

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

RESTAURANTS ACQUISITION I, LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 15-12406 (KG)

Related to Docket No. 29, 51, 83 and 84

**FINAL ORDER (A) AUTHORIZING POSTPETITION USE OF CASH  
COLLATERAL, (B) GRANTING ADEQUATE PROTECTION TO THE  
SECURED LENDERS, (C) MODIFYING THE AUTOMATIC STAY,  
AND (D) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtor and debtor in possession, (the “Debtor”) for entry of this final order (this “Final Order”): (a) authorizing the Debtor to use the Cash Collateral as defined herein; (b) providing adequate protection with respect to the diminution in value, if any, of the interests of the Secured Lenders (as defined below) as may result from the use of the Cash Collateral to the extent set forth herein; (c) modifying the automatic stay to the extent set forth herein; and (d) granting related relief;

The initial hearing on the Motion having been held by this Court on December 4, 2015 (the “Interim Hearing”), and the Court having entered on December 4, 2015, the *Interim Order (a) Authorizing Postpetition Use of Cash Collateral, (b) Granting Adequate Protection to the Secured Lender, (c) Modifying the Automatic Stay, (d) Scheduling a Final Hearing; and (e) Granting Related Relief* [Docket No. 51] (the “Interim Order”); and the final hearing on the Motion having been held by this Court on January 6, 2016 (the “Final Hearing” and, together with the Interim Hearing, the “Hearings”);

<sup>1</sup> The Debtor’s mailing address is 313 East Main Street, Suite 2, Hendersonville, TN and the last four digits of its tax identification number are 8761.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

The Court having considered the Motion, the *Declaration of W. Craig Barber in Support of Chapter 11 Petition and First Day Pleadings of Restaurants Acquisition I, LLC*, and the evidence submitted or adduced and the arguments of counsel made at the Hearings; and notice of the Motion and the Hearings having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014; and the Final Hearing to consider the relief requested in the Motion having been held and concluded; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing to the Court that granting the relief requested is necessary to the Debtor and its estate and otherwise is fair and reasonable, in the best interests of the Debtor, its estate, creditors, and equity holders, and essential for the maximization of the assets of the Debtor's business; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>3</sup>:**

A. Petition Date. On December 2, 2015 (the "Petition Date"), the Debtor filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. The chapter 11 case filed by the Debtor is hereafter referred to as the "Case".

B. Debtor in Possession. The Debtor continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Case.

C. Jurisdiction and Venue. This Court has jurisdiction over these proceedings, and the persons and properties affected hereby, pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact pursuant to Fed. R. Bankr. P. 7052.

pursuant to 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

D. No Creditors' Committee. On December 22, 2015, the United States Trustee for the District of Delaware held a meeting to consider appointing an official committee of unsecured creditors in the Case pursuant to section 1102 of the Bankruptcy Code (a "Creditors' Committee"). No Creditors' Committee was appointed.

E. Debtor's Representations. Without prejudice to the rights of any other party, but in each case subject to the limitations contained in Paragraph 4 below, the Debtor represents, admits, stipulates, and agrees (collectively, the "Debtor's Stipulations") as follows:

(i). Cash Collateral. Any and all of the Debtor's cash and other amounts on deposit or maintained in any account or accounts by the Debtor generated by the collection of accounts receivable or other disposition of the Prepetition Collateral (as defined herein) existing as of the Petition Date, and the proceeds of any of the foregoing is the Secured Lenders' (as defined herein) cash collateral within the meaning of section 363(a) of the Bankruptcy Code (the "Cash Collateral").

(ii). Prepetition Financing Documents. The Debtor is a party to that certain Secured Credit Agreement dated as of December 28, 2008 (as amended, supplemented, or modified prior to the date hereof, including without limitation that certain First Amendment dated as of December 22, 2010, the "Prepetition CNL Credit Agreement," and together with the Loan Documents and the Security Documents, each as defined in the Prepetition Credit Agreement, the "Prepetition CNL Credit Documents"), by and between the Debtor, as Borrower, and CNL Financial Group, Inc. ("CNL"), as lender, in the maximum principal amount of \$2,343,850.00. In addition, the Debtor is a party to that certain Business Loan and Security Agreement dated as of May 5, 2015

(as amended, supplemented, or modified prior to the date hereof, the “AmEx Loan Agreement” and, together with the CNL Credit Documents, collectively, the “Prepetition Financing Documents”) by and between the Debtor, as Borrower, and American Express Bank, FSB (“AmEx Bank” and, together with CNL, the “Secured Lenders”), as lender, in the maximum principal amount of \$1,200,000.00.

(iii). Prepetition Obligations Amount. As of the Petition Date, the outstanding principal amount of the obligations owing by the Debtor to CNL under and in connection with the Prepetition CNL Credit Documents was \$2,343,850.00, together with all accrued and accruing interest, charges, fees, costs and expenses (including attorneys’ fees and legal expenses) with respect to the Prepetition CNL Credit Documents (collectively, the “Secured CNL Obligations”), which, as of the Petition Date was \$3,128,323.18. The Secured CNL Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of the Debtor and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and the Debtor does not possess and shall not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and nonavoidability of any of the Secured CNL Obligations. As of the Petition Date, the outstanding principal amount of the obligations owing by the Debtor to AmEx Bank under and in connection with the AmEx Bank Loan Agreement was \$796,270.99, together with all accrued and accruing interest, charges, fees, costs and expenses (including attorneys’ fees and legal expenses) with respect to the AmEx Bank Loan Agreement (“Secured AmEx Bank Obligations” and, together with the Secured CNL Obligations, “the Secured Obligations”), which as of the Petition Date was \$851,520.99. The Secured AmEx Bank Obligations constitute allowed, legal, valid, binding, enforceable obligations of the Debtor and,

except as otherwise provided herein, are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and, except as otherwise provided herein, the Debtor does not possess and shall not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and nonavoidability of any of the Secured Obligations. Notwithstanding the foregoing, nothing in this Final Order shall release any claims or causes of action the Debtor and/or its estate may hold or assert against AmEx Bank arising under chapter 5 of the Bankruptcy Code.

