IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: TONOPAH SOLAR ENERGY, LLC, Debtor.[1]	Chapter 11 Case No. 26-10060 (___)

MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTOR TO (A) OBTAIN POSTPETITION FINANCING AND (B) UTILIZE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION LENDER; (III) MODIFYING THE AUTOMATIC STAY; (IV) SCHEDULING A FINAL HEARING AND (V) RELATED RELIEF

The above-captioned debtor and debtor in possession (the "Debtor"), by and through its proposed counsel, DLA Piper LLP (US), states as follows in support of this motion (the "Motion").[2] In further support of this Motion, the Debtor relies on the First Day Declaration and the *Declaration of Neil Gupta in Support of the Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral; (II) Granting Adequate Protection to Prepetition Lender; (III) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing and (V) Related Relief* (the "DIP Declaration"), each of which is filed contemporaneously with this Motion and incorporated by reference, and respectfully represents as follows:

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[1] The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number, is Tonopah Solar Energy, LLC (1316). The Debtor's headquarters is located at 11 Gabbs Pole Line Road, Box 1071, Tonopah, NV 89049.

[2] A detailed description of the Debtor and its business, including the facts and circumstances giving rise to the Debtor's chapter 11 case, is set forth in the *Declaration of Yale Scott Bogen in Support of Debtor's Chapter 11 Petition and First Day Motions* (the "First Day Declaration"). Capitalized terms used but not otherwise defined in this Motion have the meaning given to them in the First Day Declaration.

PRELIMINARY STATEMENT

1. The Debtor filed this chapter 11 case to, among other things, continue its prepetition sale process. The Debtor requires immediate access to postpetition incremental financing to continue its operations, administer the chapter 11 case, and effectuate a value-maximizing going-concern sale transaction. As set forth in further detail in the First Day Declaration, the Debtor owns and operates the first of its kind, net 110-megawatt concentrated solar energy power plant (the "Power Plant") located in Tonopah in Nye County, Nevada. The Power Plant is the first utility-scale concentrated solar power plant in the United States to be fully integrated with energy storage technology. Although the Power Plant employs unique underlying technology, it proved more complex to maintain than originally contemplated, leading to operational failures associated with hot salt tank leaks. The first hot salt tank leak occurred in March 2019, requiring the Power Plant to halt all power-generating operations, and contributing to the Debtor's decision to file a chapter 11 case in 2020 (the "2020 Chapter 11 Case").

2. After emerging from chapter 11 in December 2020, the Power Plant sustained three additional leaks. The Debtor's financial condition was further strained by its inability to secure a long-term power purchase agreement ("PPA") to generate consistent revenue. Together, these challenges limited the Debtor's ability to service its debt obligations. The Debtor's direct parent, Crescent Dunes Investment, LLC ("CDI") and affiliate Crescent Dunes Finance, Inc. ("CDF" and, in its capacity as such, the "Prepetition Lender") have economically supported the Debtor since it emerged from bankruptcy in 2020. The Prepetition Lender has contributed approximately $52.9 million to Debtor after the Debtor's original line of credit was exhausted in October 2022 (collectively, the "Equity Contributions"). The Prepetition Lender permitted the Debtor to stop making payments on the Prepetition Loan Agreement since October 2023, which has allowed the

Debtor to remain current on all of its ordinary course trade debt, even through the filing of this chapter 11 case.

3. The Debtor's management, along with its advisors, in consultation with the Prepetition Lender and CDI, determined that the most value-maximizing path forward would be to pursue a going-concern sale for the Power Plant. The Debtor commenced negotiations with the Prepetition Lender in the Spring of 2025, which ultimately led to entry into the Forbearance Agreement and RSA and a commitment to provide the DIP Facility. The DIP Facility is necessary to fund this chapter 11 case and the Debtor's sale process under section 363 of title 11 of the United States Code (the "Bankruptcy Code"). The DIP Facility consists of a $10 million new-money commitment, including $5 million of availability on an interim basis. The Debtor has contemporaneously filed a motion to sell substantially all of its assets to the highest or otherwise best bidder, pursuant to customary bidding procedures.

4. The Prepetition Lender is providing the DIP Facility on an arm's-length, good faith basis and on market terms. The Prepetition Lender would not consent to another lender providing funding and "priming" its Prepetition Obligations, and no other party was willing to provide additional funding on a junior basis. Moreover, the economic terms of any DIP financing would be significantly more expensive than the terms of the proposed DIP Facility. *See* DIP Decl. ¶ 11. The DIP Facility is critical to the Debtor's ability to fund its operations and the marketing process while providing sufficient liquidity during the chapter 11 case. The DIP Facility is an essential component of a successful path forward. The Debtor respectfully submits that the proposed DIP Facility is therefore in the best interests of, and necessary to avoid irreparable harm to, the Debtor and its estate, and should be approved

RELIEF REQUESTED

5. The Debtor requests entry of an interim order, substantially in the form attached as **Exhibit A** (the "Interim Order"), and, following a final hearing (the "Final Hearing"), a final order (the "Final Order" and, together with the Interim Order, the "DIP Orders"), providing the following relief:

(a) authorizing the Debtor to obtain and enter into postpetition financing (the "DIP Facility") in the form of that certain Senior Secured Superpriority DIP Term Sheet (the "DIP Term Sheet"), attached as Exhibit 1 to **Exhibit A**, which will include up to a maximum principal amount of $10 million of new money funding (such funds, the "DIP Loans") on a final basis, to be loaned under the DIP Term Sheet by and among the Debtor and CDF (in its capacity as such, the "DIP Lender"), pursuant to the terms of the DIP Orders and the DIP Term Sheet and the agreements, instruments, certificates, and other documents executed in connection therewith (as further identified in the DIP Term Sheet, collectively, the "DIP Loan Documents"), to enable the Debtor to pay the costs and expenses in the DIP loan budget ("Approved Budget") attached as Exhibit 2 to the Interim Order;

(b) authorizing the Debtor to execute and deliver the DIP Loan Documents and to perform the obligations thereunder and to perform such other and further acts as may be required in connection with the DIP Loan Documents;

(c) authorizing the Debtor to borrow (i) up to $5 million of DIP Loans under the Interim Order (the "Interim DIP Amount") and (ii) up to the full amount of the DIP Loans, inclusive of the Interim DIP Amount, under the Final Order;

(d) granting security interests, liens, and superpriority claims (including superpriority claims pursuant to 11 U.S.C. § 364(c)(1) ("Superpriority DIP Claims") and liens pursuant to 11 U.S.C. §§ 364(c)(2), 364(c)(3), and 364(d) (the "DIP Liens") to the DIP Lender, in each case payable from, and having recourse to substantially all of the Debtor's assets, as set forth in the DIP Loan Documents and all proceeds thereof (the "DIP Collateral"); provided, however, that such security interests, liens, and Superpriority DIP Claims shall have the priority described in the DIP Loan Documents and the DIP Orders;

(e) authorizing the Debtor to use cash collateral (the "Cash Collateral"), as such term is defined in 11 U.S.C. § 363(a), in accordance with the Debtor's weekly cash flow forecast setting forth all projected post-petition cash receipts and cash disbursements as set forth in the Approved Budget, and all future budgets, under the terms of the Interim Order or Final Order, as applicable;

(f) granting adequate protection in favor of the Prepetition Lender in accordance with the DIP Orders;

(g) subject to entry of the Final Order, authorizing the waiver by the Debtor of the right to (i) assert claims to surcharge against the DIP Collateral pursuant to 11 U.S.C. § 506(c) and (ii) seek marshaling with respect to the DIP Collateral;

(h) modifying the automatic stay imposed under 11 U.S.C. § 362 to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the DIP Orders, as applicable;

(i) scheduling a Final Hearing within approximately 21 days after the commencement of this chapter 11 case to consider entry of the Final Order; and

(j) granting related relief.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

7. Under rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtor consents to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent the consent of the parties, cannot enter final orders or judgments in connection with this Motion consistent with article III of the United States Constitution.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The statutory and legal bases for the relief requested in this Motion are sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c), and

507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Local Rules 2002-1(b), 4001-2, and 9013.

BACKGROUND

10. Earlier today (the "Petition Date"), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor is authorized to operate its business and manage its properties as debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

11. Additional factual background regarding the Debtor's business operations, corporate and capital structures, and restructuring efforts are described in greater detail in the First Day Declaration.

PREPETITION CAPITAL STRUCTURE AND NEED FOR DIP FINANCING

A. Prepetition Loan Agreement.

12. As discussed more fully in the First Day Declaration, the Debtor is party to that certain *Loan Agreement* dated as of December 18, 2020 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Prepetition Loan Agreement"), with the Prepetition Lender, that was approved by the Bankruptcy Court as exit financing in connection with the 2020 Chapter 11 Case. The Prepetition Loan Agreement provides for a term loan of $100 million (the "Prepetition Term Loan") and a revolving line of credit not to exceed $64 million (the "Prepetition Line of Credit" and, together with the Prepetition Term Loan the "Prepetition Obligations"). The Prepetition Loan Agreement bears interest at a rate of 2.9% per annum.

13. On August 29, 2025, Debtor and the Prepetition Lender entered into that certain *Amendment and Forbearance Agreement*, which increased the amount of the Line of Credit from $64 million to $73.5 million, to provide additional funding to TSE in anticipation of this chapter 11 case. The obligations under the Prepetition Loan Agreement are secured by a first-priority lien

on substantially all of the Debtor's assets. Additionally, as a condition precedent to the entry into the Prepetition Loan Agreement, CDI executed that certain *Equity Pledge Agreement*, dated as of December 18, 2020, with the Prepetition Lender (the "Equity Pledge Agreement"), whereby CDI granted to the Prepetition Lender a lien on and continuing security interest in, all of its right, title and interest in all limited liability company interests and other equity interests of the Debtor, as well as proceeds thereof.

14. The Prepetition Line of Credit was fully extended as of October 2022. After October 2023, the Debtor stopped paying interest and has never made any principal repayments. As more fully described in the First Day Declaration, from and after that time, until the line of credit was amended, the Prepetition Lender extended approximately $52.9 million of Equity Contributions.

15. As of the Petition Date, the Debtor was obligated to the Prepetition Lender in the aggregate amount of approximately $173 million (plus accrued and unpaid interest, expenses, costs, and fees).

B. Other Indebtedness.

16. In addition to the secured obligations owed to the Prepetition Lender, an affiliate of the Debtor arranged for the issuance a letter of credit for the benefit of CMB, which provides for $6 million on account of CMB's disputed claims against TSE (the "CMB Letter of Credit"). The CMB Letter Credit was obtained in connection with the approved plan in the 2020 Chapter 11 Case.

17. The Debtor is party to a $2.5 million escrow agreement to backstop potential indemnification claims of certain former directors of TSE, which may also be entitled to insurance coverage. The Debtor has also posted collateral with respect to its obligations, including potential reclamation costs under the right-of-way grants issued by the Bureau of Land Management

(the "BLM ROWs"), by posting a letter of credit, which was later drawn and converted by the Bureau of Land Management (the "BLM") into a deposit, of approximately $13.2 million. As of the Petition Date, the Debtor is current on obligations owed to the BLM under the BLM ROWs.

18. In the ordinary course of business, the Debtor incurs unsecured indebtedness to various suppliers, trade vendors, utility providers, and service providers, among others. As of the Petition Date, the Debtor was substantially current with respect to its ordinary course trade payables.

C. Equity Interests.

19. All of the equity interests in the Debtor are owned by CDI and have been pledged to the Prepetition Lender pursuant to the Equity Pledge Agreement.

D. Debtor's Need for Postpetition Financing.

20. As set forth more fully in the First Day Declaration, the Debtor commenced this chapter 11 case after exploring strategic alternatives and undertaking an extensive prepetition marketing process intended to sell the Power Plant. Without a long-term PPA and continuous cash infusions from its affiliates, sizable annual operating losses are expected to occur with the current business model. Running the Power Plant at a temperature high enough to generate revenue necessary to sustain current operations materially increases the risks of additional hot salt tank leaks. The Company's existing business model is unsustainable. The Debtor and its advisors believe that a sale, coupled with additional technological and capital advancement, can convert the Debtor's promising technology into sustainable profitability.

21. On December 16, 2025, the Debtor and the Non-Debtor Group Entities[3] entered into that certain *Restructuring Support Agreement* (the "RSA"), under which the Debtor and the

[3] The "Non-Debtor Group Entities" consist of the Prepetition Lender, CDI, and ACS Industrial Activities, Inc. (f/k/a Cobra Industrial Services, Inc.).

Non-Debtor Group Entities approved certain restructuring transactions on the terms and conditions set forth in the RSA (the "Transactions").

22. The Debtor currently has $598,000 in cash on hand and is unable to borrow additional amounts under its existing Prepetition Loan Agreement but requires funding to sustain its operations and pay for the costs of this chapter 11 case, including pursuing a going-concern sale and achieving Plan confirmation and consummation. The DIP Facility is the best and only path forward to ensure that the Debtor can successfully administer the chapter 11 case, facilitate the sale process, and ensure administrative solvency.

E. Debtor's Efforts to Obtain Postpetition Financing.

23. The Debtor, through its proposed investment banker, SSG Advisors, LLC ("SSG"), conducted a market check by seeking competing DIP financing offers from 10 third-party prospective lenders. No other proposals were received. The lack of competing proposals is due to several factors, including unwillingness by prospective lenders to provide a DIP facility subordinate to the Prepetition Lender's liens and unwillingness to engage in a priming fight with the Prepetition Lender. Moreover, the prospective lenders indicated that the economic terms of any DIP financing would be significantly more expensive than the terms of the proposed DIP Facility. *See* DIP Decl. ¶ 11. Based upon SSG's efforts to arrange refinancing with prospective lenders, the Debtor and its advisors believe that the proposed DIP Facility represents the best option available to the Debtor. Accordingly, the Debtor and the DIP Lender intend to enter into DIP Term Sheet, which is attached to the Interim Order as Exhibit 1.

SUMMARY OF TERMS OF DIP FINANCING

24. As required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2, the Debtor submits the following concise statement of the material terms of the DIP Facility:

Summary of Material Terms of DIP Facility	
Parties to the Proposed DIP Facility *Bankruptcy Rule 4001(c)(1)(B)*	**<u>Borrower</u>**: Tonopah Solar Energy, LLC, a Delaware limited liability company **<u>Guarantors</u>**: N/A **<u>DIP Lender</u>**: Crescent Dunes Finance, Inc., a Delaware corporation **<u>Agent</u>**: N/A **<u>Guarantors</u>**: N/A
DIP Facility & Borrowing Limits *Bankruptcy Rule 4001(c)(1)(B);* *Local Rule 4001-2(a)(i)*	A senior secured, first-lien and super-priority and priming debtor-in-possession delayed draw term loan facility in the aggregate principal amount of up to $10 million The DIP Facility provides for the following: • $5 million shall be available upon entry of the Interim Order; • an additional $5 million shall be available upon entry of the Final Order. *See* DIP Term Sheet, "DIP Facility and DIP Loan Documents".
Initial Approved Budget *Bankruptcy Rule 4001(c)(1)(B);* *Local Rule 4001-2(a)(iii)*	A copy of the Initial Budget is attached as <u>Exhibit 2</u> to the Interim Order.
Interest Rates *Bankruptcy Rule 4001(c)(1)(B)*	The DIP Loans shall bear interest at 4.5% per annum, with such interest payable monthly in arrears in kind. Default Rate: Notwithstanding anything to the contrary herein, upon the occurrence and during the continuance of an Event of Default, the DIP Loans and all other DIP Obligations will bear interest at an additional 2% per annum upon written notice from the DIP Lender to the Debtor. *See* DIP Term Sheet, "Interest Rate; Default Rate".
Expenses and Fees *Bankruptcy Rule 4001(c)(1)(B)*	None.
Termination Date *Bankruptcy Rule 4001(c)(1)(B);* *Local Rule 4001-2(a)(i)*	The DIP Lender may, by written notice to the Debtor, terminate the DIP Facility, which shall be immediately payable in full in cash, on the date of the earliest to occur of: i. upon the occurrence and during the continuance of an Event of Default; ii. six (6) months from the Petition Date (as such date may be extended with the prior written consent of the DIP Lender); iii. the date of consummation of a sale of all or substantially all of the Debtor's assets; iv. the effective date of a chapter 11 plan of the Debtor; and v. the date the DIP Obligations become due and payable in full, whether by acceleration or otherwise. *See* DIP Term Sheet, "Termination Date".
Prepayments *Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001- 2(a)(i)(I)*	Voluntary Prepayments: Permitted at any time, without premium or penalty. Mandatory Prepayments: Paid in cash in satisfaction of the DIP Obligations within two (2) business days of receipt, except as such amounts are set forth in the Approved Budget and are necessary to satisfy the expenditures set forth in the Approved Budget: i. 100% of the net proceeds of the disposition of the DIP Collateral, including asset sales;

