17 the "**Second Lien Loan Documents**"). The Second Lien Loan Documents provide that (a) the
18 Debtors are obligated for principal, accrued and unpaid interest (including default interest), fees,
19 costs, expenses, indemnities and other amounts arising under the Second Lien Credit Agreement
20 (collectively the "**Second Lien Obligations**"); and (b) all of the Second Lien Obligations are secured
21 by junior and subordinated liens granted to, or for the benefit of, the Second Lien Agent on behalf of
22 the Second Lien Lenders, on the Pre-Petition Collateral (the "**Junior Liens**"), as more fully
23 described in the Second Lien Loan Documents. For the avoidance of any doubt, the Junior Liens are
24 subject and subordinate to the Senior Liens and to liens that are permitted to be senior to or *pari*
25 *passu* with the Senior Liens by the applicable First Lien Loan Documents. As of the Petition Date,
26 the aggregate amount outstanding under the Second Lien Credit Agreement was approximately
27 \$12,720,287.00, exclusive of all accrued and unpaid interest, costs, expenses, and fees owed to the
28 Second Lien Agent and Second Lien Lenders.

F. Findings Regarding the Post-Petition Financing.

(i) *Post-Petition Financing.* The Debtors have requested from the DIP Agent and the DIP Lenders, and the DIP Agent and the DIP Lenders are willing to extend, certain loans, advances and other financial accommodations on the terms and conditions set forth, in this Order and the DIP Loan Documents.

(ii) *Need for Post-Petition Financing.* The Debtors do not have sufficient available sources of working capital, including Cash Collateral, to operate their businesses in the ordinary course of their business without the financing requested under the Motion. The Debtors' ability to maintain business relationships with their vendors, suppliers and customers, to pay their employees, and to otherwise fund their operations is essential to the Debtors' continued viability as the Debtors seek to maximize the value of the assets of their Estates (as defined below). The ability of the Debtors to obtain sufficient working capital and liquidity through the proposed post-petition financing arrangements with the DIP Agent and DIP Lenders as set forth in this Order and the DIP Loan Documents is vital to the preservation and maintenance of the going concern values of the Debtors. Accordingly, the Debtors must obtain the post-petition financing in order to, among other things, permit the orderly continuation of the operation of their businesses, minimize the disruption of their business operations, and preserve and maximize the value of the assets of their bankruptcy estates (as defined under Section 541 of the Bankruptcy Code, the "*Estates*").

(iii) *No Credit Available on More Favorable Terms.* The Debtors are unable to procure financing in the form of unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code, as an administrative expense under Section 364(a) or (b) of the Bankruptcy Code, or solely based on the grant of an administrative expense priority pursuant to Section 364(c)(1) of the Bankruptcy Code. The Debtors are also unable to obtain secured credit allowable solely under section 364(c)(2) or 364(c)(3) of the Bankruptcy Code. The Debtors have been unable to procure the necessary financing on terms more favorable than the financing offered by the DIP Agent and the DIP Lenders pursuant to the DIP Credit Agreement.

(iv) *Budget.* The Debtors have prepared and delivered to the DIP Agent and the DIP Lenders a Budget (as defined in the DIP Credit Agreement), a copy of which is attached

1 hereto as **Exhibit 1**. Such Budget has been thoroughly reviewed by the Debtors and their
2 management and the Debtors have represented that, subject to the assumptions underlying the
3 Budget, such Budget sets forth in good faith, among other things, the reasonably estimated projected
4 expenses and income for the periods covered thereby. The DIP Agent and the DIP Lenders are
5 relying upon the Debtors' strict compliance with the Budget in accordance with the terms of the DIP
6 Credit Agreement, the other DIP Loan Documents and this Order in determining to enter into the
7 post-petition financing arrangements and to provide the consent and other accommodations provided
8 for herein. As addressed below, the Budget may be amended by mutual written agreement of the
9 Debtors and the DIP Agent.

10 (v) *Business Judgment and Good Faith Pursuant to Section 364(e)*. The
11 terms of the DIP Loan Documents and this Order are fair, just and reasonable under the
12 circumstances, are ordinary and appropriate for secured financing to debtors-in-possession, reflect
13 the Debtors' exercise of their prudent business judgment consistent with their fiduciary duties, and
14 are supported by reasonably equivalent value and fair consideration. The terms and conditions of the
15 DIP Loan Documents and this Order have been negotiated in good faith and at arms' length by and
16 among the Debtors, on one hand, and the DIP Agent, the DIP Lenders, and the First Lien Agent, on
17 the other hand, with all parties being represented by counsel. Any credit extended under the terms of
18 this Order shall be deemed to have been extended in good faith by the DIP Agent and the DIP
19 Lenders as that term is used in Section 364(e) of the Bankruptcy Code.

20 (vi) *Good Cause*. The relief requested in the Motion is necessary, essential
21 and appropriate, and is in the best interest of and will benefit the Debtors, their creditors and their
22 Estates, as its implementation will, among other things, provide the Debtors with the necessary
23 liquidity to (a) minimize disruption to the Debtors' businesses and on-going operations, (b) preserve
24 and maximize the value of the Debtors' Estates for the benefit of all the Debtors' creditors, and (c)
25 avoid immediate and irreparable harm to the Debtors, their creditors, their businesses, their
26 employees, and their assets. Good cause has also been shown for the compromises among the
27 Debtors, the Committee, the DIP Agent, the DIP Lenders, the First Lien Agent, and the First Lien
28 Lenders, which compromises were entered into in good faith, based on arms'-length negotiations,

1 and are reasonable under the circumstances and in the best interests of the Debtors' estates and
2 creditors.

3 Based upon the foregoing, and after due consideration and good cause appearing therefor;

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

5 Section 1. Authorization and Conditions to Financing.

6 1.1 Motion Granted. The Motion is granted in accordance with Bankruptcy Rule
7 4001(c)(2) on a final basis. This Order shall hereinafter be referred to as the "**Final Order**."

8 1.2 Authorization to Borrow, Incur Credit and Use Loan Proceeds. The Debtors
9 are hereby authorized to immediately borrow, pursuant to the DIP Credit Agreement, an aggregate
10 amount not to exceed \$3,300,000.00, provided that disbursements of such amount must be made
11 only in accordance with the Budget, as such Budget may be amended by mutual written agreement
12 of the Debtors and the DIP Agent. Upon the entry of this Final Order, the Debtors shall be
13 authorized to use the Collateral, including Cash Collateral, and to draw on the DIP Facility to make
14 any disbursement as specifically provided in the Budget, but solely in accordance with the terms and
15 conditions set forth in this Final Order and the DIP Loan Documents.

16 1.3 DIP Loan Documents

17 1.3.1 Approval. The DIP Loan Documents (including, without limitation,
18 the DIP Credit Agreement) and each term set forth therein are approved, except to the extent
19 modified in this Final DIP Order. All of such terms, conditions and covenants shall be sufficient and
20 conclusive evidence of the borrowing arrangements by and among the Debtors, the DIP Agent and
21 the DIP Lenders, and of each Debtor's assumption and adoption of all of the terms, conditions, and
22 covenants of the DIP Credit Agreement and the other DIP Loan Documents for all purposes,
23 including, without limitation, to the extent applicable, the payment of all DIP Obligations arising
24 thereunder, including, without limitation, all principal, interest, commissions, letter of credit fees,
25 servicing fees, unused line fees, DIP facility fees, early termination fees, and other fees and
26 expenses, including, without limitation, all of the DIP Agent's and the DIP Lenders' consultant fees,
27 professional fees, attorney fees and legal expenses, as more fully set forth in the DIP Loan
28 Documents.

1.3.2 Amendment. Subject to the terms and conditions of the DIP Credit Agreement and the other DIP Loan Documents, the Debtors, the DIP Agent and the DIP Lenders may amend, modify, supplement or waive any provision of the DIP Loan Documents (an "**Amendment**") without further approval or order of the Court provided that (i) such Amendment is not material (for purposes hereof, a "material" Amendment shall mean any Amendment that increases the interest rate other than as currently provided in the DIP Loan Documents, increases the Total Revolving Credit Commitment (as defined in the DIP Credit Agreement), adds specific new events of default or enlarges the nature and extent of remedies available to the DIP Lenders following an Event of Default (as defined herein), or otherwise modifies any terms and conditions in any of the DIP Loan Documents in a manner materially less favorable to Debtors) and is undertaken in good faith by the DIP Agent, the DIP Lenders and the Debtors; (ii) the Debtors provide prior written notice of the Amendment (the "**Amendment Notice**") to (x) the U.S. Trustee and (y) counsel to the Committee; (iii) the Debtors file the Amendment with the Court; and (iv) no objection to the Amendment is filed with the Court within two (2) business days from the later of the date the Amendment is served or the date the Amendment is filed with the Court in accordance with this Section. Any material Amendment to the DIP Loan Documents must be approved by the Court to be effective.