(iv). Prepetition Liens and Collateral. As of the Petition Date, the Secured CNL Obligations were secured by a valid, perfected, and enforceable and non-avoidable first priority security interest and lien (the “Prepetition CNL Lien”) granted by the Debtor to CNL upon the Collateral (as defined in the Prepetition CNL Credit Documents, hereafter the “Prepetition CNL Collateral”). The Prepetition CNL Lien in and against the Prepetition CNL Collateral (i) is a valid, binding, perfected, and enforceable lien and security interest on the Prepetition CNL Collateral, (ii) is not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind, (iii) is subject and/or subordinate only to (x) the Carve-Out (as defined herein) and (y) any validly perfected and unavoidable liens that existed on the Petition Date and are senior to the Prepetition CNL Lien under applicable non-bankruptcy law, and (iv) constitute the legal, valid, unavoidable and binding obligation of the Debtor, enforceable in accordance with the terms of the Prepetition CNL Credit Documents. As of the Petition Date, the Secured AmEx Bank Obligations were secured by a valid, perfected, and enforceable and non-avoidable junior priority security interest and lien (the “Prepetition AmEx Bank Lien” and,

together with the Prepetition CNL Lien, the “Prepetition Liens”) granted by the Debtor to AmEx Bank upon the Collateral (as defined in the AmEx Bank Loan Agreement, hereafter the “Prepetition AmEx Bank Collateral” and, together with the Prepetition CNL Collateral, the “Prepetition Collateral”). The Prepetition AmEx Bank Lien in and against the Prepetition AmEx Bank Collateral (i) is a valid, binding, perfected, and enforceable lien and security interest on the Prepetition AmEx Bank Collateral, (ii) is not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind, (iii) is subject and/or subordinate only to (x) the Prepetition CNL Lien (subject to paragraph 4 of this Final Order), (y) the Carve-Out (as defined herein) and (z) any validly perfected and unavoidable liens that existed on the Petition Date and are senior to the Prepetition AmEx Bank Lien under applicable non-bankruptcy law, and (iv) constitute the legal, valid, unavoidable and binding obligation of the Debtor, enforceable in accordance with the terms of the AmEx Bank Loan Agreement. As of the Petition Date, the Texas Comptroller of Public Accounts (the “Texas Comptroller”) has asserted a security interest and lien on all or certain of the Prepetition Collateral (the “Texas Tax Lien”).

(v). Adequate Protection for the Secured Lenders. As a result of the Debtor’s authorization to use the Cash Collateral, the use, sale or lease of the Prepetition Collateral, and the imposition of the automatic stay, the Secured Lenders are entitled to receive adequate protection pursuant to sections 361, 362, and 363 of the Bankruptcy Code for and solely to the extent of any diminution in the value, from and after the Petition Date, of their respective interests in the Prepetition Collateral (including the Cash Collateral) resulting from the automatic stay and/or from the Debtor’s use, sale or lease of the Prepetition Collateral (including the Cash Collateral), or

otherwise during the Case. As adequate protection, the Secured Lenders will receive the adequate protection described in this Final Order (including the adequate protection set forth in Paragraphs 7-9 hereof). In light of such adequate protection, the Secured Lenders have consented to the Debtor's use of the Cash Collateral, solely on the terms and conditions set forth in this Final Order. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary to obtain such consent.

(vi) Adequate Protection for the Texas Comptroller. For the Prepetition Collateral in which the Texas Comptroller holds a valid, perfected, enforceable and unavoidable lien on as of the Petition Date, without conceding any entitlement thereto, the Texas Comptroller is being provided with the adequate protection described in this Final Order, solely to the extent that it is ultimately determined that the Texas Comptroller is entitled to such adequate protection, pursuant to sections 361, 362, and 363 of the Bankruptcy Code, as a result of the Debtor's authorization to use the Cash Collateral, the use, sale or lease of the Prepetition Collateral, and the imposition of the automatic stay. In light of such adequate protection, the Texas Comptroller has consented to the Debtor's use of the Cash Collateral, on the terms and conditions set forth in this Final Order.

(vii) Prepetition Grove Loan. On or about December 11, 2015, CFG XV, Inc. ("CFG"), an affiliate of CNL, took an assignment of the rights of Grove Family Investments, L.P. pursuant to that certain Loan Agreement dated as of December 28, 2010 by and among, *inter alia*, the Debtor, as borrower, CNL as guarantor, and Grove Family Investments, L.P., as lender (together with any and all loan documents and amendments related thereto, the "Grove Loan Documents"), waived the intercreditor provisions contained in the Grove Documents with respect to CNL, and acquired all debt outstanding in connection with the Grove Loan Documents.

(viii). No Claims; CNL. The Debtor, on behalf of itself and its estate and all of its past, present and future predecessors, successors, heirs, subsidiaries and assigns (collectively, the “Releasors”), agree that as of the Petition Date it holds no valid or enforceable “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, or setoff rights of any kind against CNL and its officers, directors, equity holders, members or shareholders arising out of, relating to, or in connection with, *inter alia*, the Prepetition CNL Credit Documents, the CNL Secured Obligations, the Prepetition CNL Collateral, the lending relationship with the Debtor under the Prepetition CNL Credit Documents, any action or inaction of CNL prior to the Petition Date under the Prepetition CNL Credit Documents or in connection with the filing of the Case. The Releasors hereby forever waive and release any and all “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, or setoff rights against CNL and/or its officers, directors, equityholders, members, partners, funds, managers, managing members, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultant, agents, and other representatives that may exist as of the Petition Date, whether arising at law or in equity, including any recharacterization, subordination, lender liability type claims, avoidance, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law, arising out of, relating to, or in connection with, *inter alia*, the Prepetition CNL Credit Documents, the Secured CNL Obligations, the Prepetition CNL Collateral, the lending relationship with the Debtor under the Prepetition CNL Credit Documents, any action or inaction of CNL prior to the Petition Date in connection with the lending relationship under the Prepetition CNL Credit Documents or in connection with the filing of the Case.