Summary of Material Terms of DIP Facility	
	ii. 100% of the net proceeds of insurance and condemnation awards; iii. 100% of the net proceeds of any debt issuance or equity issuance; and iv. 100% of proceeds of claims and causes of action. *See* DIP Term Sheet, "Mandatory Prepayments" and "Voluntary Prepayments".
Covenants *Bankruptcy Rule 4001(c)(1)(B);* *Local Rule 4001-2(a)(i)(E)*	Usual and customary covenants for debtor in possession financings of this type, including certain financial reporting. *See* DIP Term Sheet, "Affirmative Covenants and Negative Covenants,".
Events of Default *Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(i)(M)*	The DIP Term Sheet contains customary events of default for financing of this type, which are set forth in the "Events of Default" section of the DIP Term Sheet.
Roll-Up *Local Rule 4001-2(a)(i)(O)*	None.
Carve-Out *Bankruptcy Rule 4001(b)(l)(B)(ii)* *Local Rule 4001- 2(a)(ii)*	"Carve-Out" means the sum of: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under Section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, all reasonable accrued unpaid fees and expenses of the professionals retained by the Debtor ("<u>Retained Professionals</u>") (a) subject to the amounts set forth in the Approved Budget, that are incurred on or prior to the date of delivery of the Carve-Out Trigger Notice (as defined below); and (b) are incurred after the first day after the date of delivery of the Carve-Out Trigger Notice subject to a cap of $250,000 in the aggregate (the amounts set forth in this clause (iv) being the "<u>Post-Carve Out Trigger Notice Cap</u>"). For purposes of the foregoing, "<u>Carve Out Trigger Notice</u>" will mean a written notice (including email or other electronic means) by the DIP Lender to the Debtor, its counsel, and the U.S. Trustee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked. *See* DIP Term Sheet, "Carve-Out"; *See* Interim Order ¶29.
Priority of Claims and Liens; Collateral *Bankruptcy Rule 4001(c)(1)(B)(i);* *Local Rule 4001-2(a)(i)(G)*	To secure the DIP Obligations, effective as of the Petition Date, under sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Lender is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens (collectively, the "<u>DIP Liens</u>") on the DIP Collateral. The term "DIP Collateral" means, collectively, all assets, rights, and privileges of the Debtor and its estate of any nature whatsoever, now owned or hereafter acquired, wherever located, by whomsoever held and all proceeds thereof in whatever form received, whether first arising prior to, on, or following the Petition Date, including, but not limited to, any and all cash, cash equivalents and any investment of such cash or cash equivalents, inventory, goods, accounts, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, payment intangibles, documents, instruments, securities, chattel paper, interests in leaseholds (provided, however, that solely to the extent that any lease prohibits the

Summary of Material Terms of DIP Facility	
	granting of a lien thereon, or otherwise prohibits hypothecation of the leasehold interest, then in such event there will only be a lien on the economic value of, proceeds of sale or other disposition of, and any other proceeds and products of such leasehold interests unless the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code), real property, deposit accounts (except for any account created to hold an adequate assurance deposit for utility providers by separate order of this Court, but not excepting the Debtor or its estate's interest in any excess funds in such account after satisfaction of any applicable obligations to utility providers), securities accounts, investment property, letters of credit, letter-of-credit rights, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, all litigation claims, including commercial tort claims, wherever located, and the proceeds, products, rents, accession and profits of the foregoing, including as described further in the DIP Term Sheet, but not limited to, (i) all assets constituting Prepetition Collateral, (ii) the Cash Collateral, (iii) all assets of the Debtor's that, as of the Petition Date, were not otherwise subject to a security interest, (iv) the DIP Proceeds account; (v) the Debtor's allocable share of any right to payment from CMB on account of any award of attorneys' fees; (vi) the BLM Deposit; (vii) the Debtor's residual interest in the Indemnification Escrow Account established in the Confirmation Order; (viii) the Debtor's residual interest in the CMB Letter of Credit; (ix) to the extent a DIP Lien is not permitted by law to attach to any property of the Debtor or its estate, the proceeds of such property, and (x) subject to entry of the Final Order, any proceeds or property recovered, unencumbered or otherwise from the Debtor's claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code and under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and similar statutes or common law (collectively, "<u>Avoidance Actions</u>"). The equity interests in the Debtor shall be pledged by Crescent Dunes Investment, LLC to the DIP Lender in consideration for the DIP Loans. *See* DIP Term Sheet "DIP Priority and Collateral; *See* Interim Order ¶ 5.
Release, Waivers or Limitation on any Claim or Cause of Action *Bankruptcy Rule 4001(c)(1)(B)(viii*)	The Interim Order provides for customary releases, subject to a successful Challenge and entry of the Final Order. *See* Interim Order ¶ E(viii).
Indemnification *Bankruptcy Rule 4001(c)(1)(B)(ix)*	Customary for similar debtor in possession financing and consistent with the DIP Facility. *See* DIP Term Sheet, "Indemnification"; *See* Interim Order ¶ 31.
Adequate Protection / Identity of Each Entity with Interest in Cash Collateral *Bankruptcy Rule 4001(c)(l)(B)(ii); (b)(1)(B)(i), (iv);* *Local Rule 4001-2(a)(i)(K) & (P)*	As adequate protection for any Diminution in Value of the Prepetition Lender' interests in the Prepetition Collateral resulting from the subordination of the Prepetition Liens to the DIP Liens and the Carve-Out or otherwise, the Prepetition Lender will receive: i. Continuing valid, binding, enforceable, and perfected postpetition replacement liens under sections 361, 363(e), and 364(d)(l) of the Bankruptcy Code on the DIP Collateral, which will be subject and subordinated only to the Carve-Out, the DIP Liens, and Permitted Liens (as defined in the Prepetition Loan Documents) (the "<u>Adequate Protection Liens</u>") and which (a) will otherwise be senior to all other security interests in, liens on, or claims against the DIP Collateral, and (b) will not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the chapter 11 case or any Successor Case and will be valid and enforceable against any trustee appointed in the chapter 11 case or any

Summary of Material Terms of DIP Facility	
	Successor Case, and will not be subject to sections 510, 549, or 550 of the Bankruptcy Code. ii. Administrative superpriority expense claims in the chapter 11 case (the "Adequate Protection Superpriority Claims"), junior and subordinate only to the Carve-Out and the DIP Obligations, under section 507(b) of the Bankruptcy Code, with priority over any and all other administrative expenses and unsecured claims against the Debtor and its estate, now existing or hereafter arising, of any kind or nature whatsoever as to and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code. iii. The Debtor will pay all documented fees and expenses that may be required or necessary for the Debtor's performance of its obligation under the DIP Term Sheet, subject to the Approved Budget. iv. The Debtor will promptly provide the Prepetition Lender and DIP Lender with all reports, documents, and other materials, including financial reports, as may reasonably be required in this Interim Order and the DIP Term Sheet. *See* Interim Order ¶ 13.
Determination Regarding Prepetition Claims *Bankruptcy Rule 4001(c)(1)(B)(iii)*	The Interim Order contains stipulations of fact by the Debtor, including those related to the extent, validity, perfection and enforceability of the Prepetition Liens, subject to Challenge. *See* Interim Order ¶¶ E(iv), E(v), 35.
Effect of Debtor's Stipulations on Third Parties *Bankruptcy Rule 4001(c)(1)(B)(iii), (viii)* *Local Rule 4001-2(a)(i)(B)*	Subject to entry of the Final Order, the Debtor's Stipulations and releases contained in Paragraph E of the Interim Order will be binding upon the Debtor's estate and each other party-in-interest, including any statutory committee appointed in this chapter 11 case (and including any chapter 11 trustee or chapter 7 trustee), except to the extent such party in interest first obtains standing by no later than 75 calendar days following the date of entry of the Interim Order (such time period will be referred to as the "Challenge Period" and, the date that is the next calendar day after the termination of the Challenge Period in the event that either (i) no Challenge is properly raised during the Challenge Period or (ii) with respect only to those parties who properly file a contested matter, adversary proceeding, or other Challenge, such Challenge is fully and finally adjudicated, clauses (i) and (ii) will be referred to as the "Challenge Period Termination Date")) and second, obtains a final, non-appealable order in favor of such party-in-interest sustaining any such Challenge in any such timely-filed contested matter, adversary proceeding, or other action (any such Challenge timely brought for which such a final and non-appealable order is so obtained, a "Successful Challenge"). *See* Interim Order ¶ 35(c).
Provision Limiting the Court's Power or Discretion to Enter Future Orders *Local Rule 4001-2(a)(i)(C)*	N/A
Waiver/Modification of the Automatic Stay *Bankruptcy Rule 4001(c)(1)(B)(iv)*	The automatic stay of section 362 of the Bankruptcy Code is hereby modified and vacated to the extent necessary to permit the Debtor, the DIP Lender and/or the Prepetition Lender to accomplish the transactions contemplated by this Interim Order. *See* Interim Order ¶ 18.

Summary of Material Terms of DIP Facility	
Milestones *Bankruptcy Rule 4001(c)(1)(B)(vi);* *Local Rule 4001-2(i)(a)(H)*	The Debtor shall comply with the following milestones (the "DIP Milestones"), each of which may be waived only upon the consent of the DIP Lender; provided that if any such Milestone falls on a date that is not a Business Day, such Milestone automatically shall be extended to the first Business Day thereafter: i. within 24 hours of the Petition Date, or as soon as reasonably practicable thereafter, the Debtor shall file the First Day Pleadings, the DIP Financing Motion, the Plan, and the Bidding Procedures Motion; ii. no later than 50 days after the Petition Date, the bid deadline in the Bidding Procedures Order shall have occurred; iii. no later than 55 days after the Petition Date, the Bankruptcy Court shall have entered the DIP Financing Order (subject to the Bankruptcy Court's availability) on a final basis; iv. no later than 80 days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order (subject to the Bankruptcy Court's availability), if applicable; v. no later than 125 days after the Petition Date, the Bankruptcy Court shall have entered an order confirming the Plan; vi. no later than 225 days after the Petition Date, a Transaction shall have been consummated, if applicable; and vii. no later than 240 days after the Petition Date, the effective date under the Plan shall have occurred. *See* DIP Term Sheet, "DIP Milestones."
506(c) Waiver / Section 552(b) Wavier *Bankruptcy Rule 4001(c)(l)(B)(x)* *Local Rule 4001-2(a)(i)(C)*	Subject to entry of the Final Order, in light of (i) the DIP Lender's agreement that their liens and superpriority claims shall be subject to payment of the Carve-Out and (ii) the Prepetition Lender's agreement that, with respect to the Prepetition Collateral, their respective liens and claims, including any adequate protection liens and claims, shall be subject to payment of the Carve-Out, and subordinate to the DIP Liens, the DIP Lender and the Prepetition Lender have negotiated for, and the Debtor intends to seek in the Final Order, (a) a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, (b) a waiver of the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, the DIP Facility Obligations, or the Prepetition Collateral, as applicable, and (c) a waiver of the surcharge provisions of section 506(c) of the Bankruptcy Code. *See* Interim Order ¶ H.
Liens on Avoidance Actions *Bankruptcy Rule 4001(c)(1)(B)(xi)*	Subject to entry of the Final Order, the DIP Liens include any proceeds or property recovered, unencumbered or otherwise from all of the Debtor's claims and causes of action under sections 502(d), 544, and 547–550 of the Bankruptcy Code or under any applicable state or common law) *See* Interim Order ¶ 4.
No Marshaling *Local Rule 4001-2(a)(i)(X)*	In no event will the DIP Lender or the Prepetition Lender be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, the DIP Obligations, or the Prepetition Collateral, as applicable, and all proceeds will be received and applied in accordance with the Interim Order, the DIP Credit Agreement, and the Prepetition Loan Documents, as applicable. *See* Interim Order ¶ 36(b).

BASIS FOR RELIEF REQUESTED

A. Entry into the DIP Facility is a sound exercise of Debtor's business judgment.

25. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant a debtor in possession considerable deference to act in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. Indeed, "courts will almost always defer to the business judgment of a debtor in the selection of the lender." *See, e.g.*, *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment").

26. Specifically, to determine whether the business judgment standard is met, a court need only "examine whether a reasonable businessperson would make a similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code").

27. Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. Courts may also appropriately take into consideration non-economic benefits to the debtor offered by a proposed postpetition facility. For example:

> Although all parties . . . are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including noneconomic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization.

In re ION Media Networks, Inc., No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. Jul. 6, 2009).

28. The Debtor's decision to enter into the DIP Facility is an exercise of its sound business judgment following arm's-length negotiations and careful evaluation of available alternatives. As further discussed in the First Day Declaration and the DIP Declaration, the DIP Facility reflects the Debtor's operational challenges and prepetition capital structure and was the product of arm's-length, good faith negotiations. Moreover, no other financing was offered or otherwise available. Importantly, the DIP Facility has favorable economic and noneconomic terms. The DIP Facility provides enough funding to continue the postpetition sale process on a timeline that the Debtor reasonably believes is achievable. The Debtor negotiated favorable interest and default rates, and the DIP Facility does not contain fees. Moreover, when SSG marketed the proposed DIP Facility, prospective lenders indicated that the economic terms of any DIP financing would be significantly more expensive than the terms of the proposed DIP Facility. The Debtor believes that it has obtained the best financing available and that the proposed DIP Facility will best position the Debtor to facilitate a sale of the Power Plant.

29. Accordingly, the Debtor submits that entry into the DIP Facility is in the best interests of the Debtor's estate, necessary to preserve the value of its estate, and is a reasonable exercise of its business judgement.

B. <u>The Debtor should be authorized to grant liens, including priming liens, and Superpriority DIP Claims</u>.

30. The Debtor proposes to obtain the DIP Facility by providing security interests and liens as set forth in the DIP Loan Documents and the proposed Interim Order pursuant to section 364(c) of the Bankruptcy Code. More specifically, the Debtor proposes to provide to the DIP Lender continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and DIP Liens on the DIP Collateral. The Debtor also seeks authority to grant the DIP Lender Superpriority DIP Claims. The Debtor is unable to obtain secured credit without granting to the DIP Lender the DIP Liens and incurring the Adequate Protection Lien (each as defined in the Interim Order) on the terms and subject to the conditions set forth in the Interim Order and in the DIP Term Sheet. *See* DIP Decl. ¶¶ 10 -12]

31. The statutory requirement for obtaining postpetition credit under section 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code]." 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code:

a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code—i.e., by allowing a lender only an administrative claim;

b. the credit transaction is necessary to preserve the assets of the estate; and

c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

In re Crouse Grp., Inc. at 549; *see also L.A. Dodgers LLC*, 4at 312–13; *Ames Dep't Stores* at 37–40.

32. As described further in the DIP Declaration, SSG contacted 10 third-party lenders seeking alternative DIP financing. No other proposals were received. The Debtor is unable to obtain unsecured credit due to its lack of unencumbered assets. Thus, the Debtor determined that the DIP Facility provided the best— and, in fact, the only— opportunity available to the Debtor under the circumstances to fund this chapter 11 case. The DIP Facility was negotiated in good faith, at arm's-length by the proposed DIP Lender and its counsel and the Debtor's proposed counsel and advisors. Further, financing on a postpetition basis is not otherwise available without granting the DIP Lender DIP Liens on the DIP Collateral, as more fully described in the DIP Term Sheet. The Prepetition Lender has consented to the Debtor incurring debtor in possession financing, the priming of its Prepetition Liens, and the use of its Cash Collateral, only on the terms of, and subject to, the conditions set forth in the DIP Loan Documents and DIP Orders.

33. Without access to the DIP Facility, which will provide the Debtor with necessary funds to operate the Power Plant, continue the Debtor's value-maximizing sale process, and administer the chapter 11 case, the value of the Debtor's estate would be significantly impaired to the detriment of all stakeholders. Under the circumstances, the Debtor believes that the terms of the proposed DIP Facility are fair and reasonable. For the reasons discussed in this Motion, including the terms of the proposed DIP Facility and the lack of alternative sources of financing, the Debtor respectfully submits that it satisfies the standards required to access postpetition financing on a superpriority claim and priming lien basis under sections 364(c) and 364(d) of the Bankruptcy Code.

C. The Debtor should be authorized to use Cash Collateral and provide adequate protection to the Prepetition Lender.

34. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2) conditions use of Cash Collateral upon (a) obtaining consent of each party that

has an interest in the Cash Collateral or (b) "the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." Further, the use of cash collateral may be prohibited or conditioned, upon proper request, as is necessary to adequately protect any interest in cash collateral. *See* 11 U.S.C. §363(e).

35. "The concept of 'adequate protection' is not defined in the [Bankruptcy] Code except by the implications of the examples of adequate protection listed in § 361." *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986). This can include a cash payment or periodic cash payments, additional liens, replacement liens or the "indubitable equivalent of such entity's interest in such property." 11 U.S.C. § 361. While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994).

36. After arm's-length and good faith negotiations, the Prepetition Lender has consented to the use of the Prepetition Collateral, including Cash Collateral, subject to its receipt of adequate protection as set forth in the DIP Term Sheet and Interim Order. Among other things, the adequate protection contemplated by DIP Orders is designed to protect the Prepetition Lender's interests in the Debtor's property from any diminution in value caused by the automatic stay, by the Debtor's use of the Cash Collateral during the pendency of this chapter 11 case, and by the priming of the Prepetition Lender's liens by the DIP Liens.

37. The Debtor submits that it has provided the Prepetition Lender with fair and reasonable adequate protection sufficient to protect the Prepetition Lender from any diminution in value of the Cash Collateral and Prepetition Collateral. The Debtor's provision of the adequate protection is not only necessary to protect against any such diminution in value, but is also fair and

appropriate under the circumstances of this chapter 11 case to ensure the Debtor is able to continue using the Cash Collateral, subject to the terms and limitations set forth in the DIP Orders, for the benefit of its estate and all parties in interest.

D. **The scope of the Carve-Out is appropriate**.

38. The DIP Orders provide that each of the liens granted pursuant to the DIP Facility, replacement liens on account of adequate protection, and the superpriority claims are subject and subordinate to the Carve-Out. The DIP Liens, Prepetition Lender Adequate Protection Liens, Prepetition Liens, Adequate Protection Superpriority Claims, and DIP Superpriority Claims (all as defined in the Interim Order) will be subject and subordinate to the Carve-Out.