Section 2. Liens; Superpriority Administrative Claim Status; Adequate Protection.

2.1 Priority and Liens.

2.1.1 Lien Grant. To secure the prompt payment and performance of any and all obligations of the Debtors to the DIP Agent and the DIP Lenders of whatever kind, nature or description, absolute or contingent, now existing or hereafter arising, the DIP Agent, for the benefit of itself and the other DIP Lenders, shall have and is hereby granted, effective as of the Petition Date, valid and perfected first priority security interests and liens, superior to all other liens, claims or security interests that any creditor of the Debtors' Estates may have (but subject only to the Carve-Out Expenses (as defined below) and the Permitted Priority Liens, as and to the extent expressly provided in Section 2.1.3 below), in and upon all of the Collateral (collectively, the "**DIP Liens**").

2.1.2 Collateral.

Except as otherwise expressly provided for herein, for purposes of this Final Order, the term "**Collateral**" shall have the meaning ascribed to such term in the DIP Loan Documents, which term includes the following: all tangible and intangible assets and property of the Debtors, now existing or hereinafter acquired, including, without limitation, all cash and cash equivalents (whether maintained with the DIP Agent or otherwise), and any investment in such cash or cash equivalents, money, inventory, goods, accounts receivable, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights, securities (whether or not marketable), properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, bank accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds (provided, however, that to the extent that any lease prohibits or restricts the granting of a lien thereon, or otherwise prohibits or restricts hypothecation of the leasehold interest, then in such event the DIP Agent shall be granted a lien only on the economic value of, proceeds of sale or other disposition of, and any other proceeds and products of such leasehold interests), real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, permits, franchise rights, capital stock and other equity interests of subsidiaries, tax and other refunds, insurance or other proceeds, commercial tort claims, causes of action, including without limitation causes of action arising under (i) section 549 of the Bankruptcy Code and (ii) section 547 of the Bankruptcy Code against any person or entity with whom the purchaser of the Debtors' assets is conducting and will continue to conduct business with as of the closing of the Sale (as defined below) (the "**Go-Forward Vendor Claims**"), rights under section 506(c) of the Bankruptcy Code, and all other property or "property of the estate" (as defined in section 541 of the Bankruptcy Code) of any kind or nature, real or personal, or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits, replacements, and cash and non-cash proceeds of all of the foregoing, wherever located. Notwithstanding the foregoing or anything to the contrary contained in the DIP Loan Documents, the DIP Liens shall not attach to, and the Collateral shall not include, the following assets (the "**Estate Assets**"): (i) any and all causes of action, claims, objections and defenses arising under or

1 deriving from Sections 506(d), 510, 542, 544, 545, 547, 548, 550, 551, 553(b) or 724(a) of the
2 Bankruptcy Code, or any similar state or federal law ("***Avoidance Actions***") and proceeds relating
3 thereto, other than the Go-Forward Vendor Claims; (ii) the Debtors' interest in the Visa/Mastercard
4 interchange fee class action, styled as *IN RE PAYMENT CARD INTERCHANGE FEE AND*
5 *MERCHANT DISCOUNT ANTITRUST LITIGATION*, Case No. 05-MD-1720 (JG) (JO) (E.D.N.Y.)
6 (the "***Visa/Mastercard Litigation***"); (iii) the Debtors' interests in any indebtedness owed to the
7 Debtors by present or former shareholders or insiders of the Debtors ("***Shareholder Claims***"); and
8 (iv) any and all claims or causes of action held by the Debtors or the Debtors' estates against the
9 Second Lien Agent or the Second Lien Lenders (the "***Second Lien Lender Claims***").

10 2.1.3 Lien Priority. The DIP Liens shall be first and senior in priority to all
11 other interests and liens of every kind, nature and description, whether created consensually, by an
12 order of the Court or otherwise, including, without limitation, liens or interests granted in favor of
13 third parties in conjunction with Section 363, 364 or any other Section of the Bankruptcy Code or
14 other applicable law; provided, however, that the DIP Liens shall be subject to the Permitted Priority
15 Liens and to the Carve-Out Expenses to the extent provided for in Section 2.3 of this Final Order.
16 The DIP Liens and the Superpriority Claim (as defined below) (A) shall not be subject to Sections
17 506, 510, 542, 549, 550, or 551 of the Bankruptcy Code or the "equities of the case" exception of
18 Section 552 of the Bankruptcy Code, (B) shall be senior in priority and right of payment to (x) any
19 lien that is avoided and preserved for the benefit of the Debtors and their Estates under Section 551
20 of the Bankruptcy Code or otherwise and (y) any intercompany or affiliate liens or claims of the
21 Debtors, and (C) shall be valid and enforceable against any trustee or any other estate representative
22 appointed or elected in the Cases, upon the conversion of any of the Cases to a case under chapter 7
23 of the Bankruptcy Code, or in any other proceedings related to any of the foregoing (each, a
24 "***Successor Case***"), and/or upon the dismissal of any of the Cases; provided further, nothing in this
25 Final Order, the DIP Credit Agreement or the DIP Loan Documents impairs or affects the rights of
26 creditors of the Debtors asserting statutory trust claims under Section 5(c) of the Perishable
27 Agricultural Commodities Act, 7 U.S.C. 499e(c) ("***PACA***"), or impairs any defenses of the Debtors,
28 DIP Lenders, or any other party in interest to such claims. To the extent qualified PACA trust

creditors have priority to assets of the Debtors impressed with the federal statutory trust under PACA, ("*PACA Trust Assets*"), (1) such priority shall not be impacted by anything in this Final Order, the DIP Credit Agreement or the DIP Loan Documents and such priority shall continue notwithstanding any claims that may be asserted against the Debtors by other creditors (including the DIP Lenders and any other creditors asserting priority, administrative, secured, or unsecured claims) and (2) to the extent the Debtors use PACA Trust Assets on the date of the filing of the petition or thereafter for any purpose other than the payment of qualified PACA trust claims, the PACA trust claims in those PACA Trust Assets will attach to Debtors' post-petition assets to the same extent to which Debtors used PACA Trust Assets and with the same validity and priority as existed as of the petition date with respect to all other creditors of the Debtors (including the DIP Lenders and any other creditors asserting priority, administrative, secured, or unsecured claims), notwithstanding any other language in this Final Order to the contrary.

2.1.4 Enforceable Obligations. The DIP Loan Documents shall constitute and evidence the valid and binding DIP Obligations of the Debtors, which DIP Obligations shall be enforceable against the Debtors, their Estates and any successors thereto (including, without limitation, any trustee or other estate representative in any Successor Case), and their creditors, in accordance with their terms. No obligation, payment, transfer, or grant of security under the DIP Credit Agreement, the other DIP Loan Documents, or this Final Order shall be stayed, restrained, voidable, avoidable, disallowable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under Section 502(d) or based on any Avoidance Actions), or subject to any avoidance, disallowance, impairment, reduction, setoff, offset, recoupment, recharacterization, disgorgement, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, surcharge, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

2.1.5 Post-Petition Lien Perfection. This Final Order shall be sufficient and conclusive evidence of the priority, perfection and validity of the DIP Liens, effective as of the Petition Date, without any further act and without regard to any other federal, state or local requirements or law requiring notice, filing, registration, recording or possession of the Collateral, or

other act to validate or perfect such security interest or lien (each, a "**Perfection Act**"). Notwithstanding the foregoing, if the DIP Agent shall, in its sole discretion, elect for any reason to file, record or otherwise effectuate any Perfection Act, the DIP Agent is authorized to perform such act, and the Debtors are authorized and directed to perform such act to the extent necessary or required by the DIP Agent, which act or acts shall be deemed to have been accomplished as of the Petition Date, notwithstanding the date and time actually accomplished, and in such event, the subject filing or recording office is authorized to accept, file or record any document in regard to such act in accordance with applicable law. The DIP Agent, on behalf of the DIP Lenders, may choose to file, record or present a certified copy of the Interim Order and/or this Final Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file or record such certified copy of the Interim Order and/or this Final Order in accordance with applicable law. Should the DIP Agent so choose and attempt to file, record or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive or alter the validity, enforceability, attachment, or perfection of the post-petition liens and security interests granted herein by virtue of the entry of this Final Order.