(ix). No Claims; AmEx Bank. The Releasors, agree that as of the Petition Date, except as otherwise provided herein and other than potential causes of action arising under chapter 5 of the Bankruptcy Code, it holds no valid or enforceable “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, or setoff rights of any kind against AmEx Bank and its officers, directors, equity holders, members or shareholders arising out of, relating to, or in connection with, *inter alia*, the Prepetition AmEx Bank Loan Agreement, the AmEx Secured Obligations, the Prepetition AmEx Collateral, the lending relationship with the Debtor under the Prepetition AmEx Loan Agreement, any action or inaction of AmEx Bank prior to the Petition Date under the Prepetition AmEx Loan Agreement or in connection with the filing of the Case. With the exception of potential causes of action arising under chapter 5 of the Bankruptcy Code, and except as otherwise provided herein, the Releasors hereby forever waive and release any and all “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, or setoff rights against AmEx and/or its officers, directors, equityholders, members, partners, funds, managers, managing members, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultant, agents, and other representatives that may exist as of the Petition Date, whether arising at law or in equity, including any recharacterization, subordination or lender liability type claims, arising out of, relating to, or in connection with, *inter alia*, the Prepetition AmEx Loan Agreement, the Secured AmEx Obligations, the Prepetition AmEx Collateral, the lending relationship with the Debtor under the Prepetition AmEx Loan Agreement, any action or inaction of AmEx prior to the Petition Date in connection with the lending relationship under the Prepetition AmEx Loan Agreement or in connection with the filing of the Case.

(x) Section 552(b); Section 506(c). Each of the Secured Lenders is entitled to a waiver of any “equities of the case” exception under section 552(b) of the Bankruptcy Code and the provisions of section 506(c) of the Bankruptcy Code.

F. Necessity for Relief Requested. The Debtor has an immediate need to use the Cash Collateral to, among other things, preserve and maximize the value of the Debtor’s assets, its estate, and creditors. The preservation and maintenance of the Debtor’s assets and business are necessary to maximize values available for distribution to creditors. Absent the Debtor’s ability to use Cash Collateral, the Debtor would not have sufficient available sources of working capital and would be unable to pay its operating expenses or maintain its assets, to the detriment of the Debtor’s estate and creditors. Accordingly, the relief requested in the Motion and the terms herein are (i) critical to the Debtor’s ability to maximize the value of its chapter 11 estate and (ii) in the best interests of the Debtor and its estate.

G. Good Cause. Good cause has been shown for entry of this Final Order, and the entry of this Final Order is in the best interests of the Debtor and its estate and creditors. Among other things, the relief granted herein will permit the Debtor to preserve and maintain the value of its assets. The stipulated terms of the Debtor’s use of Cash Collateral and proposed adequate protection arrangements, as set forth in this Final Order, are fair and reasonable under the circumstances, and reflect the Debtor’s exercise of prudent business judgment consistent with its fiduciary duties.

H. Good Faith. The Debtor’s use of Cash Collateral has been negotiated in good faith and at arms’ length between and among the Debtor and the Secured Lenders and the Secured Lenders’ consent to the Debtor’s use of Cash Collateral shall be deemed to have been made in “good faith.”

I. Notice. The Debtor has caused notice of the Motion, the relief requested therein, and the Final Hearing to be served on the following parties (collectively, the “Notice Parties”): (i) the Office of the U.S. Trustee; (ii) the holders of the twenty (20) largest unsecured claims against the Debtor; (iii) the Texas Comptroller; (iv) the United States Attorney’s Office for the District of Delaware; (v) the Internal Revenue Service; (vi) the Secured Lenders and their respective counsel; (vii) CFG and its counsel; (viii) the cash management banks with which the Debtor maintains bank accounts; (ix) all parties who are known, after reasonable inquiry, to have asserted a lien, encumbrance, or claim in the Prepetition Collateral; and (x) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 in the Case. Under the circumstances, the notice given by the Debtor of the Motion, the relief requested therein, and of the Hearings complies with Bankruptcy Rules 2002, 4001(b), (c), and (d).

**BASED UPON THE STIPULATED TERMS SET FORTH HEREIN, AND FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

1. Motion Granted. The Motion is GRANTED to the extent provided herein on a final basis. Any objection to the relief requested in the Motion to the extent not withdrawn or resolved is hereby overruled.

2. Authorization to Use Cash Collateral. Until the Termination Date (as defined below), the Debtor is authorized to use the Cash Collateral pursuant to the terms and conditions provided herein.

3. Budget.

(a) Except as otherwise provided herein, the Debtor may only use Cash Collateral for, among other things, (i) working capital requirements, (ii) general corporate

purposes, and (iii) the costs and expenses of administering the Case (including making adequate protection payments, the payment of the allowed fees and expenses of Case Professionals (defined below), and payments under the Carve-Out as provided herein), in each case, pursuant to and solely in accordance with the 13-week cash collateral budget attached as Exhibit 1 hereto, which Budget has been approved by the Secured Lenders (as the same may be updated in accordance with the terms of this Final Order, the “Budget”).

(b) No less frequently than every four (4) weeks commencing on January 11, 2016, the Debtor shall deliver an updated Budget for the following 13-week period, inclusive of the week in which such updated Budget is delivered (each, a “Proposed Budget”) to the Secured Lenders and their respective counsel and the Office of the U.S. Trustee (and a Creditors’ Committee, if appointed).

(c) Commencing on December 14, 2015, and continuing every week thereafter, the Debtor shall deliver to the Secured Lenders a weekly sales report.

(d) Commencing on February 8, 2016, and continuing every four weeks thereafter, the Debtor shall deliver to each of the Secured Lenders a report for the prior four-week fiscal period (the “4-Week Fiscal Period”) comparing the actual receipts and disbursements of the Debtor during that 4-Week Fiscal Period with the receipts and disbursements in the Budget for the applicable period. The initial 4-Week Fiscal Period that will be reported on will cover two (2) 4-Week Fiscal Periods, the Petition Date through December 27, 2015 and December 28, 2015 through January 24, 2016.

(e) During any Cure Period (as defined below), the Debtor may only use Cash Collateral to pay the following amounts and expenses solely in accordance with the respective

Budget line items: (i) the Carve-Out; (ii) obligations for unpaid and accrued payroll and sale taxes; and (iii) any such other obligations subject to the prior written consent of CNL.