39. The Carve-Out is necessary to ensure that the Debtor and other parties in interest are not deprived of certain rights and powers by ensuring their professionals are compensated for the services they provide in this chapter 11 case. *See In re Ames Dep't Stores, Inc.* at40 (observing that courts insist on carve-outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the course of this chapter 11 case by ensuring that assets remain for the payment of amounts to the Clerk of the Court and U.S. Trustee fees and professional fees of the Debtor.

E. **The DIP Lender should be deemed a good-faith lender under section 364(e) of the Bankruptcy Code**.

40. Section 364(e) of the Bankruptcy Code protects a good-faith lender's rights to collect on loans extended to a debtor and its rights in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. As explained in this Motion, the First Day Declaration and DIP Declaration, the terms of the DIP Facility are the result of (a) the Debtor's reasonable and informed determination that the

DIP Lender offered the most favorable terms on which to obtain vital postpetition financing, and (b) arm's-length, good-faith negotiations between the Debtor and the DIP Lender and their respective advisors.

41. The Debtor submits that the terms and conditions of the DIP Facility are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to the DIP Lender other than as described in this Motion. Accordingly, the Debtor respectfully requests that the Court find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code that is entitled to all of the protections afforded thereunder.

F. Modification of the Automatic Stay is warranted.

42. This Motion contemplates a modification of the automatic stay to permit (a) the Debtor to grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (b) upon the occurrence of an Event of Default (as defined in the DIP Loan Documents), subject to the "Default Notice Period" as set forth in the proposed DIP Orders, the DIP Lender to exercise any remedies available to it; and (c) the Debtor to implement the terms of the proposed DIP Orders, including payment of all amounts referred to in the DIP Loan Documents. In the Debtor's business judgment, such relief is reasonable and fair under the circumstances.

43. Stay modifications of this kind are common features of debtor in possession financing arrangements and, in the Debtor's business judgment, are appropriate in this case as well. *See, e.g.*, *In re Azzur Group Holdings LLC*, *et al.*, Case No. 25-10342 (KBO) (Bankr. D. Del. Apr. 14, 2025) (modifying automatic stay as necessary to effectuate the terms of the order

and following occurrence of an Event of Default); *In re PGX Holdings, Inc.*, Case No. 23-10718 (CTG) (Bankr. D. Del. Aug. 4, 2023) (same); *In re SiO2 Medical Prods., Inc.*, Case No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) (same); *In re Carestream Health, Inc.*, Case No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) (same).[4]

G. **<u>Failure to obtain immediate access to the DIP Facility would cause immediate and irreparable harm to the Debtor</u>**.

44. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit under section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. However, Bankruptcy Rules 4001(b)(2) and (c)(2) allow the Court to (a) hold a preliminary expedited hearing on the motion and authorize the Debtor to obtain credit and use of cash collateral if so requested and (b) authorize, to the extent necessary to avoid immediate and irreparable harm to the estate, the use of cash collateral or the obtaining of credit.

45. The Debtor respectfully requests that the Court hold a hearing to consider entry of the proposed Interim Order authorizing the Debtor—in the period from and after entry of the Interim Order until the Final Hearing—to borrow funds under the DIP Facility in accordance with the Approved Budget. The Approved Budget was developed by the Debtor and its professionals, together with the DIP Lender, to ensure that the Debtor has sufficient funds to operate the Power Plant in the ordinary course while running a fair and transparent sale process and paying its administrative expenses. Further, the Approved Budget contemplates that, in the period from and after entry of the Interim Order until the Final Hearing, the Debtor will use only those funds necessary to avoid immediate and irreparable harm.

[4] Because the orders are voluminous, they have not been attached to this Motion. Copies of these orders are available upon request of the Debtor's proposed counsel.

WAIVER OF STAY UNDER BANKRUPTCY RULES 6004(a) AND (h)

46. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As explained above and in the First Day Declaration, the Debtor faces substantial liquidity challenges that preclude its long-term operation of the Power Plant. It is therefore imperative for the Debtor to obtain immediate access to funds to facilitate a successful sale and plan process. Accordingly, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor.

47. For this reason and those set forth above, the Debtor respectfully requests that the Court waive the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply in this case.

RESERVATION OF RIGHTS

48. Nothing contained in this Motion or the DIP Orders (i) is intended or may be deemed to constitute an assumption of any agreement under section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (ii) impairs, prejudices, waives, or otherwise affects the rights of the Debtor and its estate with respect to the validity, priority, or amount of any claim against the Debtor and its estate; (iii) impairs, prejudices, waives, or otherwise affects the rights of the Debtor and its estate with respect to any and all claims or causes of action against any third party; or (iv) may be construed as a promise to pay a claim. Likewise, if the Court grants the relief sought in this Motion, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity, priority, or amount of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

NOTICE

49. Notice of this Motion will be provided to: (a) the Office of the United States Trustee for Region 3; (b) the Office of the United States Attorney for the District of Delaware; (c) the holders of the twenty largest unsecured claims against the Debtor; (d) counsel to the Prepetition Lender and DIP Lender; (e) the Internal Revenue Service; (f) the attorneys general for the States of Delaware and Nevada; (g) the Bureau of Land Management; and (h) any party that has requested notice under Bankruptcy Rule 2002. Notice of the Motion and any order entered with respect to the Motion will be served in accordance with Local Rule 9013-1(m). The Debtor respectfully submits that such notice is sufficient, and no other or further notice of this Motion is required.

[*Remainder of page intentionally left blank*]

WHEREFORE, the Debtor respectfully requests entry of the DIP Orders granting the relief requested in this Motion and such other and further relief as the Court may deem just and proper.

Dated: January 21, 2026
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

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- and -

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Proposed Counsel to the Debtor

Exhibit A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: TONOPAH SOLAR ENERGY, LLC,[1] Debtor.	Chapter 11 Case No. 26-10060 (__) **Related D.I. [__]**

INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO (A) OBTAIN POSTPETITION FINANCING AND (B) UTILIZE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION LENDER; (III) MODIFYING THE AUTOMATIC STAY; (IV) SCHEDULING A FINAL HEARING; AND (V) GRANTING RELATED RELIEF

Upon the motion (the "DIP Motion")[2] of the Debtor in the above-captioned chapter 11 case (the "Chapter 11 Case"), seeking entry of an interim order (this "Interim Order") and a final order, under sections 105, 361, 362, 363, 364, 503, 506, 507, and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Local Rules 2002-1, 4001-2, and 9013-1; the Court having considered the DIP Motion, that certain Senior Secured Superpriority DIP Term Sheet, dated as of December 16, 2025 (the "DIP Term Sheet"), by and among the Debtor and Crescent Dunes Finance, Inc. (in its capacity as such, the "DIP Lender"), a copy of the DIP Term Sheet is attached to this Interim Order as Exhibit 1, and the agreements, instruments, certificates, and other documents executed in connection therewith (as further identified in the DIP Term Sheet, the "DIP Loan Documents"), under which the DIP Lender will provide a senior secured superpriority facility (the "DIP Facility"), the Restructuring Support Agreement and the exhibits thereto, the *Declaration of Yale Scott Bogen in Support of Debtor's Chapter 11 Petition*

[1] The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number, is Tonopah Solar Energy, LLC (1316). The Debtor's headquarters is located at 11 Gabbs Pole Line Road, Box 1071, Tonopah, NV 89049.

[2] Capitalized terms used but not defined in this Interim Order have the meaning given to them in the DIP Motion or the DIP Term Sheet attached hereto as **Exhibit A**, as applicable. In the event of any discrepancy between the DIP Motion, the DIP Term Sheet, and this Interim Order, the terms of the Interim Order shall control.

and First Day Motions (the "First Day Declaration"), and the *Declaration of J. Scott Victor in Support of the Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral; (II) Granting Adequate Protection to Prepetition Lender; (III) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing and (V) Granting Related Relief* (the "DIP Declaration"), the evidence submitted and arguments proffered or adduced at a hearing held before the Court; and adequate notice of the hearing on the DIP Motion having been given in accordance with Bankruptcy Rules 2002, 4001, and 9014 and the applicable Local Rules; and it appearing that no other or further notice need be provided; and all objections, responses, and reservations of rights with respect to the relief requested in the DIP Motion having been withdrawn, resolved, or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor,

THE COURT HEREBY FINDS AND CONCLUDES THAT:[3]

A. **Petition Date**. On January 21, 2026 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court") thereby commencing the Chapter 11 Case.

B. **Debtor-in-Possession**. The Debtor continues in possession of and to manage and operate its businesses and property as a debtor in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Case.

[3] The findings and conclusions set forth in this Interim Order constitute the Court's findings of fact and conclusions of law under Bankruptcy Rule 7052, made applicable by Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. **Jurisdiction and Venue**. This Court has core jurisdiction over the Chapter 11 Case, the DIP Motion and the parties and property affected hereby under 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

D. **Notice**. Notice of the DIP Motion and this Interim Order was sufficient and appropriate under the circumstances and no other or further notice is necessary or required.

E. **Debtor's Stipulations**. Each stipulation, admission, and agreement contained in this Interim Order, including, without limitation, the stipulations set forth below, will be binding upon the Debtor, 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, subject to the Challenge Period (as defined below). The Debtor is deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. The Debtor, on its own behalf and on behalf of its estate, admits, stipulates, acknowledges, and agrees as follows (collectively, the "Debtor's Stipulations"):

i. Prepetition Loan Agreement. Prior to the Petition Date, the Debtor and Crescent Dunes Finance, Inc. (in its capacity as such, the "Prepetition Lender"), entered into that certain Loan Agreement dated as of December 18, 2020 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, including as amended by that certain Amendment and Forbearance Agreement dated as of August 29, 2025, the "Prepetition Loan Agreement"). The Prepetition Loan Agreement and all other agreements, documents, and instruments executed and/or delivered with, to or in favor of the Prepetition Lender in connection with, evidencing or securing the Prepetition Obligations (as defined below), each as the same may be amended, restated, renewed, replaced, supplemented, or otherwise modified from time to time, are referred to in this Interim Order as the "Prepetition Loan Documents."

ii. Prepetition Obligations. As of the Petition Date, the Debtor is, justly and lawfully indebted and liable to the Prepetition Lender, without defense, counterclaim or offset of any kind, in an amount not less than $173,000,000 in principal amount of loans and commitments outstanding, plus accrued and unpaid interest and fees, expenses, charges, indemnities, and all other Obligations (as defined in the Prepetition Loan Agreement) incurred or accrued in connection with the same (whether arising before, on, or after the Petition Date) as provided in the Prepetition Loan Documents (collectively, the "Prepetition Obligations").

iii. Security for Prepetition Obligations. As more fully set forth in the Prepetition Loan Documents, prior to the Petition Date, the Debtor granted to the Prepetition Lender security interests in and liens on (the "Prepetition Liens") all of its right, title and interest in the Collateral, (as defined in the Prepetition Loan Documents) (collectively, the "Prepetition Collateral").

iv. Validity of Prepetition Obligations. The Prepetition Obligations owing to the Prepetition Lender constitute legal, valid, and binding obligations of the Debtor, enforceable against it in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Prepetition Obligations owing to, or any transfers made to the Prepetition Lender on account of the Prepetition Obligations, is subject to avoidance, recharacterization, reduction, set-off, offset, counterclaim, cross-claim, recoupment, defenses, disallowance, impairment, recovery, subordination, or any other legal or equitable challenges under the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity.

v. Validity, Extent, Perfection, and Priority of Prepetition Liens. The Prepetition Liens granted to the Prepetition Lender constitute legal, valid, binding, enforceable (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and perfected security interests in and liens on the Prepetition Collateral (including the proceeds thereof), at any time owned by the Debtor and thereafter acquired, were granted to, or for the benefit of, the Prepetition Lender for fair consideration and reasonably equivalent value, and are not subject to defense, counterclaim, recharacterization, subordination, avoidance, or recovery under the Bankruptcy Code or applicable non-bankruptcy law or equity or regulation by any person or entity, including in any Successor Case (as defined below).

vi. No Challenges or Claims Related to Prepetition Obligations. No offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, no facts or occurrence supporting or giving rise to any offset, challenge, objection, defense, claim or counterclaim of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations are subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) under the Bankruptcy Code or applicable non-bankruptcy law or equity. The Debtor and its estate have no valid or meritorious Claims (as such term is defined in section 101(5) of the Bankruptcy Code), objections, challenges, causes of action, and/or choses in action or basis for any equitable relief against the Prepetition Liens or other property of the Prepetition Lender, or the Prepetition Lender or any of its respective affiliates and its and their respective predecessors, agents, attorneys, advisors, professionals, officers, directors, and employees with respect to the Prepetition Loan Documents, the Prepetition Obligations, the Prepetition Liens, , whether arising at law or at equity, including, without limitation, any challenge, recharacterization, subordination, avoidance, recovery, disallowance, reduction, or other Claims arising under sections 105, 502, 510, 541, 542 through 553, inclusive, or 558 of the Bankruptcy Code or applicable non-bankruptcy law equivalents. The Prepetition Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

vii. No Challenges or Claims Related to the DIP Facility. No offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the DIP Liens (as defined below) or DIP Obligations (as defined below) exist, no facts or occurrence supporting or giving rise to any offset, challenge, objection, defense, claim or counterclaim of any kind or nature to any of the DIP Liens or DIP Obligations exist, and no portion of the DIP Liens or DIP Obligations are subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) under the Bankruptcy Code or applicable non-bankruptcy law or equity. The Debtor and its estate have no valid claims (as such term is defined in section 101(5) of the Bankruptcy Code), objections, challenges, causes of action, and/or choses in action or basis for any equitable relief against the DIP Lender or any of its respective affiliates and its and their respective predecessors, agents, attorneys, advisors, professionals, officers, directors, and employees with respect to the DIP Obligations, the DIP Liens, the DIP Loan Documents, , whether arising at law or at equity, including, without limitation, any challenge, recharacterization, subordination, avoidance, recovery, disallowance, reduction, or other Claims arising under or pursuant to sections 105, 502, 510, 541, 542 through 553, inclusive, or 558 of the Bankruptcy Code or applicable non-bankruptcy law equivalents.

viii. Release. Subject to and upon the entry of the Final Order granting such relief, the Debtor, on behalf of itself and its estate (including any successor trustee or other estate representative in the Chapter 11 Case and any Successor Case,), hereby stipulates and agrees that it absolutely and unconditionally releases and forever and irrevocably discharges and acquits the

Prepetition Lender, the DIP Lender, and their respective affiliates and each of its and their respective former or current officers, partners, directors, managers, owners, members, principals, employees, agents, related funds, investors, financing sources, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case solely in their capacity as such (collectively, the "Released Parties"), of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Facility, the DIP Loan Documents, the Prepetition Loan Documents and/or the transactions contemplated hereunder or thereunder including, without limitation, any so-called "lender liability" or equitable subordination claims or defenses, any and all claims and causes of action arising under the Bankruptcy Code, and any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the Prepetition Lender and/or the DIP Lender (collectively, the "Released Claims") that exist or may exist prior to the entry of this Interim Order by the Court. Subject to and upon the entry of the Final Order granting such relief, the Debtor further waives and releases any defense, right of counterclaim, right of setoff or deduction to the payment of the Prepetition Obligations and the DIP Obligations which the Debtor now has or may claim to have against the Released Parties arising out of, connected with, or relating to any and all acts, omissions or events occurring prior to the entry of this Interim Order by the Court.

ix. Indemnity. The Debtor will indemnify, pay and hold harmless the DIP Lender (and its directors, officers, employees, and agents) against any loss, liability, cost or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence, fraud, or willful misconduct of the indemnified party, as determined by a final, non-appealable judgment of a court of competent jurisdiction).

x. Sale and Credit Bidding. Subject to and upon the entry of the Final Order granting such relief, and subject to section 363(k) of the Bankruptcy Code, the DIP Lender will have the right to credit bid any or all of the obligations under the DIP Facility in connection with any disposition of DIP Collateral (as defined below). Subject to and upon the entry of the Final Order granting such relief, and subject further to a Challenge and to section 363(k) of the Bankruptcy Code, the Prepetition Lender will have the right to credit bid any or all of the Obligations under the Prepetition Loan Agreement in connection with any disposition of Prepetition Collateral. Notwithstanding the foregoing, each of the DIP Lender and Prepetition Lender agrees that it will not credit bid an initial overbid to any approved stalking horse transaction.

xi. Cash Collateral. All of the Debtor's cash and cash equivalents, including cash on deposit in any account or accounts as of the Petition Date, securities or other property, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitute Cash Collateral of the Prepetition Lender.