2.2 Superpriority Administrative Expense. For all DIP Obligations now existing or hereafter arising pursuant to the Financing Orders, the DIP Loan Documents or otherwise, the DIP Agent, for the benefit of itself and the other DIP Lenders, is granted an allowed superpriority administrative claim pursuant to Section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities and indebtedness of the Debtors, whether now in existence or hereafter incurred by the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, *inter alia* Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 364(c)(1), 546, 726, 1113 or 1114 or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment (the "**Superpriority Claim**"), provided, however, that the Superpriority Claim shall be subject only to the Permitted Priority Liens and the payment of the Carve-Out Expenses. Notwithstanding the foregoing, the Superpriority

Claim shall under no circumstances be payable from the Estate Assets or proceeds relating thereto. The Superpriority Claim shall, for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under Section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof. Other than as expressly provided in the DIP Credit Agreement and this Final Order with respect to the Carve-Out Expenses, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330, or 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Case, and no priority claims are, or will be, senior to, prior to, or on a parity with the Superpriority Claim or the DIP Obligations, or with any other claims of the DIP Secured Parties arising hereunder.

2.3 Carve-Out Expenses.

2.3.1 Upon the written notice by the DIP Agent to the Debtors (or their lead counsel), the U.S. Trustee, and lead counsel to the Committee identifying an Event of Default and triggering the Carve-Out Expense Reduction Period (as defined in the DIP Credit Agreement) (the "***Carve-Out Trigger Date***"), the DIP Agent's, the DIP Lenders', the First Lien Agent's, the First Lien Lenders', the Second Lien Agent's, and the Second Lien Lenders' liens, claims and security interests in the Collateral and their respective superpriority claims shall, in each instance, be subject only to the Permitted Priority Liens and to the right of payment of the following expenses (the "***Carve-Out Expenses***"):

a. statutory fees payable to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6), in such amounts as are determined by agreement with the Office of the United States Trustee or by final order of the Court;

b. fees payable to the Clerk of this Court;

c. accrued, but unpaid postpetition payroll obligations and payroll taxes of the Debtors up to the amounts set forth in the Budget and incurred during the two week period prior to the Carve-Out Trigger Date;

1 d. accrued, but unpaid postpetition sales taxes of the Debtors
2 incurred during the thirty (30) days prior to the Carve-Out Trigger Date (including any
3 associated interest or penalties), without regard to any limitations in the Budget;

4 e. (i) the unpaid and outstanding reasonable fees and expenses
5 actually incurred on or after the Petition Date and prior to the Carve-Out Trigger Date, and
6 approved and allowed by a final order of the Court pursuant to Sections 326, 328, 330, or 331
7 of the Bankruptcy Code by attorneys, accountants and other professionals retained by the
8 Debtors and any Committee under Section 327 or 1103(a) of the Bankruptcy Code
9 (collectively, the "**Professionals**"), in an amount not to exceed the amounts set forth for each
10 Professional in the Budget for the applicable period prior to the Carve-Out Trigger Date in
11 the Budget (after application of any unapplied retainers), plus (x) any fees and expenses of
12 the Debtors' ordinary course Professionals included in the Budget for the period prior to the
13 Carve-Out Trigger Date, (y) unbudgeted fees and expenses (including success fees) payable
14 to Mastodon Ventures, Inc., provided that the terms of employment of such firm have been
15 approved by the DIP Agent and First Lien Agent in their sole and absolute discretion, and (z)
16 any reasonable out-of-pocket expenses incurred by Committee members in the performance
17 of their fiduciary duties and allowed by the Court upon requisite notice in an amount not to
18 exceed \$10,000; and (ii) the reasonable fees and expenses actually incurred, and approved
19 and allowed by a final order of the Court pursuant to Sections 326, 328, 330, or 331 of the
20 Bankruptcy Code, by the Professionals and Committee members during the Carve-Out
21 Expense Reduction Period in an aggregate sum (after application of any unapplied retainers)
22 not to exceed \$250,000 (the "**Professional Expense Cap**"). Any payments made to
23 Professionals during the Carve-Out Reduction Period shall reduce the Professional Expense
24 Cap on a dollar-for-dollar basis. Following entry of this Final Order and on a weekly basis
25 thereafter, the Debtors shall be authorized to transfer funds to the Pachulski Stang Ziehl &
26 Jones LLP Client Trust Account (the "**Expense Reserve Account**") in the amounts set forth
27 in the Budget for fees and expenses of the Debtors' Professionals and the Committee's
28 Professionals. Such funds shall be held in the Expense Reserve Account for the benefit of

the Debtors' Professionals and the Committee's Professionals, respectively, to be applied to the fees and expenses of such Professionals approved for payment pursuant to one or more orders of the Bankruptcy Court (the "***Segregated Funds***"), provided, however, that for the avoidance of doubt, fees and expenses payable to the Professionals shall be paid first out of the Expense Reserve Account, and all amounts deposited in the Expense Reserve Account shall reduce, on a dollar for dollar basis, the obligation of the DIP Agent and First Lien Agent to fund the Carve-Out Expenses, and provided further that there shall be no requirement that any amounts in respect of any success fees that may be earned by Mastodon Ventures, Inc. be deposited into the Expense Reserve Account. Without in any way limiting the Debtors' ability to use the Segregated Funds to pay fees payable to the Office of the United States Trustee and the Clerk of the Court and the fees and expenses of the Professionals, the Segregated Funds in the Expense Reserve Account shall remain encumbered by and subject to the DIP Liens, the Superpriority Claim, the Senior Replacement Liens, the Junior Replacement Liens, the First Lien Adequate Protection Claim, and the Second Lien Adequate Protection Claim, in their respective order of priority; provided, however, that such liens and claims shall be subordinate to the Carve-Out Expenses. Notwithstanding the foregoing, none of the Carve-Out Expenses, proceeds from the DIP Facility or Cash Collateral may be used (1) to investigate or challenge in any respect the validity, perfection, priority, extent or enforceability of the First Lien Loan Documents or the liens or security interests securing the obligations under the First Lien Loan Documents, (2) to delay, challenged or impede any rights of the DIP Agent and DIP Lenders under any of the DIP Loan Documents or the Financing Orders, or (3) to pursue any claims or causes of action of any kind against the DIP Agent, the DIP Lenders, the First Lien Agent or the First Lien Lenders in their respective capacities as agents or lenders under the DIP Loan Documents or First Lien Loan Documents, as the case may be; and

f. all amounts owing to Sysco Corporation in respect of postpetition trade credit extended by Sysco Corporation to the Debtors under that certain "Master Distribution Agreement" by and among Sysco Corporation and S.B. Restaurant Co.,

entered into on March 19, 2012 (the “**Sysco Distribution Agreement**”) prior to any termination or material amendment of the Sysco Distribution Agreement, provided that no amounts shall be payable under this subsection (f) until all amounts payable under subsections (a) through (e) hereof have been paid in full.

2.3.2 Simultaneously with the termination of the DIP Facility, any unused portion of the \$200,000 allocated in the Budget to pay the allowed fees and expenses of Committee Professionals shall be funded by the DIP Agent, and the Debtors shall transfer such funds to Cooley LLP’s Client Trust Account to pay the allowed fees and expenses incurred by the Committee Professionals in connection with the monetization of the Estate Assets. In addition, in connection with any sale of substantially all of the Debtors’ assets, the schedule of wind-down expenses to be paid by the buyer of such assets at the closing of the sale (the “**Wind-Down Budget**”) shall allocate an additional \$100,000 to pay the allowed fees and expenses of Committee Professionals, which additional funds shall also be treated in the manner set forth in the first sentence of this section 2.3.2. In the event that (i) these cases are converted to cases under Chapter 7 or (ii) a plan of reorganization or liquidation is approved by the Court, any funds remaining in the Cooley LLP Client Trust Account after the payment of all allowed fees and expenses of the Committee Professionals shall be turned over to the Chapter 7 trustee or dealt with as provided by the plan, as applicable.

2.4 Use of Cash Collateral; Adequate Protection.

2.4.1 Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final Order, the DIP Credit Agreement and the other DIP Loan Documents, and in accordance with the Budget, the Debtors shall be and are hereby authorized to use, until the termination of the DIP Agent’s and the DIP Lenders’ commitment to lend under the DIP Credit Agreement or the other DIP Loan Documents, Cash Collateral subject to the Senior Liens and the Junior Liens. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their Estates outside the ordinary course of business, or any Debtor’s use of Cash Collateral or other proceeds resulting therefrom, except as expressly permitted in this Final Order, the DIP Credit Agreement, and the other DIP Loan Documents and in strict accordance with the Budget.