(f) Notwithstanding anything to the contrary set forth in this Final Order, the Cash Collateral and the Carve-Out may not be used: (i) to investigate (except as expressly provided herein), initiate, prosecute, join, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, or other litigation of any type (A) against the Secured Lenders or seek relief that would impair the rights and remedies of the Secured Lenders under the Prepetition Financing Documents or this Final Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtor or any Creditors' Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration, or similar relief that would impair the ability of the Secured Lenders to recover on the Secured Obligations or seeking affirmative relief against the Secured Lenders; (B) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the Secured Obligations or Secured Lenders' liens or security interests in the Prepetition Collateral; or (C) for monetary, injunctive, or other affirmative relief against the Secured Lenders or their liens on or security interests in the Prepetition Collateral that would impair the ability of the Secured Lenders to assert or enforce any lien, claim, right, or security interest or to realize or recover on the Secured Obligations; (ii) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of the Secured Lenders; (iii) for asserting, commencing, or prosecuting any claims or causes of action whatsoever,

including, without limitation, any Avoidance Actions (as defined below) against the Secured Lenders; or (iv) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of the Prepetition Liens or any other rights or interests of the Secured Lenders. Notwithstanding the foregoing, nothing in this Final Order shall prevent the Debtor from using Cash Collateral to investigate, assert, commence and/or prosecute any claims or causes of action the Debtor and/or its estate may hold or assert against AmEx Bank arising under chapter 5 of the Bankruptcy Code or to defend against, if necessary, any claim by AmEx Bank that it is entitled to withhold and apply Settlement Amounts under section 7 of the AmEx Bank Loan Agreement.

4. Effect of Stipulation on Third Parties.

(a) Subject to Paragraph 4(b) hereof, each stipulation, admission, and agreement contained in this Final Order including, without limitation, the Debtor's Stipulations, shall be binding upon the Debtor, its estate and any successors thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtor) under all circumstances and for all purposes, and the Debtor is deemed to have irrevocably waived and relinquished all Challenges (as defined herein) as of the Petition Date.

(b) Nothing in this Final Order shall prejudice the rights of any party in interest, if granted standing by the Court (to the extent such standing is necessary), to seek, solely in accordance with the provisions of this Paragraph 4, to assert claims against either of the Secured Lenders on behalf of the Debtor or the Debtor's creditors or to otherwise challenge the Debtor's Stipulations, including, but not limited to those in relation to (i) the validity, extent, priority, or perfection of the security interests and liens of the Secured Lenders, (ii) the validity, allowability, priority, or amount of the Secured Obligations, or (iii) any liability of the Secured Lenders with

respect to anything arising from the Prepetition Financing Documents. Any party in interest (including, without limitation, the Texas Comptroller and any Creditors' Committee, if appointed) must, after obtaining standing approved by the Bankruptcy Court, commence a contested matter or adversary proceeding raising such claim, objection, or challenge, including, without limitation, any claim or cause of action against either of the Secured Lenders (each, a "Challenge") no later than February 17, 2016 (the "Challenge Period"), provided, however, that if a party in interest files a motion seeking standing to bring causes of action, with a draft complaint attached thereto, on or prior to the expiration of the Challenge Period, the Challenge Period shall be tolled, solely with respect to movant and solely with respect to the claims asserted in the draft complaint, until three (3) business days following the adjudication of such motion. The Challenge Period may only be extended with the written consent of the applicable Secured Lender, prior to the expiration of the Challenge Period. Only those parties in interest who properly commence a Challenge within the Challenge Period may prosecute such Challenge. As to (x) any parties in interest who fail to file a Challenge within the Challenge Period, or if any such Challenge is filed and overruled, or (y) any and all matters that are not expressly the subject of a timely Challenge: (1) any and all such Challenges by any party (including, without limitation, any Creditors' Committee, if appointed, any chapter 11 trustee, any examiner or any other estate representative appointed in this Case, or any chapter 7 trustee, any examiner or any other estate representative appointed in any successor Case), shall be deemed to be forever waived and barred, (2) all of the findings, Debtor's Stipulations, waivers, releases, affirmations, and other stipulations hereunder as to the priority, extent, and validity as to the Secured Lenders' claims, liens, and interests shall be of full force and effect and forever binding upon the Debtor's bankruptcy estate and all creditors, interest holders, and other parties in interest in the Case (including, without limitation, the Texas Comptroller) and

any successor Case, and (3) any and all claims or causes of action against the Secured Lenders shall be released by the Debtor's estate, all creditors, interest holders, and other parties in interest (including, without limitation, the Texas Comptroller) in the Case and any successor Case. For the avoidance of doubt, in the event the Case is converted to chapter 7 or a chapter 11 trustee is appointed prior to expiration of the Challenge Period described in this Paragraph 4, the Challenge Period shall not expire until 60 days after the trustee's appointment. In the event any party in interest has commenced a Challenge prior to the conversion to chapter 7 or appointment of a chapter 11 trustee, the trustee shall be entitled to assume the prosecution of any pending Challenge. In either event, until the later of the expiration of the Challenge Period without commencement of a Challenge or the entry of a final, non-appealable order or judgment on account of any Challenge, the trustee shall not be bound by the Debtor's acknowledgments, admissions, confirmations, stipulations and waivers in this Final Order. For the further avoidance of doubt, the expiration of the Challenge Period shall not release any claims or causes of action the Debtor and/or its estate may hold or assert against AmEx Bank arising under chapter 5 of the Bankruptcy Code.

(c) AmEx Bank asserts that it is entitled to withhold and apply Settlement Amounts under section 7 of the AmEx Bank Loan Agreement. During the pendency of the Case and any successor Case, any such Settlement Amounts shall continue to accrue; provided, however, that AmEx Bank shall not withhold or apply any Settlement Amounts, except upon entry of an order by the Court after motion for authority to do same and notice and opportunity to object provided to CNL, the Debtor and parties in interest. Any such motion by AmEx Bank, or any dispute between the Secured Lenders as to the priority of their competing security interests in specific collateral, shall not be subject to or barred by expiration of the Challenge Period. Likewise, nothing contained in this Final Order shall preclude the Debtor and/or its estate from



defending against any such motion, if necessary. Further, nothing contained in this Final Order shall constitute a determination or admission as to whether CNL has a first-priority security interest in any Settlement Amounts with priority over the rights and security interests of AmEx Bank, such issue to be determined pursuant to subsequent order of this Court in the event of disagreement as between CNL and AmEx Bank.