F. **<u>Findings Regarding Postpetition Financing and Use of Cash Collateral</u>**.

i. <u>Request for Postpetition Financing and Use of Cash Collateral</u>. The Debtor seeks authority to (a) enter into the DIP Term Sheet on the terms described in the DIP Motion, this Interim Order, and in the DIP Loan Documents, and (b) use Cash Collateral on the terms described in this Interim Order to administer the Chapter 11 Case and fund its operations in accordance with the Approved Budget (subject to Permitted Variances (as such term is defined in the DIP Term Sheet)), the DIP Term Sheet, and the DIP Loan Documents. As of the Petition Date, the prepetition Closing Loan and Line of Credit Loans (each as defined in the Prepetition Loan Documents) available to the Debtor were fully drawn. The Debtor's use of Cash Collateral is limited to postpetition receipts of Prepetition Collateral or DIP Collateral.

ii. <u>Priming of Prepetition Liens</u>. The priming of the Prepetition Liens on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Loan Documents and as further described below, will enable the Debtor to obtain the DIP Facility and to continue to operate its business for the benefit of its estate and creditors, and as set forth in the DIP Declaration, the Debtor would not be able to obtain debtor-in-possession financing in a sufficient amount without granting such priming liens. Consistent with the requirements of section 364(d) of the Bankruptcy Code, the Prepetition Lender will receive adequate protection as set forth in this Interim Order under sections 361, 363, and 364 of the Bankruptcy Code for any decrease in the value of its interest in the Prepetition Collateral (including Cash Collateral) ("<u>Diminution in Value</u>").

iii. <u>Immediate Need for Postpetition Financing and Use of Cash Collateral</u>. The Debtor has an immediate and critical need to obtain financing through the DIP Facility and to continue to use the Prepetition Collateral (including Cash Collateral) in order to, among other things,

(a) pay the fees, costs, and expenses incurred in connection with the Chapter 11 Case, (b) fund the Carve-Out, (c) facilitate the continued operation of its business, (d) maintain business relationships with customers, vendors, and suppliers, and (e) satisfy other working capital and operational needs. The incurrence of new debt under the DIP Loan Documents and use of Cash Collateral is necessary and vital to the preservation and maintenance of the going concern value of the Debtor. Immediate and irreparable harm will be caused to the Debtor and its estate if immediate financing is not obtained and permission to use Cash Collateral is not granted. The extensions of credit under the DIP Facility are fair and reasonable, and the Debtor's entry into the DIP Facility reflects the sound exercise of the Debtor's business judgment and is supported by reasonably equivalent value and fair consideration.

iv. No Credit Available on More Favorable Terms. As set forth in the DIP Declaration, the DIP Facility is the best source of debtor-in-possession financing available to the Debtor. Given its current financial condition, financing arrangements, and capital structure, and the circumstances of the Chapter 11 Case, the Debtor has been and continues to be unable to obtain financing from sources other than the DIP Lender on terms more favorable than the DIP Facility. Further, the Prepetition Lender, in its capacity as such, has consented to the Debtor incurring debtor-in-possession financing, the priming of its Prepetition Liens, and the use of its Cash Collateral, only on the terms of and subject to the conditions set forth in the DIP Loan Documents and this Interim Order. The Debtor is unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtor has also been unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtor and its estate that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtor and its estate that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Lender: (1) perfected security interests in and liens on (each as provided in this Interim Order) all of the Debtor's existing and after-acquired assets with the priorities set forth in this Interim Order, (2) superpriority claims and priming liens to the extent set forth in this Interim Order, the DIP Term Sheet, and the DIP Loan Documents, and (3) the other protections set forth in this Interim Order.

v. Use of Cash Collateral and Proceeds of DIP Facility. As a condition to the Debtor's entry into the DIP Loan Documents, the extension of credit under the DIP Facility and the authorization to use Prepetition Collateral, including Cash Collateral, the Debtor has agreed that Cash Collateral and the proceeds of the DIP Facility will be used solely in accordance with the terms and conditions of this Interim Order (as may be amended and supplemented by the Final Order), the DIP Loan Documents, and the Approved Budget (subject to Permitted Variances).

G. **Adequate Protection**. In exchange for its consent to (i) the priming of the Prepetition Liens by the DIP Liens and (ii) the use of the Cash Collateral to the extent set forth in this Interim Order, the Prepetition Lender will receive, *inter alia*, adequate protection to the extent of any Diminution in Value of its interests in its Prepetition Collateral, as more fully set forth in this Interim Order.

H. **Sections 506(c) and 552(b)**. Subject to and upon the entry of the Final Order granting such relief, in light of (i) the DIP Lender's agreement that its liens and superpriority claims will be subject to the Carve-Out and (ii) the Prepetition Lender's agreement that, with respect to the Prepetition Collateral, its respective liens and claims, including any adequate protection liens and claims, will be subject to the Carve-Out, and subordinate to the DIP Liens, the DIP Lender and the Prepetition Lender have negotiated for, and the Debtor intends to seek in the

Final Order, (a) a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, (b) a waiver of the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, the DIP Obligations, or the Prepetition Collateral, as applicable, and (c) a waiver of the surcharge provisions of section 506(c) of the Bankruptcy Code.

I. Good Faith of DIP Lender and Prepetition Lender.

i. Willingness to Provide DIP Financing. The DIP Lender has committed to provide financing to the Debtor subject to: (a) entry of this Interim Order and the Final Order; (b) approval of the terms and conditions of the DIP Facility and those set forth in the DIP Loan Documents, including the DIP Term Sheet; (c) satisfaction of the closing conditions set forth in the DIP Loan Documents; and (d) findings by this Court that the DIP Facility is essential to the Debtor's estate, that the DIP Lender is extending credit to the Debtor under the DIP Loan Documents in good faith, and that the DIP Lender's claims, superpriority claims, security interests and liens, and other protections granted under this Interim Order and the DIP Loan Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

ii. Business Judgment. Based on the DIP Motion, the First Day Declaration, and the DIP Declaration, and the record presented to the Court at the Interim Hearing, (i) the terms of the financing embodied in the DIP Loan Documents, including the fees, expenses, and other charges paid and to be paid thereunder or in connection therewith, (ii) the adequate protection authorized by the Interim Order and DIP Loan Documents, and (iii) the terms on which the Debtor may continue to use the Prepetition Collateral (including Cash Collateral), in each case under this Interim Order and the DIP Loan Documents, are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, constitute reasonably equivalent value and fair consideration, and represent the best financing and terms available under the circumstances.

iii. Good Faith Under Section 364(e). The terms and conditions of the DIP Facility and the use of Cash Collateral were negotiated in good faith and at arm's-length among the Debtor, the DIP Lender, and the Prepetition Lender with the assistance and counsel of their respective advisors. Use of Cash Collateral and credit to be extended under the DIP Facility will be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Lender and the Prepetition Lender within the meaning of section 364(e) of the Bankruptcy Code.

iv. Consent to DIP Facility and Use of Cash Collateral. The Prepetition Lender has consented to the Debtor's use of Cash Collateral and the other Prepetition Collateral, and the Debtor's entry into the DIP Loan Documents, in accordance with and subject to the terms and conditions in this Interim Order and the DIP Loan Documents.

J. **Good Cause**. Good cause has been shown for immediate entry of this Interim Order, and the entry of this Interim Order is in the best interests of the Debtor, its estate and its stakeholders. Among other things, the Debtor has an immediate need for the liquidity provided by the DIP Facility on an interim basis and interim use of Cash Collateral in order to avoid immediate, irreparable harm, and the relief granted in this Interim Order will minimize disruption of the Debtor's business and permit the Debtor to pay critical expenses necessary to preserve the value of its estate. The extensions of credit under the DIP Facility, the use of Cash Collateral, and the proposed adequate protection arrangements, as set forth in this Interim Order, are fair and reasonable under the circumstances and reflect the Debtor's exercise of prudent business judgment.

K. **Immediate Entry**. Sufficient cause exists for the immediate entry and effectiveness of this Interim Order under Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the applicable Local Rules.

NOW, THEREFORE, based upon the foregoing findings of fact, the DIP Motion, the DIP Declaration, and the record before the Court with respect to the DIP Motion, and after due consideration and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. **Motion Granted**. The DIP Motion is GRANTED as set forth below. Entry into the DIP Term Sheet and the other DIP Loan Documents is hereby authorized and approved, and the use of Cash Collateral on an interim basis is authorized, in each case, subject to the terms and conditions set forth in this Interim Order and in the DIP Loan Documents, including, without limitation, the Approved Budget (subject to Permitted Variances). All objections to this Interim Order to the extent not withdrawn, waived, settled, or resolved, and all included reservations of rights, are hereby denied and overruled on the merits. The rights of all parties in interest to object to the entry of a Final Order are fully reserved. This Interim Order will become effective immediately upon its entry.

DIP Facility Authorization

2. **Authorization of the DIP Facility.** The Debtor is expressly and immediately authorized and empowered to execute and deliver the DIP Loan Documents, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Loan Documents, and to execute, deliver, and perform under all DIP Loan Documents, including all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtor under the DIP Loan Documents and the creation and

perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Loan Documents (the DIP Liens are perfected by entry of this Interim Order and such perfection will continue upon entry of the Final Order without the need of the Debtor or any DIP Lender to take any action, file, or record any mortgage, lien, or notice, or attach or take possession of any DIP Collateral). The Debtor is hereby authorized to pay any principal, interest, fees, expenses, and other amounts described in the DIP Loan Documents and this Interim Order, as such amounts become due and owing, subject to the Approved Budget, without the need to obtain further Court approval (except as otherwise provided in this Interim Order or in the DIP Loan Documents), subject to and in accordance with their terms and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order and the DIP Loan Documents. Upon execution and delivery, the DIP Loan Documents will represent legal, valid, and binding obligations of the Debtor, enforceable against the Debtor and its estate in accordance with their terms. Each officer of the Debtor acting individually is hereby authorized to execute and deliver each of the DIP Loan Documents, such execution and delivery to be conclusive evidence of such officer's respective authority to act in the name of and on behalf of the Debtor.

3. **Authorization to Borrow**. To prevent immediate and irreparable harm to the Debtor's estate, and to enable the Debtor to continue to operate its business and preserve and maximize the value of its estate, subject to the terms and conditions set forth in the DIP Loan Documents and this Interim Order, the Debtor is hereby authorized to borrow under the DIP Facility. The DIP Facility will be made available for the purposes set forth in the DIP Term Sheet and this Interim Order in a principal amount of up to $5 million on or after the first business day following entry of this Interim Order.

4. **DIP Obligations**. The DIP Loan Documents and this Interim Order constitute and evidence the validity and binding effect of the Debtor's DIP Obligations. All DIP Obligations are enforceable against the Debtor, its estate, and any successors thereto, including without limitation, any trustee appointed in the Chapter 11 Case, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of the Chapter 11 Case, or in any other proceedings superseding or related to any of the foregoing (each, a "Successor Case"). Upon entry of this Interim Order, the DIP Obligations will include all loans, reimbursement obligations, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by the Debtor to the DIP Lender, including, without limitation, all principal, accrued interest, costs, charges, fees, expenses, and other amounts, in each case payable under the DIP Loan Documents. Absent an Event of Default, the DIP Obligations will become due and payable, without notice or demand, on the Maturity Date (as defined in the DIP Term Sheet). No obligation, payment, transfer, or grant of collateral as security hereunder or under the DIP Loan Documents (including any DIP Obligations or DIP Liens) to the DIP Lender, including in connection with any adequate protection provided hereunder, will be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547–550 of the Bankruptcy Code or under any applicable state or common law), or be subject to any disgorgement, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), claim, counterclaim, charge, assessment, cross-claim, defense, or any other liability or challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity for any reason.

5. **DIP Collateral**. To secure the DIP Obligations, effective as of the Petition Date, under sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Lender

is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens (collectively, the "DIP Liens") on the DIP Collateral. The term "DIP Collateral" means, collectively, all assets, rights, and privileges of the Debtor and its estate of any nature whatsoever, now owned or hereafter acquired, wherever located, by whomsoever held and all proceeds thereof in whatever form received, whether first arising prior to, on, or following the Petition Date, including, but not limited to, any and all cash, cash equivalents and any investment of such cash or cash equivalents, inventory, goods, accounts, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, payment intangibles, documents, instruments, securities, chattel paper, interests in leaseholds (provided, however, that solely to the extent that any lease prohibits the granting of a lien thereon, or otherwise prohibits hypothecation of the leasehold interest, then in such event there will only be a lien on the economic value of, proceeds of sale or other disposition of, and any other proceeds and products of such leasehold interests unless the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code), real property, deposit accounts (except for any account created to hold an adequate assurance deposit for utility providers by separate order of this Court, but not excepting the Debtor or its estate's interest in any excess funds in such account after satisfaction of any applicable obligations to utility providers), securities accounts, investment property, letters of credit, letter-of-credit rights, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, all litigation claims, including commercial tort claims, wherever located, and the proceeds, products, rents, accession and profits of the foregoing, including as described further in the DIP Term Sheet, but not limited to, (i) all assets constituting Prepetition Collateral, (ii) the Cash Collateral, (iii) all assets of the

Debtor's that, as of the Petition Date, were not otherwise subject to a security interest, (iv) the DIP Proceeds account; (v) the Debtor's allocable share of any right to payment from CMB on account of any award of attorneys' fees; (vi) the Debtor's residual interest in the BLM Deposit; (vii) the Debtor's residual interest in the Indemnification Escrow Account established in the Confirmation Order; (viii) the Debtor's residual interest in the CMB Letter of Credit; (ix) to the extent a DIP Lien is not permitted by law to attach to any property of the Debtor or its estate, the proceeds of such property, and (x) subject to and upon the entry of the Final Order granting such relief, any proceeds or property recovered, unencumbered or otherwise from the Debtor's claims and causes of action under chapter 5 of the Bankruptcy Code and under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and similar statutes or common law (collectively, "Avoidance Actions").

6. **DIP Liens**. The DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, other encumbrances on, or claim to any of the DIP Collateral, except that the DIP Liens will be subject to the Carve-Out, and will otherwise be junior only to the Permitted Liens (as defined in the DIP Term Sheet). Other than as set forth in this Interim Order or in the DIP Loan Documents, it shall be an Event of Default (as defined in the DIP Loan Documents) if the DIP Liens are made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in this Chapter 11 Case or any Successor Case, and the DIP Liens will be valid and enforceable against any trustee appointed in this Chapter 11 Case or any Successor Case, upon the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Case or Successor Case. The DIP Liens will not be subject to sections 510, 549, or 550 of the Bankruptcy Code.

7. **DIP Superpriority Claims**. Subject to the Carve-Out and to Permitted Liens, upon entry of this Interim Order, the DIP Lender is hereby granted, under section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in the Chapter 11 Case and any Successor Case (collectively, the "DIP Superpriority Claims") for all DIP Obligations (a) with priority over any and all administrative expense claims and unsecured claims against the Debtor or its estate in the Chapter 11 Case and any Successor Case, at any time existing or arising, of the kind specified in section 507(b) of the Bankruptcy Code, and, to the extent allowed under the Bankruptcy Code, claims specified in, or ordered under sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code, and (b) which will at all times be senior to the rights of the Debtor and its estate, and any successor trustee or other estate representative to the extent permitted by law.

8. **No Obligation to Extend Credit**. The DIP Lender will have no obligation to make any loan or advance under this Interim Order or the DIP Loan Documents unless all of the conditions precedent under the DIP Loan Documents and this Interim Order have been satisfied in full or waived by the DIP Lender in accordance with the terms of the DIP Loan Documents.

9. **Use of DIP Proceeds**. From and after the Petition Date, the Debtor will use advances of credit under the DIP Facility only for the purposes specifically set forth in this Interim Order and the DIP Loan Documents, and only in compliance with the Approved Budget (subject to the Permitted Variances) and the terms and conditions in this Interim Order and the DIP Loan Documents.

10. **No Monitoring Obligation**. The DIP Lender will not have any obligation or responsibility to monitor the Debtor's use of the DIP Facility, and the DIP Lender may rely upon

the Debtor's representation that the use of the DIP Facility at any time is in accordance with the requirements of this Interim Order and the DIP Loan Documents, including, but not limited to, the Approved Budget (subject to the Permitted Variances).

Use of Cash Collateral

11. **Authorization to Use Cash Collateral**. Subject to the terms and conditions of this Interim Order and the DIP Loan Documents, and in accordance with the Approved Budget (subject to the Permitted Variances), the Debtor is authorized to use Cash Collateral until the termination of the DIP Facility. Nothing in this Interim Order will authorize the disposition of any assets of the Debtor outside the ordinary course of business, or the Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted by this Interim Order, the DIP Loan Documents, and in accordance with the Approved Budget (subject to the Permitted Variances), as applicable.

12. **Consent of Prepetition Lender**. The Prepetition Lender consents to (a) the provisions of this Interim Order including the Debtor's entry into the DIP Facility on an interim basis, (b) the granting of the DIP Liens and DIP Superpriority Claims on the terms and subject to the conditions set forth in this Interim Order, and (c) the Approved Budget (subject to the Permitted Variances).

13. **Adequate Protection for Prepetition Lender**. As adequate protection for any Diminution in Value of the Prepetition Lender's interests in the Prepetition Collateral resulting from the subordination of the Prepetition Liens to the DIP Liens and the Carve-Out or otherwise, the Prepetition Lender will receive:

a. Adequate Protection Liens. Continuing valid, binding, enforceable, and perfected postpetition replacement liens under sections 361, 363(e), and 364(d)(l) of the Bankruptcy Code on the DIP Collateral, which will be subject and subordinated only to the Carve-Out, the DIP Liens, and Permitted Liens (as defined in the Prepetition Loan Documents) (the "Adequate Protection Liens") and which (a) will otherwise be senior to all other security interests in, liens on, or claims against the DIP Collateral, and (b) will not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Case or any Successor Case and will be valid and enforceable against any trustee appointed in the Chapter 11 Case or any Successor Case, and will not be subject to sections 510, 549, or 550 of the Bankruptcy Code.

b. Adequate Protection Superpriority Claims. Administrative superpriority expense claims in the Chapter 11 Case (the "Adequate Protection Superpriority Claims"), junior and subordinate only to the Carve-Out, the Permitted Liens and the DIP Obligations, under section 507(b) of the Bankruptcy Code, with priority over any and all other administrative expenses and unsecured claims against the Debtor and its estate, now existing or hereafter arising, of any kind or nature whatsoever as to and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code.

c. Financial Reporting. The Debtor will promptly provide the Prepetition Lender and DIP Lender with all reports, documents, and other materials, including financial reports, as may reasonably be required in this Interim Order and the DIP Term Sheet.