2.4.2 First Lien Adequate Protection.

a. *Senior Replacement Liens.* As adequate protection for the diminution in value of their interests in the Pre-Petition Collateral (including Cash Collateral) on account of the Debtors' use of such Pre-Petition Collateral (including Cash Collateral), the imposition or enforcement of the automatic stay, the incurrence of the DIP Obligations, and the subordination to the Carve-Out Expenses, the First Lien Agent, for the benefit of the First Lien Lenders, in respect of the First Lien Obligations, is hereby granted pursuant to Sections 361 and 363 of the Bankruptcy Code, valid, binding, enforceable and perfected replacement liens upon and security interests in all Collateral (the "*Senior Replacement Liens*"); provided, however, that to the extent that any lease prohibits or restricts the granting of a lien thereon, or otherwise prohibits or restricts hypothecation of the leasehold interest, then in such event the First Lien Agent shall be granted a Senior Replacement Lien only on the economic value of, proceeds of sale or other disposition of, and any other proceeds and products of such leasehold interests. The Senior Replacement Liens shall be junior and subordinate only to (i) the DIP Liens, (ii) the Permitted Priority Liens, and (iii) the Carve-Out Expenses. The Senior Replacement Liens and the First Lien Adequate Protection Claim (as defined below) (A) shall not be subject to Sections 510, 542, 549, 550, or 551 of the Bankruptcy Code, the "equities of the case" exception of Section 552 of the Bankruptcy Code or Section 506(c) of the Bankruptcy Code, (B) shall be senior in priority and right of payment to (x) any lien that is avoided and preserved for the benefit of the Debtors and their Estates under Section 551 of the Bankruptcy Code or otherwise or (y) any intercompany or affiliate liens or claims of the Debtors, and (C) shall be continuing, binding, valid, perfected, unavoidable, and enforceable against any trustee or any other estate representative appointed or elected in the Cases or any Successor Case, and/or upon the dismissal of any of the Cases.

b. *First Lien Section 507(b) Priority Claim.* To the extent that the Senior Replacement Liens are insufficient protection against the diminution in value of their interests in the Pre-Petition Collateral (including Cash Collateral) on account of the Debtors' use of such Pre-Petition Collateral (including Cash Collateral), the incurrence of the DIP

Obligations, the imposition of the automatic stay and the subordination to the Carve-Out Expenses, the First Lien Agent, for the benefit of the First Lien Lenders, in respect of the First Lien Obligations, is hereby granted, pursuant to Section 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases with priority over all administrative expense claims and unsecured claims against the Debtors or their Estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kind specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 and any other provision of the Bankruptcy Code (the "**First Lien Adequate Protection Claim**"). The First Lien Adequate Protection Claim shall be junior and subordinate only to (i) the right of payment of the DIP Obligations owing to the DIP Lenders, (ii) the Superpriority Claim granted in favor of DIP Agent, for the benefit of the DIP Lenders, pursuant to this Final Order, and (iii) the Carve-Out Expenses. Notwithstanding anything to the contrary herein, the First Lien Adequate Protection Claim shall under no circumstances be payable from the Estate Assets or proceeds relating thereto.

c. *Payment of Fees, Costs and Expenses:* As further adequate protection, and without limiting any rights of the First Lien Agent and the First Lien Lenders under Section 506(b) of the Bankruptcy Code, all of which rights are hereby preserved, and in consideration, and as a requirement, for obtaining the consent of the First Lien Lenders to the entry of the Financing Orders and the Debtors' consensual use of Cash Collateral as provided herein, the Debtors shall pay, up to the amounts for "Lender's Professionals" set forth in the Budget, no later than three (3) days following receipt by the Debtors of any invoice therefore, with a copy to the Committee and United States Trustee the reasonable prepetition and postpetition fees and expenses for the professionals advising the First Lien Agent, including Klee, Tuchin, Bogdanoff & Stern, LLP ("**KTBS**"), counsel to the First Lien Agent, and any other advisors to the First Lien Agent. The fees and expenses paid hereunder shall not be subject to approval by the Court or to the United States Trustee Guidelines.

2.4.3 Second Lien Adequate Protection.

a. *Junior Lien Replacement Liens.* As adequate protection for the diminution in value of their interests in the Pre-Petition Collateral (including Cash Collateral) on account of the Debtors' use of such Pre-Petition Collateral (including Cash Collateral), the imposition or enforcement of the automatic stay, the incurrence of the DIP Obligations, and the subordination to the Carve-Out Expenses, the Second Lien Agent, for the benefit of the Second Lien Lenders, is hereby granted, pursuant to Sections 361 and 363 of the Bankruptcy Code, valid, binding, enforceable and perfected junior and subordinate replacement liens upon and security interests in all Collateral (the "***Junior Replacement Liens***"); provided, however, that to the extent that any lease prohibits or restricts the granting of a lien thereon, or otherwise prohibits or restricts hypothecation of the leasehold interest, then in such event the Second Lien Agent shall be granted a Junior Replacement Lien only on the economic value of, proceeds of sale or other disposition of, and any other proceeds and products of such leasehold interests. The Junior Replacement Liens shall be junior and subordinate to (i) the DIP Liens, (ii) the Permitted Priority Liens, (iii) the Carve-Out Expenses (iv) the Senior Liens, (v) the Senior Replacement Liens, (vi) all other liens and security interests granted for the benefit of the DIP Lenders and the First Lien Lenders in the Collateral, and (vii) any other valid, perfected, enforceable and non-avoidable lien that is senior to the Junior Liens. The Second Lien Agent and the Second Lien Lenders shall have no right to seek or exercise any rights or remedies in respect of the Junior Replacement Lien (whether in these Chapter 11 Cases or any subsequently converted case(s)) until all DIP Obligations have been indefeasibly paid and satisfied in full in accordance with the DIP Loan Documents and this Final Order, and until the Discharge of First Lien Obligations (as such term is defined in the First Lien Loan Documents) has occurred.

b. *Second Lien Section 507(b) Priority Claim:* To the extent that the Junior Replacement Liens are inadequate to provide sufficient protection for the diminution in value of the interest of the Second Lien Agent and the Second Lien Lenders in the Pre-Petition Collateral (including Cash Collateral) on account of the Debtors' use of such

Pre-Petition Collateral (including Cash Collateral), the incurrence of the DIP Obligations, the imposition of the automatic stay and the subordination to the Carve-Out Expenses, the Second Lien Agent, for the benefit of Second Lien Lenders, is hereby granted, pursuant to Section 507(b) of the Bankruptcy Code, an allowed junior superpriority administrative expense claim in each of the Cases and any Successor Cases with priority over all administrative expense claims and unsecured claims against the Debtors or their Estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kind specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 and any other provision of the Bankruptcy Code (the "***Second Lien Adequate Protection Claim***"), provided, however, that the Second Lien Adequate Protection Claim shall be junior and subordinate to (i) the right of payment of the DIP Obligations owing to the DIP Lenders, (ii) the Superpriority Claim granted in favor of DIP Agent, for the benefit of itself and the DIP Lenders, pursuant to this Final Order, (iii) the Carve-Out Expenses, and (iv) the First Lien Adequate Protection Claim. Notwithstanding anything to the contrary herein, the Second Lien Adequate Protection Claim shall under no circumstances be payable from the Estate Assets or proceeds relating thereto.

Section 3. Authorization to Pay Professional Fees of DIP Agent and DIP Lenders.

3.1 Up to the amounts for "Lender's Professionals" set forth in the Budget, any and all fees paid or required to be paid in connection with the DIP Loan Documents (including, but not limited to, the prepetition and postpetition fees and expenses of the DIP Agent and the DIP Lenders) are hereby authorized and shall be paid as set forth in the DIP Credit Agreement.

Section 4. Sale Process.

4.1 Sale Process / Payment of Prepetition Debt. The Debtors intend to conduct an accelerated process to sell all or substantially all of their assets or equity (the "***Sale***"). The Debtors shall provide a weekly telephonic update on their Sale process to the DIP Agent and its advisors and shall provide all other updates on the Sale process as the DIP Agent or its advisors may request and as provided for in the DIP Loan Documents. In addition, the Debtors are authorized and directed to

1 distribute directly to the DIP Agent for the benefit of the DIP Lenders, and the First Lien Agent for
2 the benefit of the First Lien Lenders, as the case may be, the Sale proceeds from any winning bid(s)
3 for some or all of the Debtors' assets, other than proceeds relating to the sale of Estate Assets.