(d) Nothing in this Final Order vests or confers on any person (as defined in the Bankruptcy Code) including any Creditors' Committee, if appointed, standing or authority to pursue any claim or cause of action belonging to the Debtor and/or its bankruptcy estate, including, without limitation, any Challenge with respect to the Prepetition Financing Documents or the Secured Obligations.

5. Termination Date. The Debtor's authorization, and the consent of the Secured Lenders to use Cash Collateral shall terminate on the earliest to occur of (the "Termination Date"): (i) the termination or non-consensual modification of this Final Order or the failure of this Final Order to be in full force and effect; (ii) the entry of an order of this Court terminating the Debtor's right to use Cash Collateral; (iii) the dismissal of the Case or the conversion of the Case to a case under chapter 7 of the Bankruptcy Code; (iv) the appointment of a trustee or an examiner with expanded powers; and (vi) the expiration of the Cure Period following the delivery of a Default Notice (as defined herein) by either of the Secured Lenders, as set forth below.

6. Insurance. At all times, the Debtor shall maintain casualty and loss insurance coverage for the Prepetition Collateral on substantially the same basis as maintained prior to the Petition Date.

7. Adequate Protection.

(a) Adequate Protection Liens. Subject to the Carve-Out in all respects and the terms of this Final Order, pursuant to sections 361, 363(e) and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection for and solely to the extent of any diminution in the value, from and after the Petition Date, of the Secured Lenders' respective interests in the Prepetition Collateral (including Cash Collateral) resulting from: (i) any postpetition use of Cash Collateral; (ii) the use, sale or lease of the Prepetition Collateral, and (iii) the imposition of the automatic stay (the "Adequate Protection Obligations"), the Debtor hereby grants to each of the Secured Lenders an additional and replacement valid, binding, enforceable, non-avoidable, and automatically perfected, *nunc pro tunc* to the Petition Date, postpetition security interest in and lien on (the "Adequate Protection Liens"), without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, the Prepetition Collateral.

(b) Priority of the Adequate Protection Liens.

(i) Subject to the Carve-Out (as defined below), the Adequate Protection Lien granted to CNL shall be a (x) first priority perfected lien on the Prepetition Collateral on which CNL had a valid and perfected first priority lien on as of the Petition Date, even if such collateral is subject to a validly perfected lien that is junior to the lien of CNL, and (y) junior perfected lien on the Prepetition Collateral that is subject to a validly perfected lien with priority over CNL's liens as of the Petition Date.

(ii) Subject to the Carve-Out (as defined below) and the provisions of Paragraph 4 of this Final Order above, the Adequate Protection Lien granted to AmEx Bank shall

be a (x) junior priority perfected lien on the Prepetition Collateral on which AmEx Bank had a valid and perfected lien on as of the Petition Date, even if such collateral is subject to a validly perfected lien that is junior to the lien of AmEx Bank, and (y) junior perfected lien on the Prepetition Collateral that is subject to a validly perfected lien with priority over AmEx Bank's liens as of the Petition Date. For the avoidance of doubt, subject to any Challenge or motion pursuant to Paragraph 4 hereof, the Adequate Protection Lien granted to AmEx Bank shall be for all purposes junior and subordinate to the Adequate Protection Lien granted to CNL.

(iii) Subject to the Carve-Out in all respects and the terms of this Final Order, the Adequate Protection Liens shall be enforceable against and binding upon the Debtor, its estate, and any successors thereto.

(c) The Texas Tax Lien. Subject to the Carve-Out and the Adequate Protection Liens in all respects and the terms of this Final Order, pursuant to sections 361, 363(e) and 364 of the Bankruptcy Code, as adequate protection for and solely to the extent of any diminution in the value, from and after the Petition Date, of the Texas Comptroller's interests (if any) in the Prepetition Collateral (including Cash Collateral) resulting from: (i) any postpetition use of Cash Collateral; (ii) the use, sale or lease of the Prepetition Collateral, and (iii) the imposition of the automatic stay (the "Other Adequate Protection Obligations"), the Debtor, without conceding the Texas Comptroller's entitlement thereto and solely to the extent that it is ultimately determined that the Texas Comptroller is entitled to such adequate protection, hereby grants the Texas Comptroller an additional and replacement valid, binding, enforceable, non-avoidable, and automatically perfected, *nunc pro tunc* to the Petition Date, postpetition security interest in and lien on (the "Adequate Protection Tax Lien"), without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge

agreements, financing statements, mortgages, or other similar documents, any Prepetition Collateral in which the Texas Comptroller held a valid, perfected, enforceable and unavoidable lien as of the Petition Date.

(d) Priority of the Adequate Protection Tax Lien. Subject to any Challenge pursuant to Paragraph 4 hereof, the Adequate Protection Tax Lien shall be for all purposes junior and subordinate to the Carve-Out and the Adequate Protection Lien granted to CNL. All relative priorities among: (i) the Texas Comptroller and AmEx Bank, or (ii) between or among the Texas Comptroller and any third party are preserved as of the Petition Date.

(e) Carve-Out. For purposes hereof, the “Carve-Out” shall mean the aggregate amount of:

- (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code (in such amount as agreed to by the U.S. Trustee or as ordered by the Court) plus interest at the statutory rate;
- (ii) subject to subparagraph (d) below, all allowed and unpaid professional fees, expenses and disbursements incurred prior to the Termination Date (whenever allowed) by (x) estate professionals retained by order of the Court, including professionals of the Debtor or any Creditors’ Committee (if appointed) employed under sections 327, 328, 363 or 1103 of the Bankruptcy Code (“Estate Professionals”) up to the amount provided for such Estate Professionals for the such period in the Budget (this clause (ii) being referred to as the “Pre-Termination Date Carve-Out”); *provided, however*, that to the extent that the

Termination Date occurs during any given month, the fees set forth in the Budget shall be prorated for the number of days elapsed; and

(iii) the allowed and unpaid professional fees, expenses and disbursements under sections 327 or 1103(a) of the Bankruptcy Code incurred on or after the Termination Date, in the aggregate not to exceed \$250,000.00 for all Estate Professionals (this clause (iii) being referred to as the “Post-Termination Date Carve-Out”).