14. **Adequate Protection Reservation**. Nothing in this Interim Order will impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Lender hereunder is insufficient to compensate for any Diminution in Value of its interests in the Prepetition Collateral during the Chapter 11 Case or any Successor Case. The receipt by the Prepetition Lender of the adequate protection provided in this Interim Order will not be deemed an admission that the interests of the Prepetition Lender are

adequately protected, and this Interim Order will not prejudice or limit the rights of the Prepetition Lender to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection.

General Provisions Regarding DIP Financing and Use of Cash Collateral

15. **Amendments to the DIP Loan Documents**. The Debtor and the DIP Lender may enter into one or more amendments, waivers, consents, or other modifications to and under the DIP Loan Documents, in each case in the DIP Lender's discretion, and no further approval of this Court will be required for any amendment, waiver, consent, or other modification to and under the DIP Loan Documents (and any fees paid in connection therewith) that does not materially and adversely affect the Debtor or which does not (i) shorten the maturity of the DIP Facility, (ii) increase the principal amount of, the rate of interest on, or the fees payable in connection with the DIP Facility, (iii) change any Event of Default (as defined in the DIP Loan Documents), or (iv) add any covenants, or amend the covenants to be materially more restrictive; provided, however, notice of any such amendment or other modification will be provided by the Debtor via electronic mail to counsel to the U.S. Trustee and any statutory committee appointed in this case at least two (2) business days in advance of its effectiveness, each of whom shall have the right to object on the grounds that the proposed modification is material and should be subject to further notice and a hearing. After obtaining the DIP Lender's and the Prepetition Lender's prior written consent, the Debtor is authorized and empowered, without further notice and hearing or approval of this Court so long as such amendment, or modification is not of the type set forth in clauses (i) through (iv) above, to amend, modify, supplement, or waive any provision of the DIP Loan Documents in accordance with the provisions thereof.

16. **Approved Budget**.

a. Attached to this Interim Order as **Exhibit 2** is a 13-week budget commencing on the Petition Date (the "Initial Budget") approved by the DIP Lender and the Prepetition Lender, which sets forth, among other things, forecasted cash receipts and cash disbursements. Such budget will be updated from time to time as set forth in the DIP Term Sheet. As of any date of determination, the budget or the updated budget that has most recently become the "Approved Budget" in accordance with and as defined in the DIP Term Sheet will be referred to as the "Approved Budget." Until any updated budget has become the Approved Budget, the Debtor will be subject to and be governed by the terms of the Approved Budget then in effect (subject to Permitted Variances). As set forth in the DIP Term Sheet, "Permitted Variance" has the meaning given to it in the DIP Term Sheet. For the avoidance of doubt, documented fees and out-of-pocket expenses paid to the Debtor or its professionals will not be included in the foregoing variance testing.

b. The Approved Budget is hereby approved on an interim basis. The proceeds of the DIP Facility and Cash Collateral under this Interim Order will be used by the Debtor in accordance with the Approved Budget (subject to Permitted Variances), this Interim Order, and the DIP Loan Documents.

c. Other than with respect to the Carve-Out, neither the DIP Lender's nor the Prepetition Lender's consent to, or acknowledgement of, the Approved Budget will be construed as consent to use the proceeds of the DIP Facility or Cash Collateral beyond the Maturity Date (as defined in the DIP Term Sheet) or a termination of the DIP Term Sheet, regardless of whether the aggregate funds shown on the Approved Budget have been expended.

d. Absent relief from the Court, any amendment or modification of the terms and conditions set forth in this Interim Order related to the Approved Budget, or any amendment or modification of the Approved Budget itself, will be subject to prior written express consent and approval of the DIP Lender and the Prepetition Lender. In the event of a dispute concerning the Approved Budget, all rights of the Debtor, the DIP Lender, and the Prepetition Lender are reserved.

17. **Budget Reporting**. The Debtor will at all times comply with the Permitted Variance and other reporting requirements set forth in the DIP Term Sheet.

18. **Modification of the Automatic Stay**. The automatic stay of section 362 of the Bankruptcy Code is hereby modified and vacated to the extent necessary to permit the Debtor, the DIP Lender and/or the Prepetition Lender to accomplish the transactions contemplated by this Interim Order.

19. **Perfection of DIP Liens and Adequate Protection Liens**. This Interim Order will be sufficient and conclusive evidence of the creation, extent, validity, perfection, and priority of all liens granted in the DIP Term Sheet, any security DIP Loan Document executed and delivered in connection therewith or herewith, or approved in this Interim Order, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, attachment, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens or to entitle the DIP Lender and the Prepetition Lender to the priorities granted in this Interim Order. Notwithstanding the foregoing, the DIP Lender and the Prepetition Lender are authorized, but not required, to file, as each deems necessary or advisable, such

financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Adequate Protection Liens, and all such financing statements, mortgages, notices and other documents will be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation will be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. Each of the DIP Lender and the Prepetition Lender may, in its discretion, file an electronic copy or photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office in addition to or in lieu of such financing statements, notices of lien or similar instruments. To the extent that the Prepetition Lender is, with respect to the DIP Collateral, a secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition Loan Documents or is listed as loss payee, lenders' loss payee, or additional insured under any the Debtor's insurance policies, the DIP Lender will also be deemed to be the secured party or mortgagee, as applicable, under such documents or to be the loss payee or additional insured, as applicable.

20. **Proceeds of Subsequent Financing**. If the Debtor, any trustee, any examiner, or any responsible officer subsequently appointed in the Chapter 11 Case or any Successor Case obtains credit or incurs debt under sections 364(b), 364(c), or 364(d) of the Bankruptcy Code in violation of the DIP Loan Documents at any time prior to the indefeasible repayment in full in cash of all DIP Obligations (other than unasserted contingent obligations, if any, that expressly survive termination of the DIP Loan Documents which will be cash collateralized) and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, then, after

satisfaction of the Carve-Out, and unless otherwise agreed by the DIP Lender, all cash proceeds derived from such credit or debt will immediately be turned over to the DIP Lender to be distributed in accordance with this Interim Order and the DIP Loan Documents. For the avoidance of doubt, if the Debtor, any trustee, any examiner, or any responsible officer subsequently appointed in the Chapter 11 Case, or any Successor Case, obtains credit or incurs debt (other than the DIP Facility) under section 364(d) of the Bankruptcy Code in violation of the DIP Loan Documents at any time prior to the indefeasible repayment in full of the Prepetition Obligations (other than unasserted contingent obligations, if any, that expressly survive termination of the Prepetition Loan Documents which will be cash collateralized), the Prepetition Lender's and/or the DIP Lender's rights to object to the Debtor's use of Cash Collateral and assert a lack of adequate protection will be fully preserved.

21. **Maintenance of DIP Collateral**. Until the payment in full of the DIP Obligations and the Prepetition Obligations, the Debtor will: (a) insure and/or maintain insurance on the DIP Collateral as required under the DIP Loan Documents or the Prepetition Loan Documents, as applicable; and (b) maintain the Debtor's cash management system consistent with the terms and conditions of the Cash Management Order and the DIP Loan Documents.

22. **Rights to Credit Bid**.

a. Subject to the Challenge Period and to section 363(k) of the Bankruptcy Code and the Prepetition Loan Documents, the Prepetition Lender may credit bid all or any portion of its claims, including, without limitation, the Prepetition Obligations and the Adequate Protection Liens, in connection with any proposed sale of any, all, or substantially all of the Debtor's assets, including, without limitation, any sale occurring under section 363 of the Bankruptcy Code or included as part of a reorganization plan under section 1123 of the Bankruptcy Code, including a plan subject to confirmation under Bankruptcy Code section 1129(b)(2)(A)(ii), or a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

b. Subject to section 363(k) of the Bankruptcy Code and the DIP Loan Documents, the DIP Lender may credit bid all or any portion of its claims, including, without limitation, the DIP Obligations, in connection with any proposed sale of any, all, or substantially all of the Debtor's assets, including, without limitation, any sale occurring under Bankruptcy Code section 363 or included as part of a reorganization plan under section 1123 of the Bankruptcy Code, including a plan subject to confirmation under Bankruptcy Code section 1129(b)(2)(A)(ii), or a sale or disposition by a chapter 7 trustee for the Debtor under section 725 of the Bankruptcy Code. Notwithstanding the foregoing, each of the DIP Lender and Prepetition Lender agrees that it will not credit bid an initial overbid to any approved stalking horse transaction.

23. **DIP Milestones**. As a condition to the DIP Facility and the use of Cash Collateral, the Debtor has agreed to the DIP Milestones (as defined in the DIP Term Sheet). For the avoidance of doubt, unless waived by the DIP Lender and the Prepetition Lender, each in its sole discretion, the failure of the Debtor to meet the DIP Milestones by the applicable specified deadlines will constitute an Event of Default under the DIP Loan Documents and this Interim Order.

24. **Termination Date**. On the applicable Termination Date (defined below), all applicable DIP Obligations will be immediately due and payable and all commitments to extend credit under the applicable DIP Facility will terminate. The DIP Lender may, by written notice to the Debtor, terminate the DIP Facility, which shall be immediately payable in full in cash, on the date of the earliest to occur of (the "Termination Date"):

a. upon the occurrence and during the continuance of an Event of Default;

b. six (6) months from the Petition Date (as such date may be extended with the prior written consent of the DIP Lender);

c. the date of consummation of a sale of all or substantially all of the Debtor's assets;

d. the effective date of a chapter 11 plan of the Debtor; and

e. the date the DIP Obligations become due and payable in full, whether by acceleration or otherwise.

The occurrence of the Termination Date shall terminate the ability of the Debtor to draw and shall terminate the DIP Commitment and any further obligation of the DIP Lender to make any DIP Loans under the DIP Loan Documents.

25. **Events of Default**. Until the payment in full of the DIP Obligations, the occurrence of any of the Events of Default under the DIP Term Sheet, unless waived in writing (which may be by electronic mail) and in accordance with the terms of the DIP Loan Documents, will constitute an event of default hereunder (collectively, the "Events of Default").

26. **Rights and Remedies Upon Event of Default**. Following five (5) business days' advance notice to the Debtor, the UST and the Committee (if one is appointed) (a "Termination Declaration"), during which the Debtor and any other party in interest may seek an emergency hearing from the Bankruptcy Court, the DIP Lender may, upon the expiration of the five business-day notice period, take all or any of the following actions without further order of or application to the Bankruptcy Court, and notwithstanding the automatic stay:

a. immediately terminate the Debtor's use of any Cash Collateral;

b. cease making any DIP Loans under the DIP Facility to the Debtor and terminate the DIP Commitment;

c. declare all DIP Obligations to be immediately due and payable;

d. freeze monies or balances in the Debtor's accounts (and, with respect to the DIP Loan Documents and the DIP Facility, sweep all funds contained in any account subject to a control agreement);

e. immediately set-off any and all amounts in accounts maintained by the Debtor with the DIP Lender against the DIP Obligations, or otherwise enforce any and all rights against the DIP Collateral (as defined below) in the possession of the DIP Lender, including, without limitation, disposition of the DIP Collateral solely for application towards the DIP Obligations; and

f. take any other actions or exercise any other rights or remedies permitted under the DIP Orders, this DIP Term Sheet, or applicable law to effect the repayment of the DIP Obligations.

27. **Emergency Hearing**. The Debtor and any other party in interest may seek an emergency hearing during the five (5) business days following the date a Termination Declaration is delivered (such five (5) business day period, the "Remedies Notice Period"). During the Remedies Notice Period, the Debtor will continue to have the right to use Cash Collateral in accordance with the terms of this Interim Order, solely to satisfy obligations that are necessary to avoid immediate and irreparable harm to the Debtor and its estate.

28. **Rights and Remedies Following Termination Date**. Following a Termination Date and unless the Court has entered an order prior to the expiration of the Remedies Notice Period finding that an Event of Default has not occurred, the DIP Lender will be entitled to exercise all rights and remedies in accordance with the DIP Loan Documents, this Interim Order, and applicable law without further order of or application to the Bankruptcy Court, and notwithstanding the automatic stay. Notwithstanding the foregoing, if the Debtor or any party in

interest requests an emergency hearing during the Remedies Notice Period, but such hearing is scheduled for a later date by the Court, then the Remedies Notice Period shall be automatically extended, and no rights or remedies may be exercised pursuant to the foregoing paragraph until after the Court has issued an order or other ruling following such hearing.

29. **Carve-Out**.

a. Carve-Out Definition. As used in this Interim Order and the DIP Loan Documents, "Carve-Out" means the sum of: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below, and which fees shall not be limited by any Approved Budget); (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under Section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, all reasonable accrued unpaid fees and expenses of the professionals retained by the Debtor ("Retained Professionals") (a) subject to the amounts set forth in the Approved Budget, that are incurred on or prior to the date of delivery of the Carve-Out Trigger Notice (as defined below); and (b) are incurred after the first day after the date of delivery of the Carve-Out Trigger Notice subject to a cap of $250,000 in the aggregate (the amounts set forth in this clause (iv) being the "Post-Carve Out Trigger Notice Cap"). For purposes of the foregoing, "Carve Out Trigger Notice" will mean a written notice (including email or other electronic means) by the DIP Lender to the Debtor, its counsel, and the U.S. Trustee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

b. Escrow. On a monthly basis, budgeted fees, costs and expenses of Retained Professionals will be funded into a segregated escrow account in an amount as set forth in the Approved Budget (the "Professional Fee Reserve"). Amounts funded into the Professional Fee Reserve will be considered borrowed by the Debtor at such time as they are deposited into the Professional Fee Reserve for distribution to professionals in accordance with orders of the Bankruptcy Court. Any amounts remaining in the Professional Fee Reserve after payment of all allowed fees and expenses will be returned to the Debtor and constitute DIP Collateral.

c. No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees. The DIP Lender and the Prepetition Lender will not be responsible for the direct payment or reimbursement of any fees or disbursements of any of the Retained Professionals incurred in connection with the Chapter 11 Case or any Successor Case under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise will be construed to obligate the DIP Lender or the Prepetition Lender in any way to pay compensation to, or to reimburse expenses of, any estate professional, or to guarantee that the Debtor or its estate have sufficient funds to pay such compensation or reimbursement. Nothing in this Interim Order will be construed as consent to the allowance of any Professional Fees or Expenses of the Debtor or of any other person or entity or will affect the right of the DIP Lender and/or the Prepetition Lender to object to the allowance and payment of any such fees and expenses.

30. **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order**. The DIP Lender and the Prepetition Lender have acted in good faith in connection with the DIP Facility, the DIP Loan Documents, the Prepetition Loan Documents, and this Interim Order and are entitled to rely upon the protections granted in this Interim Order and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Interim

Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, and notwithstanding any modification, amendment or vacatur of any or all of the provisions of this Interim Order by a subsequent order of this Court or any other court, the DIP Lender and Prepetition Lender are entitled to the protections provided in section 364(e) of the Bankruptcy Code.

31. **Indemnification**. Subject to and upon the entry of the Final Order granting such relief, the Debtor will indemnify and hold harmless the DIP Lender and each of its affiliates and its and their respective directors, officers, employees, agents, attorneys, accountants, advisors, controlling persons, equity holders, partners, members, and other representatives and each of their respective successors and permitted assigns (each, an "Indemnified Party") against, and hold each Indemnified Party harmless from, any and all losses, claims, damages, liabilities, and reasonable, documented and invoiced out-of- pocket fees and expenses (including, without limitation, fees and disbursements of counsel but limited, in the case of counsel, to the extent set forth in the DIP Loan Documents) that may be incurred by or asserted or awarded against any Indemnified Party, in each case, arising out of, or in any way in connection with, or as a result of: (i) the execution or delivery of any of the DIP Loan Documents, the performance by the parties thereto of their respective obligations thereunder and the other transactions contemplated thereby; (ii) the use of the proceeds of the DIP Facility; (iii) the enforcement or protection of their rights in connection with any of the DIP Loan Documents; (iv) the negotiation of and consent to this Interim Order; or (v) any claim, litigation, investigation, or proceeding relating to any of the foregoing, whether or not any Indemnified Party is a party thereto and regardless of whether such matter is initiated by a third party or the Debtor or any of its affiliates or creditors; provided that the foregoing indemnity will not apply to any claims arising (i) prior to the Petition Date or (ii) out of, or in any way in

connection with, or as a result of provisions of the Prepetition Loan Documents (for the avoidance of doubt, nothing in this Interim Order alters, amends, expands or minimizes any indemnification under the Prepetition Loan Documents, subject to applicable law); provided further that no Indemnified Party will be indemnified for any loss, claim, damage, liability, cost, or other expense to the extent such loss, claim, damage, liability, cost, or expense that (i) is determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (A) the gross negligence, fraud, or willful misconduct of such Indemnified Party or (B) a material breach of the obligations of such Indemnified Party under the DIP Loan Documents or (ii) relates to any proceeding between or among Indemnified Parties other than claims arising out of any act or omission on the part of the Debtor in accordance with this paragraph.

32. **Proofs of Claim**. Neither the DIP Lender nor the Prepetition Lender will be required to file a proof of claim in the Chapter 11 Case or any Successor Case, and the Debtor's stipulations in this Interim Order will be deemed to constitute a timely filed proof of claim. Any order entered by this Court in relation to the establishment of a bar date for any claim (including without limitation, administrative claims) in the Chapter 11 Case or any Successor Case will not apply to the DIP Lender. Notwithstanding the foregoing, each of the DIP Lender and the Prepetition Lender is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in the Chapter 11 Case.