4 4.2 Sale Milestones. As a condition to funding under the DIP Facility, the
5 Debtors shall achieve the following timeline milestones in connection with the Sale, in each case in a
6 manner satisfactory to the DIP Agent and the DIP Lenders (the "**Sale Milestones**"):

7 a. entry of an order of the Court, satisfactory to the DIP Agent
8 and the DIP Lenders in their sole and absolute discretion, approving bidding and sale
9 procedures (the "**Bid Procedures Order**") no later than 23 days after the Petition Date;

10 b. entry of an order, satisfactory to the DIP Agent and the DIP
11 Lenders in their sole and absolute discretion, approving the Debtors' retention of an
12 investment banking firm acceptable to the DIP Agent and the DIP Lenders, no later than 30
13 days after the Petition Date;

14 c. completion of an offering memorandum, teaser and
15 nondisclosure agreement no later than 30 days after the Petition Date;

16 d. conduct an auction (the "**Auction**"), if more than one bona fide
17 offer meeting the conditions established by the Debtors with the approval of the DIP Agent
18 and the DIP Lenders is received no later than 60 days after the Petition Date;

19 e. entry of a final order of the Court, satisfactory to the DIP
20 Agent and the DIP Lenders in their sole and absolute discretion, approving the Sale (the
21 "**Sale Order**") no later than 75 days after the Petition Date; and

22 f. close the Sale no later than 15 days after entry of the Sale
23 Order.

24 Each of the foregoing Sale Milestones may be extended or waived by the DIP Agent in its sole and
25 absolute discretion.

26 4.3 In connection with any sale of all or substantially all of the Debtors' assets or
27 equity, the DIP Agent and First Lien Agent shall be permitted to credit bid any portion or all of the
28 Debtors' outstanding obligations under the DIP Credit Agreement and the First Lien Credit

1 Agreement pursuant to Bankruptcy Code section 363(k); provided that so long as Cerberus Business
2 Finance, LLC, or any of its Affiliates, hold a majority of the First Lien Loans, the DIP Agent and
3 First Lien Agent will not increase the Credit Bid Amount (as that term is used and defined in that
4 certain *Asset Purchase Agreement*, dated as of June 20, 2014, by and between the Debtors and the
5 First Lien Agent) above \$15 million, and any bid submitted by the DIP Agent and First Lien Agent
6 shall be deemed a “Qualified Bid” under the Court’s approved bidding procedures. For the
7 avoidance of doubt, neither the First Lien Agent nor any of its successors or assigns may submit a
8 credit bid for the Estate Assets.

9 4.4 In connection with, and as a condition precedent to, the closing of any sale of
10 all or substantially all of the Debtors’ assets or equity, the Debtors shall pay when due, and in any
11 event at or prior to the closing of such sale to New Hampshire Insurance Company, National Union
12 Fire Insurance Company of Pittsburgh, PA, and certain other affiliates of AIG Property Casualty,
13 Inc. (collectively, “**National Union**”), which provided a now in force insurance program which
14 commenced May 1, 2006 (the “**National Union Insurance Program**”), an installment payment in
15 the aggregate amount of \$461,470 due August 1, 2014, consisting of: (i) collateral due under the
16 National Union Insurance Program in the amount of \$200,000 and (ii) insurance premium due under
17 the National Union Insurance Program in the amount of \$261,470, which amount represents a
18 reduction of \$100,000; *provided, however*, the automatic stay is hereby modified to permit the
19 collateral held by National Union that secures the Debtors’ obligations under the National Union
20 Insurance Program to be used to fund all loss reimbursements under the National Union Insurance
21 Program, and for the purposes of calculating any claim by National Union against the estate, the
22 collateral shall first be deemed to be applied to postpetition losses; *provided further* however the
23 Debtors’ obligations under National Union Insurance Program is in no other way modified. Further,
24 in the event that the collateral held by National Union for the National Union Program is not
25 sufficient to satisfy the loss obligations of the Debtors to National Union secured by such collateral,
26 this paragraph shall not be deemed to prejudice any claim National Union may file for any
27 deficiency, which is to be treated in such manner, and in such class, as shall be applicable
28

1 Section 5. Cash Management System; Control Over Debtors' Accounts. The Debtors shall
2 maintain their existing cash management system to the extent set forth in the DIP Loan Documents
3 unless the DIP Agent, in its sole and absolute discretion, consents in writing to any proposed
4 modification to such cash management system; provided, that the Debtors shall be authorized, at the
5 direction of the DIP Agent and First Lien Agent to enter into amendments to their existing cash
6 management system. Pursuant to the Interim Order and this Final Order, all collections and
7 proceeds of any Collateral or services provided by any Debtor and all Cash Collateral which shall at
8 any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now
9 or shall become entitled at any time, shall be promptly deposited in the same bank accounts into
10 which collections and collateral proceeds were deposited under the First Lien Loan Documents (or in
11 such other accounts as are designated by the DIP Agent from time to time). In addition, the DIP
12 Agent shall be deemed, without any further action of any kind, to have "control" over all of the
13 Debtors' bank accounts within the meaning of Sections 8-106, 9-104, 9-105, 9-106, 9-107 and 9-314
14 of the New York Commercial Code.

15 Section 6. Proof of Claim. The First Lien Agent, on behalf of itself and the First Lien Lenders,
16 shall be deemed to have filed a timely proof of claim in the Cases in an amount equal to no less than
17 \$27,375,000.00, exclusive of all accrued and unpaid interest, costs, expenses, and fees owed to the
18 First Lien Agent and First Lien Lenders. The First Lien Agent shall not be required to file any other
19 proof of claim in the Cases (or any Successor Cases) on behalf of the First Lien Lenders setting forth
20 the First Lien Obligations, or any portion thereof. Notwithstanding any provision to the contrary in
21 any order to be entered by the Court concerning the establishment of a bar date in any of the Cases
22 or in any Successor Cases, the First Lien Agent, on behalf of itself and the First Lien Lenders, is
23 hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or
24 supplement, as it deems appropriate) one or more proofs of claim in each of the Cases or in any
25 Successor Cases for any claim allowed herein. Any order entered, or to be entered, by the Court
26 concerning the establishment of a bar date in any of the Cases or in any Successor Cases shall not
27 apply to the DIP Agent, the DIP Lenders, the First Lien Agent, and the First Lien Lenders. Any and
28 all payments made and accepted by the First Lien Agent on behalf of the First Lien Lenders or made

1 directly to the First Lien Lenders, whether pre-petition or post-petition, in connection with the First
2 Lien Obligations or the Financing Orders are final and not subject to avoidance or recovery by the
3 Debtor or any other entity under chapter 5 of the Bankruptcy Code or otherwise.

4 Section 7. Default; Rights and Remedies; Relief from Stay.

5 7.1 Events of Default. The occurrence of any of the following events shall
6 constitute an "***Event of Default***" under this Final Order and the DIP Loan Documents:

7 a. the Debtors' failure to timely achieve any of the Sale
8 Milestones;

9 b. a plan of reorganization or liquidation is proposed which does
10 not provide for termination of the commitment under the DIP Facility and payment in full of
11 the DIP Obligations and the First Lien Obligations in cash on the effective date of such plan;

12 c. any other superpriority administrative expense claim or lien
13 senior to or *pari passu* with the DIP Obligations, the DIP Liens, the First Lien Adequate
14 Protection Claim or the Senior Replacement Liens shall be granted, approved, imposed, or
15 otherwise created;

16 d. any of the Debtors seeks to obtain additional financing under
17 section 364(c) or 364(d) of the Bankruptcy Code or to grant any lien other than liens
18 permitted under the DIP Credit Agreement without the prior written consent of the DIP
19 Agent and the Required DIP Lenders;

20 e. any Debtor files or any representative of any Debtor's estate
21 seeks leave to file or files an action challenging the validity, perfection, priority, extent, or
22 enforceability of the DIP Loan Documents or the liens and claims granted thereunder;

23 f. any Debtor commences any action against any of the First Lien
24 Agent or the First Lien Lenders with respect to the First Lien Obligations including, without
25 limitation, any action to avoid, modify, dispute, challenge, or subordinate any of the First
26 Lien Obligations or any Senior Liens, or entry of an order in any action by any other party
27 granting such relief;
28

g. any DIP Collateral becoming subject to surcharge or marshaling;

h. the entry of an order dismissing any of the Cases that does not provide for the termination of the commitment under the DIP Facility and payment in full of the DIP Obligations and the First Lien Obligations in cash prior to dismissal;

i. the entry of an order of the Court granting relief from the automatic stay to the holder of any claim against one or more of the Debtors equal to or exceeding \$150,000;

j. any material contract is rejected or otherwise terminated (other than in accordance with its terms as a result of a specified or scheduled termination date) or any material property of the Debtors or their respective Estates is sold, in each instance having a value of \$100,000 or more, without the express prior written consent of the DIP Agent in its sole and absolute discretion;

k. any Debtor's failure to perform, in any respect, any of the terms, conditions or covenants or their obligations under this Final Order; or

l. any other Event of Default under the DIP Credit Agreement or any of the other DIP Loan Documents.