For the avoidance of doubt, the Carve-Out shall be paid solely from the proceeds of the Collateral and nothing in this Final Order or otherwise shall be construed to obligate the Secured Lenders or the Texas Comptroller to directly pay or otherwise satisfy the Carve-Out or to guarantee that the Debtor has sufficient funds to satisfy the Carve-Out.

(f) Further Provisions Regarding Professional Fees. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Estate Professionals or shall affect the right of the Secured Lenders or the Texas Comptroller to object to the allowance and payment of such fees and expenses. Neither the Secured Lenders nor the Texas Comptroller shall be responsible for the payment or reimbursement of any fees or disbursements of any Estate Professionals incurred in connection with the Case or any successor case under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the Secured Lenders or the Texas Comptroller to directly pay compensation to or to reimburse expenses of any Estate Professional or to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement.

8. Adequate Protection Superpriority Claims.

(a) Secured Lenders' Adequate Protection Superpriority Claims. Subject to the Carve-Out in all respects and the terms of this Final Order, as further adequate protection for and to the extent permitted by sections 503(b) and 507(b) of the Bankruptcy Code, each of the Secured Lenders is hereby granted an allowed administrative expense claim in the Case ahead of and senior to any and all other administrative expense claims in such Case to the extent of any postpetition diminution in value of the Prepetition Collateral, including Cash Collateral (the "Adequate Protection Superpriority Claim").

(b) Priority of the Secured Lenders' Adequate Protection Superpriority Claims.

(i) Subject to the Carve-Out and the provisions of Paragraph 4 of this Final Order, the Adequate Protection Superpriority Claim granted to CNL shall have priority over all administrative expense claims (including, without limitation, the Adequate Protection Claim granted to AmEx Bank and the Adequate Protection Superpriority Tax Claim (as defined below)) and unsecured claims against the Debtor or its estate of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code.

(ii) Subject to the Carve-Out and the provisions of Paragraph 4 of this Final Order, the Adequate Protection Superpriority Claim granted to AmEx Bank shall have priority over all administrative expense claims other than those granted to CNL as provided above and unsecured claims against the Debtor or its estate of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered

pursuant to sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code.

(c) Adequate Protection Superpriority Tax Claim. Subject to the Carve-Out and the Adequate Protection Superpriority Claim granted to CNL in all respects and the terms of this Final Order as further adequate protection, without conceding the Texas Comptroller's entitlement thereto and solely to the extent that it is ultimately determined that the Texas Comptroller is entitled to such adequate protection, for and to the extent permitted by sections 503(b) and 507(b) of the Bankruptcy Code, the Texas Comptroller is hereby granted an allowed administrative expense claim in the Case to the extent of any postpetition diminution in value of the Prepetition Collateral in which the Texas Comptroller held a valid, perfected, enforceable and unavoidable lien as of the Petition Date (the "Adequate Protection Superpriority Tax Claim").

(d) Priority of the Adequate Protection Superpriority Tax Claim. Subject to the Carve-Out and the Adequate Protection Superpriority Claims, the Adequate Protection Superpriority Tax Claim shall have priority over all administrative expense claims and unsecured claims against the Debtor or its estate of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code; provided however, all relative priorities among the Texas Comptroller and AmEx Bank with respect to the Adequate Protection Superpriority Claim granted to AmEX Bank and the Adequate Protection Superpriority Tax Claim granted to the Texas Comptroller are preserved as of the Petition Date. For the avoidance of doubt, subject to any Challenge pursuant to Paragraph 4 hereof, the Adequate Protection Superpriority Tax Claim shall

be for all purposes junior and subordinate to the Adequate Protection Superpriority Claim granted to CNL.

9. Adequate Protection Fees and Interest. As further adequate protection the Secured Lenders shall be entitled to (i) interest on account of the outstanding Secured Obligations, which shall accrue in accordance with the amounts, time and manner set forth in the Prepetition Financing Documents, and (ii) the reasonable and documented fees, costs and expenses incurred by each of the Secured Lenders after the Petition Date, including, but not limited to, attorneys' fees and expenses (the "Adequate Protection Fees"), which shall also accrue in accordance with the amounts, time and manner set forth in the Prepetition Financing Documents.

10. Modification of Automatic Stay. The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to: (a) permit the Debtor to provide the adequate protection provided herein; (b) permit the Debtor to perform such acts as the Secured Lenders or the Texas Comptroller may reasonably request to assure the perfection and priority of the liens granted herein; and (c) authorize the Debtor to make payments in accordance with the terms of this Final Order.

11. Disposition of Collateral. Unless otherwise provided for herein, the Debtor shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Prepetition Collateral without the prior written consent of CNL and, where appropriate, AmEx Bank, unless done so in the ordinary course of business. Further, unless otherwise agreed to by CNL in writing, all proceeds of any sale or other disposition of the Prepetition CNL Collateral in which



CNL has a first priority security interest, shall be paid over to CNL as and to the extent required by this Final Order.