33. **Limitations on the Use of DIP Proceeds, Cash Collateral, the Carve Out, and Other Funds**. Except as otherwise permitted in this Interim Order and the Approved Budget, the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, and the Carve-Out may not be used, directly or indirectly, by the Debtor or any trustee or other estate representative

appointed in the Chapter 11 Case (or any Successor Case) or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith) in connection with any of the following (each, a "Challenge") (a) seeking authorization to obtain liens or security interests that are senior to or *pari passu* with the DIP Liens or the Prepetition Liens or (b) investigating (including by way of examinations or discovery proceedings), preparing, asserting, joining, commencing, supporting or prosecuting any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, the DIP Lender and/or the Prepetition Lender, and each of their respective officers, directors, controlling persons, employees, agents, attorneys, affiliates, assigns, or successors of each of the foregoing (all in their capacities in relation to the DIP Lender and Prepetition Lender), with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any claims or causes of action arising under Chapter 5 of the Bankruptcy Code, (ii) any so-called "lender liability" claims and causes of action, (iii) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the DIP Obligations, the DIP Liens, the DIP Loan Documents, the Adequate Protection Liens, the Prepetition Liens, the Prepetition Loan Documents or the Prepetition Obligations, (iv) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the DIP Obligations or the Prepetition Obligations, (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (A) the DIP Lender or the Prepetition Lender under any of the DIP Loan Documents or this Interim Order, or (B) the Prepetition Lender under any of the Prepetition Loan Documents or this Interim Order (in each case, including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of the DIP Lender's or the Prepetition Lender's assertions, enforcements, realizations or remedies on or against the DIP Collateral or the Prepetition Collateral, as applicable, in accordance with the DIP Loan Documents or the Prepetition Loan Documents, as applicable, and this Interim Order), or (vi) objecting to, contesting, or interfering with, in any way, the DIP Lender's or the Prepetition Lender's enforcement or realization upon any of the DIP Collateral or the Prepetition Collateral, as applicable, once an Event of Default has occurred.

34. **Payments Held in Trust**. Except as expressly permitted in this Interim Order or the DIP Loan Documents and other than with respect to the Prepetition Collateral, in the event that any person or entity receives any payment on account of a security interest in the DIP Collateral or receives any DIP Collateral or any proceeds of DIP Collateral prior to indefeasible payment in full in cash of all DIP Obligations under the DIP Loan Documents and termination of the DIP Facility in accordance with the DIP Term Sheet, such person or entity will be deemed to have received, and will hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Lender and will immediately turn over such proceeds to the DIP Lender, for application in accordance with the DIP Loan Documents and this Interim Order; *provided that* the foregoing provision shall not apply to any person or entity holding a Permitted Lien.

35. **Releases; Challenge Rights**.

a. Binding Effect on Debtor. The Debtor's Stipulations and releases contained in Paragraph E of this Interim Order will be binding in all circumstances upon the Debtor upon entry of this Interim Order and upon its estate subject to and upon the entry of the Final Order granting such relief, and subject to the Challenge Period.

b. Lender Release. Effective as of the date of entry of the Interim Order, subject solely to the Challenge Period (as defined below) rights and limitations of this Interim Order, each of the Debtor and the Debtor's estate, on its and their own behalf, on behalf of its and their respective past, present and future predecessors, heirs, successors, subsidiaries, and assigns, will absolutely, unconditionally and irrevocably release and forever discharge and acquit the DIP Lender and, subject to and upon entry of the Final Order granting such relief, the Prepetition Lender and each of their respective current and former officers, directors, controlling persons, employees, agents, attorneys, affiliates, or successors of each of the foregoing (all in their capacities as such) from any and all (a) obligations and liabilities to the Debtor (and their successors and assigns), and (b) claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action arising prior to the date of the Interim Order of any kind, nature or description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, upon doctrines of contract or tort or under any state or federal law or otherwise, in each case arising out of or related to (as applicable) the Prepetition Loan Agreement (and related security documents), the DIP Loan Documents, and the obligations owing and financial obligations made thereunder, the negotiation thereof and of the transactions and agreements reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtor at any time had, now have or may have, or that its predecessors, successors or assigns at any time had or hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Interim Order. For the avoidance of doubt, nothing in the release will relieve the Debtor of the secured obligations under the Prepetition Loan Agreement or its obligations under the DIP Loan Documents.

c. Binding Effect on Non-Debtor Third Parties.

i. Subject to and upon the entry of the Final Order granting such relief, the Debtor's Stipulations and releases contained in Paragraph E hereof will be binding upon the Debtor's estate and each other party in interest, including any statutory committee appointed in this Chapter 11 Case (and including any chapter 11 trustee or chapter 7 trustee), except to the extent such party in interest first obtains standing by no later than (a) 75 days following the date of entry of the Interim Order and (b) any later date agreed to in writing by the Prepetition Lender (such time period established by the foregoing clauses (a) and (b) will be referred to as the "Challenge Period" and, the date that is the next calendar day after the termination of the Challenge Period in the event that either (i) no Challenge is properly raised during the Challenge Period or (ii) with respect only to those parties who properly file a contested matter, adversary proceeding, or other Challenge, such Challenge is fully and finally adjudicated, clauses (i) and (ii) will be referred to as the "Challenge Period Termination Date")) and second, obtains a final, non-appealable order in favor of such party in interest sustaining any such Challenge in any such timely-filed contested matter, adversary proceeding, or other action (any such Challenge timely brought for which such a final and non-appealable order is so obtained, a "Successful Challenge"); provided that no more than $25,000.00 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by the Committee, if appointed, solely to investigate the foregoing matters with respect to the Prepetition Liens or the Prepetition Obligations within the Challenge Period (the "Challenge Budget").

ii. Except as otherwise expressly provided in this Interim Order, from and after the Challenge Period Termination Date and for all purposes in the Chapter 11 Case and any Successor Case (and after the dismissal of the Chapter 11 Case or any Successor Case), and without further notice, motion, or application to, order of, or hearing before this Court, (i) any and all payments made to or for the benefit of the Prepetition Lender in accordance with the Prepetition Loan Documents or otherwise authorized by this Interim Order (whether made prior to, on, or after the Petition Date) will be indefeasible and not be subject to counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery or avoidance by any party in interest, (ii) any and all such Challenges by any party in interest will be deemed to be forever released, waived, and barred, (iii) all of the Prepetition Obligations will be deemed to be fully allowed claims within the meaning of section 506 of the Bankruptcy Code, and (iv) the Debtor's Stipulations will be binding on all parties in interest in the Chapter 11 Case or any Successor Case, including any committee or chapter 11 or chapter 7 trustee.

iii. Notwithstanding the foregoing, to the extent any Challenge is timely asserted, the Debtor's Stipulations and the other provisions in clauses (i) through (iv) in the immediately preceding sentence will nonetheless remain binding and preclusive on any statutory committee appointed in this Chapter 11 Case and on any other party in interest from and after the Challenge Period Termination Date, except to the extent that the Debtor's Stipulations or the other provisions in clauses (i) through (iv) of the immediately preceding sentence were expressly challenged in such Challenge and such Challenge becomes a Successful Challenge; provided that all other stipulations (other than those subject to a Successful Challenge) will remain binding on any such committee or other party in interest.

iv. Notwithstanding any provision to the contrary in this Interim Order, nothing in this Interim Order will be construed to grant standing to any party in interest, including to any committee, to bring any Challenge on behalf of the Debtor's estate; *provided that* a chapter 7 trustee shall have automatic standing pursuant to section 323 of the Bankruptcy Code. The failure of any party in interest, including any committee, to obtain an order of this Court prior to the Challenge Period Termination Date granting standing to bring any Challenge on behalf of the Debtor's estate will not be a defense to failing to commence a Challenge prior to the Challenge Period Termination Date as required under this paragraph or to require or permit an extension of the Challenge Period Termination Date. The filing of a motion seeking standing to file a Challenge before the Challenge Period Termination Date, which attached a proposed Challenge action, shall extend the Challenge Period with respect to the movant until two business days after the Court approves the standing motion, or such other time period ordered by the Court in approving the standing motion.

v. The Debtor's Stipulations will not bind a chapter 7 or chapter 11 trustee until the occurrence of the Challenge Period Termination Date with no challenge filed. If the Chapter 11 Case converts to a case under chapter 7 or if a chapter 11 trustee is appointed prior to the Challenge Period Termination Date, the Challenge Period shall be extended for such chapter 7 or chapter 11 trustee to 45 days after their appointment. For the avoidance of doubt, any trustee appointed or elected in this Chapter 11 Case or any Successor Case shall, until the occurrence of the Challenge Period Termination Date, and thereafter for the duration of any Challenge commenced pursuant to this Interim Order, be deemed to be a party other than the Debtor and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgements, admissions, confirmations and Stipulations of the Debtor in this Interim Order.

36. **Waivers**. Subject to and upon the entry of a Final Order granting such relief and as a further condition of the DIP Loan Documents and any obligation of the DIP Lender to make credit extensions under the DIP Loan Documents (and the consent of the DIP Lender to the payment of the Carve-Out to the extent provided in this Interim Order and the consent of the Prepetition Lender of the priming of the Prepetition Liens by the DIP Facility and the use of Cash Collateral):

a. Limitation on Charging Expenses. No costs or expenses of administration of the Chapter 11 Case or any Successor Case will be charged against or recovered from or against the DIP Lender and/or the Prepetition Lender with respect to the DIP Collateral or the Prepetition Collateral, in each case under section 105 or section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Lender or the Prepetition Lender, as applicable, and no such consent will be implied from any other action, inaction, or acquiescence of any or all of the DIP Lender or the Prepetition Lender.

b. No Marshaling. In no event will the DIP Lender or the Prepetition Lender be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, the DIP Obligations, or the Prepetition Collateral, as applicable, and all proceeds will be received and applied in accordance with this Interim Order, the DIP Loan Documents, and the Prepetition Loan Documents, as applicable.

c. Equities of the Case. In no event will the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply to the Prepetition Lender or Prepetition Collateral.

37. **No Lender Liability**. In determining to make any loan under the DIP Loan Documents the DIP Lender shall not be deemed to be in control of the Debtor and will not owe any fiduciary duty to the Debtor, its respective creditors, shareholders, or estate. In determining to permit the use of Cash Collateral, the DIP Lender and Prepetition Lender shall not be deemed to be in control of the Debtor and will not owe any fiduciary duty to the Debtor, its respective creditors, shareholders, or estate. Furthermore, nothing in this Interim Order will in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtor and its respective affiliates (as defined in section 101(2) of the Bankruptcy Code). For the avoidance of doubt, nothing in this Paragraph 37 is intended to release or change the status of parties, if they are control persons, outside of their capacity as Prepetition Lender or DIP Lender.

38. **No Third Party Beneficiaries**. Except as explicitly provided for in this Interim Order, this Interim Order does not create any rights for the benefit of any third party, creditor, landlord, lessor, equity holder, or any direct, indirect, or incidental beneficiary.

39. **Insurance Proceeds and Policies**. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Lender and the Prepetition Lender will be, and will be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtor that in any way relates to the DIP Collateral.

40. **No Waivers or Modifications of Interim Order**. It shall be an Event of Default under the DIP Term Sheet for the Debtor to seek any modification or extension of this Interim Order without the prior written consent of the DIP Lender and the Prepetition Lender, and no such

consent will be implied by any other action, inaction, or acquiescence of the DIP Lender or the Prepetition Lender.

41. **Binding Effect of this Interim Order**. Immediately upon entry of this Interim Order by this Court, the terms and provisions of this Interim Order will become valid and binding upon and inure to the benefit of the Debtor, the DIP Lender, the Prepetition Lender, all other creditors of any of the Debtor and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Chapter 11 Case, any Successor Case, or upon dismissal of the Chapter 11 Case or Successor Case; provided that, except with respect to the Carve-Out, neither the DIP Lender nor the Prepetition Lender will have an obligation to permit the use of DIP Collateral or Prepetition Collateral (including Cash Collateral) or to extend any financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the Debtor's estate.

42. **Survival**. The provisions of this Interim Order and any actions taken pursuant hereto will survive entry of any order which may be entered: (a) confirming a plan of reorganization in the Chapter 11 Case; (b) converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing the Chapter 11 Case or any Successor Case; or (d) by which this Court abstains from hearing the Chapter 11 Case or any Successor Case. The terms and provisions of this Interim Order, including the claims, liens, security interests, and other protections granted to the DIP Lender and the Prepetition Lender under this Interim Order and the DIP Loan Documents, will continue in the Chapter 11 Case, in any Successor Case, or following dismissal of the Chapter 11 Case or any Successor Case, and will maintain their priority as provided by this Interim Order until: (i) in respect of the DIP Facility, all the DIP Obligations under the DIP Loan Documents and this Interim Order have been paid in full (such payment being

without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms) or otherwise satisfied with the consent of the DIP Lender; and (ii) in respect of the Prepetition Loan Documents, all of the Prepetition Obligations under the Prepetition Loan Documents and this Interim Order, have been paid in full or otherwise satisfied with the consent of the Prepetition Lender. The terms and provisions concerning the indemnification of the DIP Lender will continue in the Chapter 11 Case, in any Successor Case, following dismissal of the Chapter 11 Case or any Successor Case, following termination of the DIP Facility and/or the indefeasible repayment of the DIP Obligations. In addition, the terms and provisions of this Interim Order will continue in full force and effect for the benefit of the Prepetition Lender notwithstanding the satisfaction in full or termination of the DIP Obligations until the satisfaction in full of the Prepetition Obligations.

43. **Necessary Actions**. The Debtor is authorized and directed to take any and all such necessary actions it deems reasonable and appropriate to implement the terms of this Interim Order.

44. **Enforceability**. This Interim Order constitutes findings of fact and conclusions of law under Bankruptcy Rule 7052 and will take effect and be enforceable immediately upon entry thereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9014 of the Bankruptcy Rules, any applicable Local Bankruptcy Rules, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order will be effective immediately and enforceable upon its entry and there will be no stay of execution or effectiveness of this Interim Order.

45. **Rights Reserved**. Notwithstanding anything in this Interim Order to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the rights of the DIP Lender or the Prepetition Lender to seek any other or

supplemental relief in respect of the Debtor that does not conflict with the terms of this Interim Order; (b) the rights of the DIP Lender or the Prepetition Lender under the DIP Loan Documents, the Prepetition Loan Documents, or the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of the Chapter 11 Case, conversion of the Chapter 11 Case to a case under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) 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 DIP Lender or the Prepetition Lender.

46. **Headings**. All paragraph headings used in this Interim Order are for reference only and are not to affect the construction hereof or to be taken into consideration in the interpretation hereof.

47. **Final Hearing**. The final hearing (the "Final Hearing") on the motion will be held on [●], 2026 at [●] [a.m./p.m.] (Eastern Time). Any objections or responses to entry of a final order on the motion (each, an "Objection") must be filed on or before 4:00 p.m. (Eastern Time) on [●], 2026, and served on the following parties: (a) proposed counsel for the Debtor, DLA Piper LLP (US), (i) 1201 North Market Street, Suite 2100, Wilmington, Delaware 19801 (Attn.: Aaron S. Applebaum [aaron.applebaum@us.dlapiper.com] and (ii) 1251 Avenue of the Americas, New York, New York, 10020 (Attn.: Rachel Ehrlich Albanese [rachel.albanese@us.dlapiper.com]); (b) the Office of the United States Trustee for Region 3, J. Caleb Boggs Federal Building, 844 King Street, Lockbox 35, Wilmington, Delaware 19801 (Attn.: Malcolm M. Bates [malcolm.m.bates@usdoj.gov]); and (c) counsel to the DIP Lender and Prepetition Lender, (i) Kelley Drye & Warren LLP, 3 World Trade Center, 175 Greenwich Street, New York, New

York 10007 (Attn.: Joel S. Rublin [jrublin@kelleydrye.com], Eric R. Wilson [ewilson@kelleydrye.com], and Benjamin D. Feder [bfeder@kelleydrye.com]) and (ii) Potter Anderson & Corroon LLP, 1313 N. Market St., 6th Floor, Wilmington, Delaware 19801 (Attn: Christopher M. Samis [csamis@potteranderson.com] and R. Stephen McNeill [rmcneill@potteranderson.com]). In the event no Objections to entry of a final order on the DIP Motion are timely received, this Court may enter such final order without a Final Hearing.

48. **Retention of Jurisdiction**. The Court will retain jurisdiction with respect to all matters arising out of or related to the interpretation, implementation, or enforcement of this Interim Order or the DIP Facility.

EXHIBIT 1

DIP Term Sheet

SENIOR SECURED SUPERPRIORITY DIP TERM SHEET

This Senior Secured Superpriority DIP Term Sheet (this "DIP Term Sheet") sets forth certain of the terms of the proposed DIP Facility (as defined below) subject to the conditions set forth below, among the Debtor and the DIP Lender (each as defined below).

This DIP Term Sheet is proffered in the nature of a settlement proposal in furtherance of settlement discussions. Accordingly, this DIP Term Sheet is protected by Rule 408 of the Federal Rules of Evidence and any other applicable statutes or doctrines protecting the use or disclosure of confidential settlement discussions. Nothing contained in this DIP Term Sheet shall be an admission of fact or liability.

This DIP Term Sheet shall be a binding agreement from and after, and subject to, the entry of the Interim DIP Order with respect to the DIP Loans (as defined below). The obligation of the DIP Lender to provide financing pursuant to this DIP Term Sheet shall be subject to the conditions precedent and other terms and conditions set forth herein. In the event of any conflict between this DIP Term Sheet and the terms of the Interim DIP Order or the Final DIP Order (each as defined below), the terms of the Interim DIP Order or the Final DIP Order (as applicable) shall govern.