7.2 Rights and Remedies Upon Event of Default. Upon the occurrence of and during the continuance of an Event of Default, (i) the Debtors shall be bound by all restrictions, prohibitions and other terms as provided in this Final Order, the DIP Credit Agreement and the other DIP Loan Documents, (ii) the DIP Agent, on behalf of itself and the DIP Lenders, shall be entitled to take any act or exercise any right or remedy (subject to Section 7.4 below) as provided in this Final Order or the DIP Loan Documents, including, without limitation, immediately suspending or immediately terminating the DIP Facility and (iii) the Debtors' right to use Cash Collateral shall thereupon immediately and without further action of any kind terminate. The DIP Agent and the DIP Lenders shall have no obligation to lend or advance any additional funds to or on behalf of the Debtors, or provide any other financial accommodations to the Debtors, immediately upon or after the occurrence of an Event of Default or upon the occurrence of any act, event, or condition that,

with the giving of notice or the passage of time, or both, would constitute an Event of Default.

7.3 Expiration of Commitment. Upon the earlier of (i) expiration of Borrower's authority to borrow and obtain other credit accommodations from the DIP Agent and the DIP Lenders pursuant to the terms of this Final Order and the DIP Loan Documents (except if such authority shall be extended with the prior written consent of the DIP Agent in its sole and absolute discretion, which consent shall not be implied or construed from any action, inaction or acquiescence by the DIP Agent or any DIP Lender) and (ii) the occurrence of an Event of Default set forth in Section 7.1 above, all of the DIP Obligations shall automatically become due and payable and the DIP Agent and the DIP Lenders shall be automatically and completely relieved from the effect of any stay under Section 362 of the Bankruptcy Code, any other restriction on the enforcement of their liens upon and security interests in the Collateral or any other rights granted to the DIP Agent and the DIP Lenders pursuant to the terms and conditions of the DIP Loan Documents or this Final Order, and the DIP Agent, acting on behalf of itself and the other the DIP Lenders, shall be and is hereby authorized, in its sole discretion, to take any and all actions and remedies provided to it in this Final Order, the DIP Loan Documents or applicable law which the DIP Agent may deem appropriate and to proceed against and realize upon the Collateral or any other property of the Debtors' Estates following five (5) business days' notice of the Event of Default to the Debtors, the Committee and the U.S. Trustee, unless an order of the Court is entered to the contrary.

7.4 Relief from Automatic Stay. The automatic stay provisions of Section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified and vacated without further notice, application or order of the Court to the extent necessary to permit the DIP Agent, acting on behalf of itself and the DIP Lenders, to perform any act authorized or permitted under or by virtue of this Final Order or the DIP Loan Documents, including, without limitation, (a) to implement the post-petition financing arrangements authorized by this Final Order and pursuant to the terms of the DIP Loan Documents, and (b) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the Collateral. In addition, and without limiting the foregoing, upon the occurrence of an Event of Default and after providing five (5) business days' prior written notice (the "**Enforcement Notice**") to lead counsel for

the Debtors, lead counsel for the Committee and the U.S. Trustee, the DIP Agent, acting on behalf of itself and the DIP Lenders, shall be entitled to take any action and exercise all rights and remedies provided to it by this Final Order, the DIP Loan Documents or applicable law as the DIP Agent may deem appropriate in its sole discretion to, among other things, proceed against and realize upon the Collateral or any other assets or properties of Debtors' Estates upon which the DIP Agent, for the benefit of itself and the DIP Lenders, has been or may hereafter be granted liens or security interests to obtain the full and indefeasible repayment of all DIP Obligations. For the avoidance of doubt, during the five (5) business day period referenced above, the DIP Agent and DIP Lenders shall have no obligation to make any additional advances under the DIP Loan Documents and shall further be permitted to continue to exercise control over the Debtors' cash and bank accounts (including the right to continue to sweep and apply cash) in accordance with the DIP Loan Documents.

7.5 All financial information required to be provided by the Debtors to the DIP Agent pursuant to the DIP Credit Agreement shall also be provided by the Debtors to Sysco Corporation, and, upon the occurrence of an Event of Default and a subsequent termination of the DIP Facility by the DIP Agent, Sysco Corporation shall be entitled to immediately cease the extension of credit to the Debtors under the Sysco Distribution Agreement and shall further be entitled to require the Debtors to pay cash in advance or provide other security for any subsequent provision of goods. In no event shall the Sysco Corporation be required to extend credit terms to the Debtors postpetition if the Debtors are not timely paying for such shipments.

Section 8. Good Faith. The terms of the Financing Orders were negotiated in good faith and at arm's length by and among the Debtors, the First Lien Agent, the First Lien Lenders, the DIP Agent and the DIP Lenders. The DIP Agent and the DIP Lenders shall be entitled to the full protections 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. Accordingly, if any or all of the provisions of this Final Order are hereafter modified, vacated, or stayed, such modification, vacation, or stay shall not affect, prejudice or impair (a) the validity of any obligation, indebtedness or liability incurred by the Debtors to the DIP Agent and the DIP Lenders under the DIP Loan Documents or the validity of any obligation, indebtedness or liability incurred by the Debtors to the First Lien

1 Agent and the First Lien Lenders under this Final Order before the effective date of such
2 modification, vacation or stay, or (b) the validity or enforceability of any security interest, lien,
3 priority, or other protection authorized or created hereby. Notwithstanding any such modification,
4 vacation, or stay, any indebtedness, obligations or liabilities incurred by the Debtors to the First Lien
5 Agent, the First Lien Lenders, the DIP Agent and the DIP Lenders before the effective date of such
6 modification, vacation, or stay shall be governed in all respects by the original provisions of this
7 Final Order, and the First Lien Agent, the First Lien Lenders, the DIP Agent and the DIP Lenders
8 shall be entitled to all the rights, remedies, privileges and benefits granted herein with respect to all
9 such indebtedness, obligations or liabilities.

10 Section 9. Representations; Covenants; and Waivers.

11 9.1 First Lien Obligations. The First Lien Obligations are allowed in full, are not
12 subject to any setoff, recoupment, counterclaim, avoidance, subordination, deduction, cure,
13 reinstatement or claim of any kind, and are not subject to any further objection or challenge by any
14 party at any time, and the pre-petition liens and security interests in favor of the First Lien Agent and
15 the First Lien Lenders in the Pre-Petition Collateral are legal, valid, perfected, enforceable, and non-
16 avoidable for all purposes and of first and senior priority, subject to only the Permitted Priority
17 Liens, the Carve-Out Expenses, and the DIP Liens, and (b) the First Lien Agent, the First Lien
18 Lenders and each of their agents, officers, directors, employees, attorneys, professionals, successors,
19 and assigns are released and discharged from any and all claims and causes of action related to or
20 arising out of the First Lien Loan Documents, the Debtors, or the Debtors' business and are not
21 subject to any further objection or challenge by any party at any time.

22 9.2 Debtors' Waivers. At all times during the Cases, and whether or not an Event
23 of Default has occurred, the Debtors irrevocably waive any right that they may have to seek
24 authority (i) to obtain post-petition loans or other financial accommodations pursuant to Section
25 364(c) or 364(d) of the Bankruptcy Code, other than from the DIP Agent and the DIP Lenders or as
26 may be otherwise expressly permitted pursuant to the DIP Loan Documents, (ii) to challenge the
27 application of any payments authorized by the Financing Orders as pursuant to Section 506(b) of the
28 Bankruptcy Code, (iii) to propose, support or have a plan of reorganization or liquidation that does

not provide for the indefeasible payment in cash in full and satisfaction of all DIP Obligations and all First Lien on the effective date of such plan in accordance with the terms and conditions set forth herein and in the DIP Credit Agreement, or (iv) to seek relief under the Bankruptcy Code, including without limitation, under Section 105 of the Bankruptcy Code, to the extent any such relief would directly restrict or impair the rights and remedies of the DIP Agent or the DIP Lenders under the Financing Orders and the DIP Loan Documents or the DIP Agent's and the DIP Lenders' exercise of such rights or remedies; provided, however, that the DIP Agent, in its sole and absolute discretion, may otherwise consent in writing, but no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent or any DIP Lender.