12. Events of Default. The occurrence of any of the following events, unless waived in writing by CNL, shall constitute an event of default (each, an “Event of Default”):

- (a) the Debtor’s continued use of Cash Collateral after the Termination Date without the written consent of the Secured Lenders;
- (b) the Debtor’s failure to (i) comply with the Budget (other than for Professional Fees) and related reporting requirements, or (ii) perform, in any material respect, any of its obligations under this Final Order;
- (c) the Debtor obtaining post-petition credit or incurring post-petition indebtedness that is (i) secured by a security interest, mortgage or lien on all or any portion of the Prepetition Collateral which is equal to or senior to, any security interest, mortgage or lien of the Secured Lenders, or (ii) entitled to priority administrative status which is equal to or senior to that granted to the Secured Lenders;
- (d) any lien or security interest purported to be created under the Prepetition Financing Documents shall cease to be, shall be asserted by the Debtor not to be, or shall otherwise be determined by the Bankruptcy Court not to be, a valid and perfected lien on or security interest in any Prepetition Collateral, with the priority required by the Prepetition Financing Documents or the provisions of this Final Order;

- (e) dismissal of the Case, conversion of the Case to chapter 7, or the appointment of a chapter 11 trustee or examiner with expanded powers in the Case;
- (f) an order shall be entered staying, reversing, vacating, amending, or rescinding any of the terms of this Final Order without the consent of the Secured Lenders;
- (g) the entry of an order or judgment by this Court or any other court: (i) modifying, limiting, subordinating, or avoiding the priority of the obligations of the Debtor under this Final Order, the obligations of the Debtor under the Prepetition Financing Documents, or the perfection, priority, or validity of the Prepetition Liens, or the Adequate Protection Liens; (ii) imposing, surcharging, or assessing against the Secured Lenders' claims or the Prepetition Collateral, any costs or expenses, whether pursuant to section 506(c) of the Bankruptcy Code or otherwise; (iii) impairing the Secured Lenders' right to credit bid; and (iv) authorizing the obtaining of post-petition credit or the incurrence of post-petition indebtedness that is secured by a security interest, mortgage, or other lien on all or any portion of the Prepetition Collateral which is equal to or senior to any security interest, mortgage, or other lien of the Secured Lender, or entitled to administrative expense priority status which is equal or senior to that granted to the Secured Lenders herein;

- (h) the sale of any material portion of the Debtor's assets outside of the ordinary course of business without the prior written consent of CNL, unless, as a result of the sale, CNL is paid in full;
- (i) any proceeds of any sale or other disposition of the Prepetition CNL Collateral are not paid over to CNL despite a requirement to do so in this Final Order, unless otherwise previously agreed to by CNL in writing, in its sole discretion; or
- (j) any Cash Collateral or the Carve-Out is used, whether or not pursuant to Court order, in a manner prohibited by this Final Order, including Paragraph 3(d) hereof.

13. Exercise of Remedies. Upon the occurrence and at any time during the continuation of an Event of Default, either of the Secured Lenders may deliver a written notice of an Event of Default (a "Default Notice"), and the automatic stay is hereby vacated to allow the delivery of any Default Notice, which Default Notice shall be given by email, facsimile, or other electronic means to counsel to the Debtor, the other Secured Lender, the Texas Comptroller, the U.S. Trustee, and counsel to any Creditors' Committee (if appointed). The Debtor shall have five (5) business days from the date of delivery of such Default Notice to cure such Event of Default (the "Cure Period"). Except as expressly set forth in Paragraph 3 above, the Debtor's right to use, and the Secured Lenders' consent to the Debtor's use of, Cash Collateral shall cease as of the expiration of the Cure Period, provided, however, that any Default Notice that is overruled, waived or withdrawn by CNL shall be binding upon AmEx Bank. Upon the expiration of the Cure Period, the automatic stay shall be deemed terminated (except as otherwise ordered by the Court for cause) and the Secured Lenders shall be entitled to take any

action and exercise all rights and remedies provided to them by this Final Order, the Prepetition Financing Documents, and/or applicable law as the Secured Lenders may deem appropriate in their sole discretion to, among other things, proceed against and realize upon the assets or properties of Debtor's estate (including the Prepetition Collateral) upon which the Secured Lenders have been granted liens and security interests. The Debtor and/or any estate representative shall cooperate and make all information and documents readily available and turned over to the Secured Lenders to realize against the Collateral.

14. Reversal, Modification, Vacatur, or Stay. Any reversal, modification, vacatur, or stay of any or all of the provisions of this Final Order shall not affect the validity or enforceability of any Adequate Protection Liens, or any claim, lien, security interest, or priority authorized or created hereby with respect to any Adequate Protection Liens, incurred prior to the effective date of such reversal, modification, vacatur, or stay. Notwithstanding any reversal, modification, vacatur, or stay (a) this Final Order shall govern, in all respects, any use of Cash Collateral or Adequate Protection Liens or Adequate Protection Superpriority Claims incurred by the Debtor prior to the effective date of such reversal, modification, vacatur, or stay, and (b) the Secured Lenders and the Texas Comptroller shall be entitled to all the benefits and protections granted by this Final Order with respect to any such use of Cash Collateral or such Adequate Protection Liens or Adequate Protection Superpriority Claims incurred by the Debtor.

15. Reservation of Rights. Notwithstanding anything to the contrary herein, the entry of this Final Order and the transactions contemplated hereby shall not constitute an admission nor be deemed an admission by either of the Secured Lenders that absent its consent to the Debtor's use of Cash Collateral under this Final Order its interest in the Prepetition Collateral would be adequately protected. Except as otherwise expressly set forth herein, the entry of this

Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) either Secured Lender's rights to seek any other or supplemental relief in respect of the Debtor, including the right to seek additional adequate protection; (b) either of the Secured Lender's rights under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of the Secured Lenders to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of the Case, conversion of the Case to a case under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, (iii) seek to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of the Secured Lenders.

16. No Waiver for Failure to Seek Relief. The failure or delay of the Secured Lenders to seek relief or otherwise exercise any of its rights and remedies under this Final Order, the Prepetition Financing Documents, or applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise, by the Secured Lenders.

17. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided hereunder is insufficient to compensate for the Adequate Protection Obligations during the Case. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by the Secured Lenders or the Texas Comptroller that the adequate protection granted herein does in fact adequately protect such parties against any diminution in value of their respective interests in and against the Prepetition Collateral (including the Cash Collateral).

18. Section 552(b) Waiver. Each of the Secured Lenders shall be entitled to all of the rights and benefits of Bankruptcy Code section 552(b) and the “equities of the case” exception shall not apply.

19. Section 506(c) Waiver. The Debtor and its estate waive any claim under Bankruptcy Code section 506(c) for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Secured Lenders upon the Prepetition Collateral.

20. No Marshalling/Application of Proceeds. In no event shall the Secured Lenders be subject to the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the Prepetition Collateral.