Debtor	Tonopah Solar Energy, LLC, a Delaware limited liability company (the "Debtor" and borrower under the DIP Facility).
DIP Lender	"DIP Lender" shall mean Crescent Dunes Finance, Inc., a Delaware corporation.
Chapter 11 Case	"Chapter 11 Case" shall mean a case to be commenced (the date of the commencement of the Chapter 11 Case, the "Petition Date") by the Debtor under chapter 11 of title 11, United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in accordance with the Restructuring Support Agreement dated as of December 16, 2026, by and among the Debtor, the Prepetition Lender (as defined below), Crescent Dunes Investment, LLC, and ACS Industrial Activities, Inc.
DIP Facility and DIP Loan Documents	A senior secured, first-lien and super-priority and priming debtor-in-possession delayed draw term loan facility in the aggregate principal amount of up to $5 million on an interim basis upon entry of the Interim DIP Order (defined below) and an additional $5 on a final basis upon entry of the Final DIP Order (defined below) (the "DIP Facility"; the loans under the DIP Facility, the "DIP Loans"; the DIP Lender's commitment under the DIP Facility, the "DIP Commitment"; and proceeds received by the Debtor from the DIP Loans, the "DIP Proceeds"). The DIP Facility will be evidenced by:

	(i) this DIP Term Sheet; (ii) an interim order entered by the Bankruptcy Court approving the DIP Facility and authorizing use of Debtor's Cash Collateral (as such term is defined under section 363(a) of the Bankruptcy Code) on an interim basis, in form and substance satisfactory to the DIP Lender and the Debtor (the "Interim DIP Order"); (iii) a final order entered by the Bankruptcy Court approving the DIP Facility on a final basis and authorizing use of Debtor's Cash Collateral, in form and substance satisfactory to the DIP Lender and the Debtor (the "Final DIP Order", and together with the Interim DIP Order, the "DIP Orders"); and (iv) any other legal documentation as may be required by the DIP Lender to be delivered in connection with the foregoing (together with the DIP Term Sheet and the DIP Orders, collectively, the "DIP Loan Documents"). "DIP Obligations" shall mean all DIP Loans and other liabilities and obligations owed to the DIP Lender under or in connection with the DIP Loan Documents. The DIP Facility does not contemplate a roll-up of any Prepetition Obligations. Following the entry of the Interim DIP Order and upon satisfaction of the Lending Conditions (as defined below), the DIP Lender agrees to make DIP Loans to the Debtor from time to time during the period commencing on the entry of the Interim DIP Order and ending on the Termination Date, subject to the Approved Budget (as defined below). After the advance of the initial DIP Loans, subsequent DIP Loans shall be in minimum principal amounts and increments to be agreed, not to exceed the aggregate DIP Commitment, in each case subject to the terms and conditions provided in the DIP Loan Documents (each such draw, a "Draw"). Once repaid or prepaid, the DIP Loans incurred under the DIP Facility cannot be reborrowed.
Interest Rate; Default Rate	The DIP Loans shall bear interest at 4.5% per annum, with such interest payable monthly in arrears in kind (*i.e.*, by adding the amount of such outstanding interest to the aggregate principal amount of the DIP Loans) on the monthly anniversary of the Petition Date, computed based on a 365/366-day year; provided that any and all accrued and unpaid interest shall be due and payable in cash upon the Termination Date. Default Rate. Notwithstanding anything to the contrary herein, upon the occurrence and during the continuance of an Event of Default, the DIP Loans and all other DIP Obligations will bear interest at an additional 2% per annum upon written notice from the DIP Lender to the Debtor.

Prepetition Loan Agreement and Collateral	"Prepetition Loan Agreement" shall mean that loan agreement dated as of December 18, 2020 (as amended, amended and restated, supplemented, or otherwise modified from time to time) pursuant to which Crescent Dunes Finance, Inc. (in such capacity, the "Prepetition Lender") made a loan to the Debtor in the original principal amount of $100,000,000 and Line of Credit Loans (as defined in the Prepetition Loan Agreement) in an aggregate principal amount not to exceed $73,500,000, which loans (together with all other obligations arising under the Prepetition Loan Agreement, the "Prepetition Obligations") were secured by a security interest in the Collateral (as defined in the Prepetition Loan Agreement and as used herein, the "Prepetition Collateral"). "Prepetition Liens" shall mean the liens securing the Prepetition Lender's interest in the Prepetition Collateral.
Lending Conditions	"Lending Conditions" shall mean the following conditions precedent that need to be satisfied to DIP Lender's sole discretion (or waived in writing by the DIP Lender) in order to obligate the DIP Lender to fund any Draw: (i) solely with respect to the initial Draw, the DIP Lender shall have received from Debtor on the date hereof (a) copies of recent UCC search reports as of a recent date listing all effective financing statements (or equivalent filings) that name Debtor, together with copies of such financing statements, and (b) a certificate of the Debtor, dated as of the date hereof and executed by the secretary or an assistant secretary or manager of Debtor, attaching (1) a copy of the Debtor's certificate of formation and operating or limited liability company agreement, as amended to date (the "Organizational Documents"), and such certificate of formation shall be certified as of the date hereof or a recent date prior thereto by the appropriate governmental authority, (2) signature and incumbency certificates of the officers/manager of Debtor executing each DIP Loan Document, (3) resolutions, which may be chapter 11 filing authorizing resolutions, of the board of managers or similar governing body of Debtor approving and authorizing the execution, delivery and performance of this DIP Term Sheet and the other Loan Documents to which it is a party, certified as of the date hereof by such secretary or assistant secretary or manager as being in full force and effect without modification or amendment; (ii) the Interim DIP Order or following the entry of the Final DIP Order, the Final DIP Order, as applicable, shall have been entered by the Bankruptcy Court and shall be in full force and effect,

	and shall not have been stayed, vacated, reversed, amended or modified without the prior written consent of the DIP Lender; and (iii) prior to the Draw of each DIP Loan (a) the DIP Lender shall have received a borrowing notice from the Debtor with respect to the applicable Draw in form and substance reasonably acceptable to the DIP Lender (which may be substantially in the form attached as Exhibit C to the Prepetition Loan Agreement), (b) all representations and warranties in the DIP Loan Documents shall be true and correct in all material respects as of the date of such borrowing notice as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects on and as of such earlier date), (c) no Default or Event of Default shall have occurred, and shall be continuing, immediately prior to the funding of the Draw or would result from such borrowing, and (d) the Termination Date shall not have occurred.
Events of Default	"<u>Events of Default</u>" shall include the following and any other defaults specified as such in the DIP Orders, each of which may only be waived in writing by the DIP Lender in its sole discretion: (i) Debtor shall fail to pay (a) any principal or interest of any DIP Loan when due in accordance with the terms thereof or hereof (whether at stated maturity, by acceleration, voluntary prepayment, mandatory prepayment or otherwise); or (b) any other amount payable hereunder or under any other DIP Loan Document, within five (5) business days after any such other amount becomes due in accordance with the terms thereof or hereof; (ii) any representation or warranty made or deemed made by Debtor herein or in any other DIP Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this DIP Term Sheet or any such other DIP Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made or furnished; (iii) Debtor shall default in the observance or performance of any material agreement contained in this DIP Term Sheet or any other DIP Loan Document, which default, if capable of being cured, remains uncured for a period of five (5) business days after the date that an authorized officer of Debtor receives notice of such failure or obtains actual knowledge of such failure; (iv) one or more judgments arising following the Petition Date for the payment of money in an aggregate amount of $500,000 or more (other than any such judgment covered by insurance

	(other than under a self-insurance program) provided by a financially sound insurer to the extent a claim therefor has been made in writing and liability therefor has not been denied in writing by the insurer), shall be rendered against the Debtor and the same shall remain undischarged for a period of sixty (60) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Debtor to enforce any such judgment; (v) any material provision of the DIP Loan Documents shall cease to be valid or binding on Debtor, or Debtor shall so assert in any pleading filed in any court; (vi) any action of the Debtor to challenge the Prepetition Liens or the DIP Liens (as defined below); (vii) use of proceeds of any sale for any purpose other than repayment of the DIP Obligations, the Prepetition Obligations, other customary closing costs and any transaction fees payable to SSG Advisors, LLC, and other amounts as agreed by the DIP Lender and the Debtor; (viii) entry by the Bankruptcy Court of an order (a) directing the appointment of an examiner with expanded powers or a chapter 11 trustee without the prior written consent of the DIP Lender (but not including the appointment of a fee examiner to assist in reviewing applications for compensation by professionals), (b) converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, (c) dismissing the Chapter 11 Case, or (d) terminating or reducing the exclusive right of the Debtor to file a plan under section 1121 of the Bankruptcy Code; (ix) any variance from the Approved Budget above a Permitted Variance (as defined below) shall have occurred; (x) any material breach by the Debtor of any obligation under any DIP Order shall have occurred; (xi) the failure to meet any of the DIP Milestones (as defined below) and such failure continues for five (5) business days without the prior written consent of the DIP Lender; (xii) (a) the Debtor files a pleading seeking to vacate or modify any DIP Order without the prior written consent of the DIP Lender; (b) the entry of an order without the prior written consent of the DIP Lender amending, supplementing or otherwise modifying any DIP Order; or (C) the reversal, vacation or stay of the effectiveness of any DIP Order without the prior written consent of the DIP Lender; (xiii) the granting of relief from the automatic stay in the Chapter 11 Case to permit foreclosure or enforcement on assets of the Debtor in excess of $250,000; (xiv) the Debtor's filing of (or supporting another party in the filing of) a motion seeking entry of, or the entry of an order, granting any superpriority claim or lien (except as contemplated herein) which is senior to or *pari passu* with the DIP Lender's claims under the DIP Facility;

	(xv) cessation of the DIP Liens or the Superpriority DIP Claims to be valid, perfected and enforceable in all respects; (xvi) subject to the Carve-Out, the Debtor's use of Cash Collateral or DIP Loans for any item other than those set forth in the Approved Budget; (xvii) any uninsured judgments are entered with respect to any post-petition liabilities against the Debtor or any of their respective properties in an aggregate amount in excess of $250,000; and (xviii) the occurrence of any event, development, or circumstance that results in, or could reasonably be expected to result in, a Material Adverse Effect. "Default" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default. "Material Adverse Effect" means a material adverse effect on (i) the Project (as defined in the Prepetition Loan Agreement), (ii) the business, assets, financial condition or results of operations of the Debtor, (iii) the rights and remedies (taken as a whole) of the DIP Lender under the DIP Loan Documents or (iv) the ability of the Debtor to perform its payment obligations under the DIP Loan Documents; provided that, with respect to each of subsections (i), (ii), (iii), and (iv), there will be no Material Adverse Effect as a result of events leading up to and resulting from the commencement of the Chapter 11 Case and the continuation and prosecution of it.
Remedies	The DIP Lender shall have customary remedies upon the occurrence and during the continuance of an Event of Default, including, without limitation, the following: Following five (5) business days' advance notice to the Debtor, the UST and the Committee (if one is appointed), during which the Debtor may seek an emergency hearing from the Bankruptcy Court, the DIP Lender may, upon the expiration of the five (5) business day notice period, take all or any of the following actions without further order of or application to the Bankruptcy Court, and notwithstanding the automatic stay: (i) immediately terminate the Debtor's use of any Cash Collateral; (ii) cease making any DIP Loans under the DIP Facility to the Debtor and terminate the DIP Commitment; (iii) declare all DIP Obligations to be immediately due and payable;

	(iv) freeze monies or balances in the Debtor's accounts (and, with respect to the DIP Loan Documents and the DIP Facility, sweep all funds contained in any account subject to a control agreement); (v) immediately set-off any and all amounts in accounts maintained by the Debtor with the DIP Lender against the DIP Obligations, or otherwise enforce any and all rights against the DIP Collateral (as defined below) in the possession of the DIP Lender, including, without limitation, disposition of the DIP Collateral solely for application towards the DIP Obligations; and (vi) take any other actions or exercise any other rights or remedies permitted under the DIP Orders, this DIP Term Sheet, or applicable law to effect the repayment of the DIP Obligations.
Termination Date	The DIP Lender may, by written notice to the Debtor, terminate the DIP Facility, which shall be immediately payable in full in cash, on the date of the earliest to occur of (the "<u>Termination Date</u>"): (i) upon the occurrence and during the continuance of an Event of Default; (ii) six (6) months from the Petition Date (as such date may be extended with the prior written consent of the DIP Lender); (iii) the date of consummation of a sale of all or substantially all of the Debtor's assets; (iv) the effective date of a chapter 11 plan of the Debtor; and (v) the date the DIP Obligations become due and payable in full, whether by acceleration or otherwise. The occurrence of the Termination Date shall terminate the ability of the Debtor to Draw and shall terminate the DIP Commitment and any further obligation of the DIP Lender to make any DIP Loans under the DIP Loan Documents.
Budget; Use of DIP Proceeds	The budget shall consist of forecasted receipts and disbursements of the Debtor on a line-item basis for the 13-weeks commencing on the Petition Date (the "<u>Initial Budget</u>"), which Initial Budget shall be satisfactory to the DIP Lender, which shall be updated by each Thursday at 5:00 p.m. (prevailing Eastern Time) of every 4 weeks thereafter (the "<u>Updated Budget</u>"), which Updated Budget shall be satisfactory to the DIP Lender, (the Initial Budget and each Updated Budget, the "<u>Approved Budget</u>"). The DIP Proceeds will be used solely to the extent set forth in the Approved Budget.

	Forecast Variances: On the Wednesday of each calendar week at 5:00 p.m. (prevailing Eastern Time), commencing with the second full week following the Petition Date, the Debtor shall deliver to the DIP Lender a variance report in form reasonably acceptable to the DIP Lender (each, a "Variance Report") setting forth (i) the Debtor's expenditures and disbursements on a line-by-line basis (including, for the avoidance of doubt, professional fees) consistent with the Approved Budget during the immediately preceding calendar week ending on Sunday compared to the projected expenditures and disbursements (on a line-by-line basis) set forth in the Approved Budget for such Variance Testing Period (as defined below) and (ii) the variance in dollar amounts of the actual expenditures and disbursements (excluding all fees due and payable pursuant to 28 U.S.C. § 1930(a) plus any interest due and payable under 31 U.S.C. § 3717) for each weekly period ending on Sunday from those reflected for the corresponding period in the Approved Budget (such comparison, the "Variance"). "Permitted Variance" means a Variance that is not more than 15% above the total aggregate amount of the actual disbursements across all line items (which shall not include Debtor professional fees) (the "Operating Disbursements") during any Variance Testing Period against the projected Operating Disbursements in the Approved Budget for such Variance Testing Period. "Variance Testing Period" means, starting the second full week following the Petition Date the two-week period ending on the second Sunday thereafter and each week thereafter the subsequent two-week period ending on each Sunday. During any Variance Testing Period, the Variance from the then-current Approved Budget shall not exceed the Permitted Variance.
DIP Collateral and Priority	The DIP Lender shall be granted automatically and properly perfected liens and security interests ("DIP Liens") in all assets and properties, tangible and intangible, now owned or at any time hereafter acquired by the Debtor and its estate or in which the Debtor and its estate now has or at any time in the future may acquire any right, title or interest, including, without limitation, all of the Debtor's rights in: (i) all Prepetition Collateral; (ii) the DIP Proceeds Account;

	(iii) the Debtor's allocable share of any right to payment from CMB[1] on account of award of attorneys' fees; (iv) the Debtor's residual interest in the BLM Deposit; (v) the Debtor's residual interest in the Indemnification Escrow Account established in the Confirmation Order;[2] (vi) the Debtor's residual interest, if any, in the CMB Letter of Credit;[3] (vii) copyrights; (viii) subject to entry of the Final DIP Order, all litigation claims, including commercial tort claims; (ix) subject to entry of a Final DIP Order, the proceeds of any claims and causes of action of any Debtor's estate under chapter 5 of the Bankruptcy Code ("Avoidance Actions"); and (x) all proceeds of any assets subject to DIP Liens (including any and all proceeds of any insurance, indemnity, warranty or guaranty) (collectively, the "DIP Collateral"). The equity interests in the Debtor shall be pledged by Crescent Dunes Investment, LLC to the DIP Lender in consideration for the DIP Loans. Notwithstanding anything herein to the contrary, the security interest over the DIP Collateral shall be created and perfected by the DIP Orders, as applicable, and no perfection documentation shall be required for the perfection of such security interest in the DIP Collateral; provided, further, that the DIP Lender in its sole discretion may require the execution, filing or recording of any perfection documentation and/or the taking of any action so that the DIP Lender obtains possession or control of any collateral. The DIP Liens shall be senior in priority to all other liens, security interests or claims of any kind against the Debtor, including the Prepetition Liens, subject solely to the Carve-Out and Permitted Liens (each as defined below), and shall not be made subject to or *pari passu* with (i) any lien, security interest or claim to be granted in the Chapter 11 Case or any successor case, including any lien or security interest granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Debtor, (ii) any lien or security interest that is avoided or preserved for the benefit

[1] "CMB" means CMB Export LLC, CMB Infrastructure Group IX, LP and CMB Infrastructure Group XI, LP.

[2] *See In re Tonopah Solar Energy, LLC*, Case No. 20-11884, U.S. Bankruptcy Court for the District of Delaware, D.I. 291.