9.3 Section 506(c) Claims. No costs or expenses of administration which have or may be incurred in the Cases at any time, or any Successor Cases, shall be charged against the DIP Agent, the DIP Lenders, the First Lien Agent, the First Lien Lenders, their respective claims or interests, the Collateral and/or Pre-Petition Collateral pursuant to Section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of the DIP Agent and First Lien Agent in their sole and absolute discretion, and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Agent, any DIP Lender, the First Lien Agent, or any First Lien Lender.

9.4 Collateral Rights. Until all of the DIP Obligations shall have been indefeasibly paid and satisfied in full:

9.4.1 no other party shall foreclose or otherwise seek to enforce any junior lien or claim in any Collateral; and

9.4.2 upon and after the occurrence of an Event of Default, and subject to the DIP Agent providing five (5) business days' prior written notice as set forth in Section 7.4, above, in connection with a liquidation of any of the Collateral, the DIP Agent (or any of its employees, agents, consultants, contractors or other professionals), on behalf of itself and the DIP Lenders, shall have the right, at the sole cost and expense of Debtors, to: (i) enter upon, occupy and use any real or personal property, fixtures, equipment, leasehold interests or warehouse arrangements owned or leased by Debtors, provided, however, that such right shall be limited to (a) existing rights under applicable non-bankruptcy law; (b) any written agreement with the applicable

landlord(s); and (c) any Court order upon motion and notice to applicable landlord(s) with an opportunity to respond that is reasonable under the circumstances, and (ii) use any and all trademarks, tradenames, copyrights, licenses, patents or any other similar assets of Debtors, which are owned by or subject to a lien of any third party and which are used by Debtors in their businesses.

Section 10. Other Rights and Obligations.

10.1 No Modification or Stay of This Final Order. Notwithstanding (i) any stay, modification, amendment, supplement, vacating, revocation or reversal of this Final Order, the DIP Loan Documents or any term hereunder or thereunder, or (ii) the dismissal or conversion of one or more of the Cases (each, a "**Subject Event**"), (x) the acts taken by the DIP Agent and the DIP Lenders in accordance with this Final Order, and (y) the DIP Obligations incurred or arising prior to the DIP Agent's actual receipt of written notice from Debtors expressly describing the occurrence of such Subject Event shall, in each instance, be governed in all respects by the original provisions of this Final Order, and the acts taken by the DIP Agent and the DIP Lenders in accordance with this Final Order, and the liens granted to the DIP Agent and the DIP Lenders in the Collateral, and all other rights, remedies, privileges, and benefits in favor of the DIP Agent and the DIP Lenders pursuant to this Final Order and the DIP Loan Documents shall remain valid and in full force and effect pursuant to Section 364(e) of the Bankruptcy Code. For purposes of this Final Order, the term "appeal", as used in Section 364(e) of the Bankruptcy Code, shall be construed to mean any proceeding for reconsideration, amending, rehearing, or re-evaluating this Final Order by this Court or any other tribunal.

10.2 Power to Waive Rights; Duties to Third Parties. The DIP Agent and the DIP Lenders, in their sole and absolute discretion, shall have the right to waive any of the terms, rights and remedies provided or acknowledged in this Final Order in respect of the DIP Agent and the DIP Lenders (the "**DIP Lender Rights**"), and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any DIP Lender Right(s). Any waiver by the DIP Agent or any DIP Lender of any DIP Lender Rights shall not be or constitute a continuing waiver. Any delay in or failure to exercise or enforce any DIP Lender Right shall

1 neither constitute a waiver of such DIP Lender Right, subject the DIP Agent or any DIP Lender to
2 any liability to any other party, nor cause or enable any other party to rely upon or in any way seek
3 to assert a defense to any obligation owed by the Debtors to the DIP Agent or any DIP Lender.

4 10.3 Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber
5 or otherwise dispose of any portion of the Collateral (or enter into any binding agreement to do so)
6 without the prior written consent of the DIP Agent in its sole and absolute discretion (and no such
7 consent shall be implied, from any other action, inaction or acquiescence by the DIP Agent or any
8 DIP Lender), except in the ordinary course of their businesses and in strict accordance with the
9 Budget, this Final Order and the DIP Loan Documents. The Debtors shall not, without the consent
10 of the DIP Agent in its sole and absolute discretion, (a) enter into any agreement to return any goods
11 to any of their creditors for application against any pre-petition indebtedness under any applicable
12 provision of Section 546 of the Bankruptcy Code, or (b) consent to any creditor taking any setoff
13 against any of its pre-petition indebtedness based upon any such return pursuant to Section 553(b)(1)
14 of the Bankruptcy Code or otherwise.

15 10.4 Reservation of Rights. The terms, conditions and provisions of this Final
16 Order are in addition to and without prejudice to the rights of the DIP Lenders and the DIP Agent, on
17 behalf of itself and the DIP Lenders, to pursue any and all rights and remedies under the Bankruptcy
18 Code, the Interim Order, the DIP Loan Documents or any other applicable agreement or law,
19 including, without limitation, rights to seek adequate protection and/or additional or different
20 adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any
21 request for use of cash collateral or granting of any interest in the Collateral or priority in favor of
22 any other party, to object to any sale of assets, and to object to applications for allowance and/or
23 payment of compensation of Professionals or other parties seeking compensation or reimbursement
24 from the Estates.

25 10.5 Binding Effect of Final Order.

26 10.5.1 Immediately upon entry by this Court, this Final Order shall be valid
27 and binding upon and inure to the benefit of the DIP Agent, the DIP Lenders, the First Lien Agent,
28 the First Lien Lenders, the Debtors and the property of the Debtors' Estates, all other creditors of any

1 of the Debtors, the Committee, and all other parties in interest and their respective successors and
2 assigns (including any chapter 11 or chapter 7 trustee or any other fiduciary hereafter appointed as a
3 legal representative of the Debtors), in any of the Cases, any Successor Cases, or upon dismissal of
4 any Case or Successor Case.

5 10.5.2 Any order dismissing one or more of the Cases under Section 1112 or
6 otherwise shall be deemed to provide (in accordance with Sections 105 and 349 of the Bankruptcy
7 Code) that (a) the Superpriority Claim, the DIP Liens, the Senior Liens, the Senior Replacement
8 Liens and the First Lien Adequate Protection Claim shall continue in full force and effect
9 notwithstanding such dismissal until the DIP Obligations and First Lien Obligations are indefeasibly
10 paid and satisfied in full, and (b) this Court shall retain jurisdiction to the greatest extent permitted
11 by applicable law, notwithstanding such dismissal, for the purposes of enforcing the Superpriority
12 Claim, the DIP Liens, the Senior Liens, the Senior Replacement Liens and the First Lien Adequate
13 Protection Claim.

14 10.6 Restrictions on Cash Collateral Use, Additional Financing, Plan Treatment.