21. Good Faith. Based on the findings set forth in this Final Order and the record made during the Hearings, pursuant to sections 105, 361, 363, and 364 of the Bankruptcy Code, the Debtor and the Secured Lenders are hereby found to be entities that have acted in “good faith” in connection with the negotiation and entry of this Final Order and are entitled to the protections afforded by sections 363(m) of the Bankruptcy Code.

22. No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

23. No Liability to Third Parties. In permitting the use of the Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order, neither the Secured Lenders nor the Texas Comptroller shall be deemed to be in control of the operations of the Debtor or the or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the

United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute), nor shall they owe any fiduciary duty to the Debtor, its creditors or estate, or shall constitute or be deemed to constitute a joint venture or partnership with the Debtor. Furthermore, nothing in this Final Order shall in any way be construed or interpreted to impose upon the Secured Lender or the Texas Comptroller any liability for any claims arising from the prepetition or postpetition activities of the Debtor and/or its affiliates (as defined in Bankruptcy Code section 101(2)).

24. Proof of Claim. The Secured Lenders are not required to file proofs of claim in the Case or any converted case with respect to any obligations under the Prepetition Financing Documents or any other claims or liens granted hereunder or created hereby. Any order entered by the Bankruptcy Court in relation to the establishment of a bar date in the Case will provide that the Secured Lenders shall have no obligation to comply with the bar date.

25. Binding Effect of Final Order. The provisions of this Final Order shall be binding upon all parties in interest in the Case, including the Secured Lenders, the Texas Comptroller, any statutory committees that may be appointed in any Case, and the Debtor and their respective successors and assigns and shall inure to the benefit of the Secured Lenders, the Texas Comptroller, the Debtor and their respective successors and assigns. Except as provided forth in Paragraph 4 hereof, to the extent permitted by applicable law, this Final Order shall bind any trustee hereafter appointed or elected for the estate of the Debtor whether in the Case or in the event of the conversion of the Case to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is a benefit of each of the Secured Lender's bargain in connection with the Debtor's use of Cash Collateral and is an integral part of this Final Order. Any payments to be

made by the Debtor under any order (including any “First Day” order) shall be made in accordance with this Final Order and the Budget.

26. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any chapter 11 plan, (ii) converting the Case to a chapter 7 case(s), or (iii) dismissing the Case. The terms and provisions of this Final Order, including, for the avoidance of doubt, the provisions in Paragraph 4 hereof, as well as the adequate protection granted pursuant to this Final Order shall continue in full force and effect notwithstanding the entry of any of the foregoing orders, and such claims and liens shall maintain their priority as provided by this Final Order and the Prepetition Financing Documents and the maximum extent permitted by law until all of the Secured Obligations are indefeasibly paid and satisfied in full in cash.

27. Effect of Dismissal. If the Case is dismissed or converted, then neither the entry of this Final Order nor the dismissal or conversion of the Case shall affect the rights of the Secured Lenders (to the extent of the adequate protection provided hereunder) under the Prepetition Financing Documents or this Final Order, and all rights and remedies thereunder of the Secured Lenders (to the extent of adequate protection provided hereunder) shall remain in full force and effect as if the Case had not been dismissed or converted. If an order dismissing the Case is entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (i) all adequate protection granted to and conferred herein shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until such Adequate Protection Obligations have been satisfied, (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the adequate protection provided for herein, and (iii) any hearing on a motion to dismiss the Case shall require at least twenty one



(21) days prior notice. The provisions of this Final Order, and any actions taken pursuant hereto, shall survive the entry of and shall govern with respect to any conflict with any order that may be entered confirming any chapter 11 plan, dismissing the or converting the Case from chapter 11 to chapter 7.

28. Findings of Fact and Conclusions of Law. This Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon the entry thereof. To the extent that any findings of fact are determined to be conclusions of law, such findings of fact shall be adopted as such; and to the extent that any conclusions of law are determined to be findings of fact, such conclusions of law shall be adopted as such.

29. Order Effective Upon Entry. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

30. Retention of Jurisdiction. The Court has and will retain jurisdiction and power to enforce this Final Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Final Order.

31. Trust Fund Taxes. Notwithstanding anything herein to the contrary, the relief granted herein is without prejudice to any rights of the Texas Comptroller or any other taxing authority or governmental entity to funds which do not constitute property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code, but which qualify as tax trust funds. Neither the Texas Comptroller nor or any other taxing authority or governmental entity are precluded from pursuing such trust funds by this Final Order, nor is the Debtor or any other party in interest precluded from contesting any action of the Texas Comptroller or any other taxing authority or

governmental entity to recover alleged trust funds. Nothing in this Order shall be construed to prevent the Debtor from complying with 28 U.S.C. §§ 959 and 960 with respect to trust fund taxes. Nothing in this Final Order waives the Debtor's right to dispute any and all taxes (trust fund or otherwise) alleged to be due from the Debtor to the Texas Comptroller or any other taxing authority or governmental entity.

32. Bixmor Leased Premises. Upon the occurrence of an Event of Default, the Secured Lenders may enter upon, occupy and use the premises leased from Bixmor Property Group, Inc. and Bixmor Holdings 12 SPE, LLC (collectively "Bixmor") by the Debtor (the "Bixmor Leased Premises") and any personal property, fixtures, or equipment, in which the Debtor has an interest, located thereon, but only in accordance with (a) existing rights under applicable non-bankruptcy law, including but not limited to, the leases related to the Bixmor Leased Premises, (b) pre-petition landlord's waivers (if any), (c) further Order of this Court on motion and notice appropriate under the circumstances, or (d) any rights pursuant to a consensual written agreement between the Secured Lenders and Bixmor. Notwithstanding anything to the contrary in this Final Order or any credit or financing document, with respect to the leases related to the Bixmor Leased Premises (the "Bixmor Leases") and only to the extent such Bixmor Leases prohibit any liens or encumbrances, no replacement or other liens granted by this Final Order shall be granted on the Bixmor Leases themselves, but rather, any such replacement or other liens granted by this Final Order shall extend only to the proceeds realized upon the sale, assignment, termination, or other disposition of such Bixmor Leases.

Dated: January 7, 2016

  
HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**The Budget**