15 All post-petition advances and other financial accommodations under the DIP Credit Agreement
16 (and with respect to the First Lien Agent and First Lien Lenders, their agreement to the imposition or
17 enforcement of the automatic stay, the incurrence of the DIP Obligations, and the subordination to
18 the Carve-Out Expenses) are made in reliance on the Financing Orders and there shall not at any
19 time be entered in the Cases, or in any subsequently converted case under Chapter 7 of the
20 Bankruptcy Code, any order which (a) authorizes the use of Cash Collateral of the Debtors in which
21 the First Lien Agent or the First Lien Lenders have an interest, or the sale, lease, or other disposition
22 of property of any Debtor's Estate subject to a lien or security interest granted to the First Lien Agent
23 for the benefit of First Lien Lenders, except as expressly permitted hereunder or in the DIP Loan
24 Documents, or (b) authorizes under Section 364 of the Bankruptcy Code the obtaining of credit or
25 the incurring of indebtedness secured by a lien or security interest which is equal or senior to a lien
26 or security interest in property in which the DIP Agent, for the benefit of the DIP Lenders, or the
27 First Lien Agent, for the benefit of the First Lien Lenders, holds a lien or security interest, or which
28 is entitled to priority administrative claim status which is equal or superior to that granted to the DIP

Agent, for the benefit of the DIP Lenders, or the First Lien Agent, for the benefit of the First Lien Lenders, herein; unless, in each instance (i) the DIP Agent and First Lien Agent shall have given their express prior written consent with respect thereto (such consent to be in the DIP Agent's and First Lien Agent's sole and absolute discretion), no such consent being implied from any other action, inaction or acquiescence by the DIP Agent or any DIP Lender or the First Lien Agent or any First Lien Lender, or (ii) such other order requires that all DIP Obligations and First Lien Obligations shall first be indefeasibly paid and satisfied in full in accordance with the terms of the DIP Credit Agreement, the other DIP Loan Documents, the First Lien Credit Agreement and the First Lien Loan Documents, including, without limitation, all debts and obligations of the Debtors to the DIP Agent, the DIP Lenders, the First Lien Agent and the First Lien Lenders which arise or result from the obligations, loans, security interests and liens authorized herein, on terms and conditions acceptable to the DIP Agent and First Lien Agent. The security interests and liens granted to or for the benefit of the DIP Lenders and First Lien Lenders hereunder and the rights of the DIP Agent, the DIP Lenders, the First Lien Agent and the First Lien Lenders pursuant to the Financing Orders shall not be altered, modified, extended, impaired, or affected by any plan of reorganization or liquidation of Debtors without the express prior written consent of the DIP Agent and First Lien Agent (such consent to be in the DIP Agent's and First Lien Agent's sole and absolute discretion).

10.7 No Owner/Operator Liability. In determining to make any loan under the DIP Credit Agreement or any Financing Order, or in exercising any rights or remedies as and when permitted pursuant to the DIP Credit Agreement or any Financing Order, the DIP Agent or the DIP Lenders shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute).

10.8 Marshalling. None of the DIP Agent, the DIP Lenders, the First Lien Agent or any of the First Lien Lenders shall be subject to the equitable doctrine of "marshaling" or any

other similar doctrine with respect to any of the Collateral, and all proceeds thereof shall be received and used in accordance with this Final Order. The First Lien Agent and the First Lien Lenders shall be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code and the "equities of the case" exception under Section 552(b) of the Bankruptcy Code shall not apply to the First Lien Agent or the First Lien Lenders with respect to any proceeds, products, offspring, or profits of any of the Collateral.

10.9 Term; Termination. Notwithstanding any provision of this Final Order to the contrary, the term of the financing arrangements among Debtors, the DIP Agent and the DIP Lenders authorized by this Final Order may be terminated pursuant to the terms of the DIP Credit Agreement.

10.10 Objections Overruled. All objections to the entry of this Final Order are, to the extent not withdrawn or resolved, hereby overruled.

Section 11. Findings and Conclusions. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Final Order.

Section 12. Committee Standing. The Committee is hereby granted the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, settle, compromise, monetize, assign, transfer, release, abandon, withdraw, or litigate to judgment the Estate Assets. The Committee shall be required to obtain Court approval upon requisite notice prior to settling, compromising, monetizing, assigning, transferring, releasing, withdrawing or abandoning an Estate Asset. In the event of a conversion of these Cases to Chapter 7 or upon the appointment of a Chapter 11 trustee, the rights granted to the Committee in this Section 12 shall automatically terminate and vest with the Chapter 7 or 11 trustee, as applicable.

Section 13. 2004 Authority. The Committee is hereby granted authority pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure to investigate the Estate Assets, including authority to

1 compel the production of documents and issue subpoenas for oral examination (nothing contained
2 herein being deemed a waiver of any objection that any party may have with respect thereto).

3 Section 14. First Lien Lenders' Deficiency Claim. In the event that the First Lien Agent is
4 entitled to recover any funds from the Second Lien Agent or Second Lien Lenders, or any successors
5 thereto, in accordance with the terms of Section 2 of the Intercreditor and Subordination Agreement,
6 dated July 10, 2012, the First Lien Agent shall recover such funds and turn over such recovery to the
7 Debtors' estates. Notwithstanding the foregoing, the First Lien Agent shall be entitled to 50% of any
8 net proceeds in excess of \$1 million arising from the monetization of Estate Assets to reduce the
9 First Lien Lenders' deficiency claims until the the First Lien Obligations are fully and finally satisfied.

10 Section 15. Committee Releases. For good and valuable consideration, including, without
11 limitation, the treatment of the Estate Assets as set forth herein, the Committee hereby releases and
12 discharges the First Lien Agent, First Lien Lenders, DIP Agent and DIP Lenders from any and all
13 claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever,
14 whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or
15 otherwise, that the Committee could have been entitled to assert in its own right or on behalf of the
16 Debtors or their estates or any holder of any claim or equity interest, based on or relating to, or in
17 any manner arising from, in whole or in part, the Debtors, these Chapter 11 cases, or the Sale.

18 Section 16. Final Order Governs. In the event that any provision of this Final Order conflicts
19 with any term of the DIP Loan Documents or the Interim Order, this Final Order shall govern.

20 Section 17. No Prejudice. The Financing Orders shall not prejudice, impair or adversely affect
21 any of the First Lien Agent's and the First Lien Lenders' rights in connection with any of the First
22 Lien Loan Documents, including any third party guarantees.

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1 Section 18. Retention of Jurisdiction. The Court has and will retain jurisdiction to interpret and
2 enforce the provisions of this Final Order.

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24 Date: July 9, 2014


25 
26 Erithe Smith
27 United States Bankruptcy Judge
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EXHIBIT 1

Proposed DIP Budget

(\$ in 000s)

[illegible]

Elephant Bar

Proposed DIP Budget

(\$ in 000s)

Bankruptcy Week # Week Ending Sunday,	1 6/22/14	2 6/29/14	3 7/6/14	4 7/13/14	5 7/20/14	6 7/27/14	7 8/3/14	8 8/10/14	9 8/17/14	10 8/24/14	11 8/31/14	11 Week TOTAL
PROFESSIONAL FEES DETAIL												
Professional Fee Disbursements - Ties to DIP Budget												
<i>Debtor's Professionals</i>												
Debtor's Legal Counsel (PSZJ)	50	50	50	40	45	45	45	45	45	45	45	505
Deloitte CRG	45	40	30	30	30	35	40	40	40	35	35	400
Investment Banker (Mastodon)	-	-	-	-	-	-	-	-	50	-	-	50
Claims & Noticing Agent (Rust/Omni)	4	4	4	4	4	4	4	4	4	4	4	40
<i>Total Debtor's Professionals</i>	99	94	84	74	79	84	89	89	139	84	84	995
<i>Lender's Professionals</i>												
Lender's Legal Counsel	200	-	-	100	-	-	-	-	200	-	-	500
Lender's Financial Advisors	-	-	-	-	-	-	-	-	42	-	-	42
<i>Total Lender's Professionals</i>	200	-	-	100	-	-	-	-	242	-	-	542
<i>Committee Professionals</i>												
UCC Legal Counsel and Financial Advisors	-	-	-	-	-	-	-	-	150	25	25	200
<i>Total Committee Professionals</i>	-	-	-	-	-	-	-	-	150	25	25	200
Total Professional Fees Payments	299	94	84	174	79	84	89	89	530	109	109	1,737
Professional Fees as Accrued												
<i>Debtor's Professionals</i>												
Debtor's Legal Counsel (PSZJ)	50	50	50	40	45	45	45	45	45	45	45	505
Deloitte CRG	45	40	30	30	30	35	40	40	40	35	35	400
Investment Banker (Mastodon)	-	-	-	-	-	-	-	-	50	-	-	50
Claims & Noticing Agent (Rust/Omni)	4	4	4	4	4	4	4	4	4	4	4	40
<i>Total Debtor's Professionals</i>	99	94	84	74	79	84	89	89	139	84	84	995
<i>Lender's Professionals</i>												
Lender's Legal Counsel	200	-	-	100	-	-	-	-	200	-	-	500
Lender's Financial Advisors	7	7	7	7	7	7	-	-	-	-	-	42
<i>Total Lender's Professionals</i>	207	7	7	107	7	7	-	-	200	-	-	542
<i>Committee Professionals</i>												
UCC Legal Counsel and Financial Advisors	-	-	-	25	25	25	25	25	25	25	25	200
<i>Total Committee Professionals</i>	-	-	-	25	25	25	25	25	25	25	25	200
Total Professional Fees Accrual	306	101	91	206	111	116	114	114	364	109	109	1,737