[3] "CMB Letter of Credit" means that certain letter of credit tin the aggregate Face Amount of $6 million issued in favor of CMB Export, LLC, as beneficiary, in its capacity as agent for each of CMB Export, LLC, CMB Infrastructure Investment Group IX, LP, and Solar Reserve CSP Holdings, LLC.

	of the Debtor and its estate under section 551 of the Bankruptcy Code or otherwise, or (iii) any other lien, security interest or claim arising under section 363 or 364 of the Bankruptcy Code to be granted in the Chapter 11 Case.
Superpriority DIP Claims	All of the claims of the DIP Lender under the DIP Facility shall, subject to the Carve-Out, be entitled to the benefits of section 364(c)(1) of the Bankruptcy Code, having a superpriority over any and all administrative expenses (collectively, the "Superpriority DIP Claims").
Adequate Protection	As adequate protection against the risk of any post-petition diminution in the value of the Prepetition Collateral (including Cash Collateral), including the granting of priming liens and claims as set forth herein and the imposition of the Carve-Out (any such diminution, "Diminution in Value"), the Prepetition Lender shall be granted the following adequate protection (the "Adequate Protection Obligations"), subject to the Carve-Out, Permitted Liens (as defined below), the Challenge Period (as defined in the DIP Orders), the DIP Liens, and the Superpriority DIP Claims: the Prepetition Lender shall receive the following as adequate protection, to the extent of any Diminution in Value of the Prepetition Collateral, the Prepetition Lender shall be granted (i) validly perfected replacement liens on any security interests in all DIP Collateral (the "Adequate Protection Liens"), which replacement liens shall have priority over any and all other liens except the DIP Liens, Permitted Liens (as defined below), and the Carve-Out, and (ii) a superpriority administrative expense claim under section 503(b) of the Bankruptcy Code with the priority set forth in section 507(b) of the Bankruptcy Code against the Debtor which claim shall have priority over any and all other claims against the Debtor and its estate (other than the Carve-Out and the Superpriority DIP Claims) (the "Adequate Protection Superpriority Claims").
Carve-Out	The "Carve-Out" shall be, collectively, (i) all fees required to be paid to the U.S. Trustee, (ii) reasonable fees and expenses incurred by a trustee and payable under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed $50,000, and (iii) to the extent allowed at any time, all reasonable accrued unpaid fees and expenses of the professionals retained by the Debtor (a) subject to the amounts set forth in the Approved Budget, that are incurred on or prior to the date of delivery of the Carve-Out Trigger Notice; and (b) are incurred after the first day after the date of delivery of the Carve-Out Trigger Notice subject to a cap of $250,000 in the aggregate. On a monthly basis, budgeted fees, costs and expenses of professionals retained by the Debtor shall be funded into a segregated escrow account held in trust in an amount as set forth in the Approved Budget (the

	"Professional Fee Reserve"). Amounts funded into the Professional Fee Reserve shall be considered used by the Debtor at such time as they are deposited into the Professional Fee Reserve for distribution to professionals in accordance with orders of the Bankruptcy Court. Any amounts remaining in the Professional Fee Reserve after payment of all allowed fees and expenses will be returned to the Debtor and constitute DIP Collateral. "Carve-Out Trigger Notice" shall mean a written notice delivered by the DIP Lender to the Debtor's counsel and the U.S. Trustee, delivered following the occurrence and during the continuation of an Event of Default under the DIP Facility.
Permitted Liens	"Permitted Liens" shall mean any valid, enforceable and unavoidable liens that are (i) in existence on the Petition Date and set forth on Schedule 1 attached hereto, (ii) either properly perfected as of the Petition Date or perfected subsequent to the Petition Date under section 546(b) of the Bankruptcy Code and (iii) senior in priority to the Prepetition Liens either under the Prepetition Loan Agreement or by operation of applicable non-bankruptcy law.
Representations and Warranties	The Debtor represents and warrants to the DIP Lender that (i) the execution, delivery and performance of this DIP Facility and the other DIP Loan Documents, including the grant of the DIP Liens, has been duly authorized, and, subject solely to the entry of the DIP Orders, this DIP Facility has been duly and validly executed and delivered by the Debtor and constitutes the Debtor's legal, valid and binding obligation, enforceable against it in accordance with its terms; (ii) the Debtor shall use the DIP Proceeds solely to the extent set forth in the Approved Budget (subject to any Permitted Variances); and (iii) the provisions of Sections 5.1, 5.4, 5.8, 5.9[4], 5.10, 5.12 of the Prepetition Loan Agreement, together with all related definitions and ancillary provisions, are hereby incorporated herein by reference to the extent applicable (and for the avoidance of doubt, only to the extent relevant for the transactions contemplated by this DIP Term Sheet) *mutatis mutandis* for the benefit of the DIP Lender, and the Debtor hereby makes each of those representations and warranties as if (i) made as of the Petition Date, and (ii) each reference therein to "Lender" were references to the DIP Lender.

[4] For the avoidance of doubt, the DIP Lender and Prepetition Lender acknowledge that all CMB-related litigation has been and is deemed disclosed.

Mandatory Prepayments	The following amounts shall be indefeasibly paid in cash in satisfaction of the DIP Obligations within two (2) business days of receipt, except as such amounts are set forth in the Approved Budget and are necessary to satisfy the expenditures set forth in the Approved Budget: (i) 100% of the net proceeds of the disposition of the DIP Collateral, including asset sales; (ii) 100% of the net proceeds of insurance and condemnation awards; (iii) 100% of the net proceeds of any debt issuance or equity issuance; and (iv) 100% of proceeds of claims and causes of action.
Voluntary Prepayments	Voluntary prepayments of the DIP Loans shall be permitted at any time, without premium or penalty.
Payments Generally	All payments (including all prepayments) to be made by Debtor hereunder, whether on account of principal, interest, fees or otherwise or under any DIP Loan Document shall be made by wire transfer of same day funds in U.S. Dollars, without defense, recoupment, set-off or counterclaim, free of any restriction or condition, to the account of the DIP Lender most recently designated by it for such purpose.
Affirmative Covenants and Negative Covenants	Subject to the DIP Orders, the Debtor covenants and agrees to the DIP Lender that the provisions of Articles 6 (other than sections 6.1.2, 6.1.3, 6.6, and 6.8) and 7 (other than sections 7.2, as modified below, and 7.7) of the Prepetition Loan Agreement, together with all related definitions and ancillary provisions, are hereby incorporated herein by reference to the extent applicable (and for the avoidance of doubt, only to the extent relevant for the transactions contemplated by this DIP Term Sheet) *mutatis mutandis* for the benefit of the DIP Lender, and the Debtor covenants and agrees that it shall perform and observe each of these covenants as if (i) each reference therein to "Lender" were references to the DIP Lender, (ii) each reference to "Financing Documents", "Loan Agreement", "Line of Credit Commitment" and similar expressions were references to this DIP Facility, and (iii) the term "Permitted Liens" shall have the meaning given to such term in this DIP Term Sheet. Section 7.2 is incorporated but modified to permit the Prepetition Liens and Adequate Protection Liens.
DIP Milestones	The Company shall comply with the following milestones (the "DIP Milestones"), each of which may be waived only upon the consent of the DIP Lender; provided that if any such Milestone falls on a date that is not a Business Day, such Milestone automatically shall be extended to the first Business Day thereafter:

	(a) within 24 hours of the Petition Date, or as soon as reasonably practicable thereafter, the Company shall file the First Day Pleadings, the DIP Financing Motion, the Plan, and the Bidding Procedures Motion; (b) no later than 50 days after the Petition Date, the bid deadline in the Bidding Procedures Order shall have occurred; (c) no later than 55 days after the Petition Date, the Bankruptcy Court shall have entered the DIP Financing Order (subject to the Bankruptcy Court's availability) on a final basis; (d) no later than 80 days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order (subject to the Bankruptcy Court's availability), if applicable; (e) no later than 125 days after the Petition Date, the Bankruptcy Court shall have entered an order confirming the Plan; and (f) no later than 225 days after the Petition Date, a Transaction shall have been consummated, if applicable. (g) no later than 240 days after the Petition Date, the effective date under the Plan shall have occurred.
Credit Bidding	Subject to entry of the Final DIP Order, the DIP Lender shall have the right to credit bid any or all of the obligations under the DIP Facility in connection with any disposition of DIP Collateral. Subject to entry of the Final DIP Order and subject to a Challenge, the Prepetition Lender shall have the right to credit bid any or all of the Obligations under the Prepetition Loan Agreement in connection with any disposition of Prepetition Collateral. Notwithstanding the foregoing, each of the DIP Lender and Prepetition Lender agrees it will not credit bid an initial overbid to any approved stalking horse transaction.
Admissions/Stipulations	The Debtor shall make customary admissions and stipulations in the DIP Orders with respect to the amount of the secured obligations under the Prepetition Loan Agreement, the validity, perfection, enforceability, non-avoidability, and priority of the Prepetition Liens, and the value of the Prepetition Collateral.
Challenge Period	The DIP Orders shall provide that any official committee of unsecured creditors or, if none is appointed, any party in interest in each case with requisite standing, must file a pleading with the Bankruptcy Court challenging any releases granted under the DIP Orders or the Debtors' stipulations and other admissions, releases, agreements, and waivers regarding the validity, extent, perfection and/or priority of any claims or security interest of the Prepetition Lender no later than (i) seventy-five (75) days after the Bankruptcy Court enters the Interim DIP Order and (ii) any later date agreed to in writing by the Prepetition Lender (the time

	period established by the foregoing clauses (i) and (ii), the "Challenge Period"). Failure of any official committee or any other party in interest to file such a pleading during the Challenge Period with the Bankruptcy Court shall forever bar such party from making such a challenge. To the extent a party in interest with requisite standing and authority timely and properly commences a challenge during the Challenge Period, all claims, causes of action and other matters not specifically set forth in such challenge shall be deemed forever waived, released, and barred with respect to such party in interest.
Indemnification	The Debtor shall indemnify, pay and hold harmless the DIP Lender (and its directors, officers, employees and agents) against any loss, liability, cost or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence, fraud, or willful misconduct of the indemnified party, as determined by a final, non-appealable judgment of a court of competent jurisdiction).
Releases	Effective as of the date of entry of the Interim DIP Order, subject solely to the Challenge Period rights and limitations set forth in herein, each of the Debtor and the Debtor's estate, on its and their own behalf, on behalf of its and their respective past, present and future predecessors, heirs, successors, subsidiaries, and assigns, shall absolutely, unconditionally and irrevocably release and forever discharge and acquit the DIP Lender and the Prepetition Lender and each of their respective current and former officers, directors, controlling persons, employees, agents, attorneys, affiliates, or successors of each of the foregoing (all in their capacities as such) (the "Released Parties"), from any and all (i) obligations and liabilities to the Debtor (and their successors and assigns), and (ii) claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action arising prior to the date of the Interim DIP Order of any kind, nature or description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, upon contract or tort or under any state or federal law or otherwise, in each case arising out of or related to (as applicable) the Prepetition Loan Agreement (and related security documents), the DIP Loan Documents, and the obligations owing and financial obligations made thereunder, the negotiation thereof and of the transactions and agreements reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtor at any time had, now has or may have, or that its predecessors, successors or assigns at any time had or hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Interim DIP Order. For the avoidance of doubt, nothing in the release shall

	relieve the Debtor of the secured obligations under the Prepetition Loan Agreement or its obligations under the DIP Loan Documents.
Section 506(c) Waiver; Marshalling Waiver; Section 552(b) Benefits	Effective upon entry of the Final DIP Order, the DIP Lender and the Prepetition Lender shall not be subject to the equitable doctrine of "marshalling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable, and all proceeds shall be received and applied under the Final DIP Order and the DIP Loan Documents notwithstanding any other agreement or provision to the contrary. Effective upon entry of the Final DIP Order, the Debtor (on behalf of itself and its estate) shall waive, and shall not assert in the Chapter 11 Case or any successor case, (i) any surcharge claim under sections 105(a) and/or 506(c) of the Bankruptcy Code or otherwise for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Lender and the Prepetition Lender, upon the DIP Collateral or the Prepetition Collateral, and (ii) the DIP Lender and the Prepetition Lender shall each 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 DIP Lender and the Prepetition Lender with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or DIP Collateral.
Amendments and Waivers	Except as otherwise provided herein, neither this DIP Term Sheet or any other DIP Loan Document nor any of the terms herein or therein may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing and signed by the Debtor and the DIP Lender; provided further that any material amendments (other than the Approved Budget) must be approved by the Bankruptcy Court following notice and a hearing.
Assignment and Participations	This DIP Facility shall be binding upon and inure to the benefit of the Debtor, the DIP Lender, and their respective successors and assigns, except that Debtor may not assign or transfer any of its rights or obligations under this DIP Term Sheet or any other DIP Loan Documents without the prior written consent of the DIP Lender (and any purported such assignment or transfer by Debtor without such consent shall be null and void). Subject to applicable law, the DIP Lender reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, the DIP Lender's rights and benefits under this DIP Term Sheet, the DIP Loan or any other DIP Loan Documents.
Governing Law	Except as governed by the Bankruptcy Code, the law of the State of New York.

	THE DEBTOR, THE DIP LENDER, AND THE PREPETITION LENDER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS DIP TERM SHEET OR ANY OTHER DIP LOAN DOCUMENT AND FOR ANY COUNTERCLAIM RELATING THERETO.

Schedule 1

Permitted Liens

1. None.

EXHIBIT 2

Initial Budget

Tonopah Solar Energy
Thirteen-Week Cash Flow Forecast
Petition date of January 21, 2026

	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
Week Number	1	2	3	4	5	6	7	8	9	10	11	12	13	Thirteen-Week
Week Ending	1/23/26	1/30/26	2/6/26	2/13/26	2/20/26	2/27/26	3/6/26	3/13/26	3/20/26	3/27/26	4/3/26	4/10/26	4/17/26	Total
Receipts [1]														
Energy Revenue	$0	$637,000	$0	$0	$0	$410,000	$0	$0	$0	$394,000	$0	$0	$0	$1,441,000
Other Revenue	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Income	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Receipts	**$0**	**$637,000**	**$0**	**$0**	**$0**	**$410,000**	**$0**	**$0**	**$0**	**$394,000**	**$0**	**$0**	**$0**	**$1,441,000**
Operating Expenses														
Consumables	$0	$0	$0	$0	$0	$25,000	$0	$0	$0	$100,000	$0	$0	$0	$125,000
Spare parts	0	0	0	0	0	30,000	0	0	0	70,000	0	0	0	100,000
Leases & Rent	0	0	0	0	0	230,000	0	0	0	0	0	0	0	230,000
O&M - Wages & benefits	0	0	0	0	0	30,000	0	0	0	750,000	0	0	0	780,000
O&M - Other	0	0	0	0	0	15,000	0	0	0	17,000	0	0	0	32,000
Outside Services [2]	0	0	0	0	0	150,000	0	0	0	150,000	0	0	0	300,000
Utilities	0	0	0	0	0	80,000	0	0	0	330,000	0	0	0	410,000
BI/Property Insurance	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Operating Expense [3]	0	35,000	0	0	0	35,000	0	0	0	35,000	0	0	0	105,000
General and Administrative Expenses														
Other Consultants	0	0	0	0	0	87,000	0	0	0	87,000	0	0	0	174,000
Project Management [4]	0	0	0	0	0	40,000	0	0	0	94,000	0	0	0	134,000
Taxes	0	0	0	0	0	460,000	0	0	0	0	0	0	0	460,000
Other General and Administrative	0	20,000	0	0	0	40,000	0	0	0	40,000	0	0	0	100,000
Total Operating Disbursements	**$0**	**$55,000**	**$0**	**$0**	**$0**	**$1,222,000**	**$0**	**$0**	**$0**	**$1,673,000**	**$0**	**$0**	**$0**	**$2,950,000**
Operating Cash Flow	**$0**	**$582,000**	**$0**	**$0**	**$0**	**($812,000)**	**$0**	**$0**	**$0**	**($1,279,000)**	**$0**	**$0**	**$0**	**($1,509,000)**
Non-Operating Disbursements														
Non-Bankruptcy Legal & Professional Fees														
Independent Managers	$0	$0	$0	$0	$0	$35,000	$0	$0	$0	$35,000	$0	$0	$0	$70,000
Legal	0	0	0	0	0	60,000	0	0	0	60,000	0	0	0	120,000
Special Litigation Counsel	0	80,000	0	0	0	75,000	0	0	0	75,000	0	0	0	230,000
Adequate Protection - Utility Depo	0	107,130	0	0	0	0	0	0	0	0	0	0	0	107,130
Interest Expense [5]	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Non-Operating Disbursements	**$0**	**$187,130**	**$0**	**$0**	**$0**	**$170,000**	**$0**	**$0**	**$0**	**$170,000**	**$0**	**$0**	**$0**	**$527,130**
Bankruptcy Costs [6]														
Development Specialists, Inc.	$0	$0	$0	$0	$0	$100,000	$0	$0	$0	$100,000	$0	$0	$0	$200,000
DLA Piper	0	300,000	0	0	0	500,000	0	0	0	600,000	0	0	0	1,400,000
SSG Capital Advisors [7]	0	0	0	0	0	52,500	0	0	0	52,500	0	0	0	105,000
Noticing Agent	0	0	0	0	0	50,000	0	0	0	50,000	0	0	0	100,000
UST Fees	0	0	0	0	0	0	0	0	0	0	0	0	43,000	43,000
Other Costs [8]	0	20,000	0	0	0	20,000	0	0	0	20,000	0	0	0	60,000
Total Bankruptcy Costs	**$0**	**$320,000**	**$0**	**$0**	**$0**	**$722,500**	**$0**	**$0**	**$0**	**$822,500**	**$0**	**$0**	**$43,000**	**$1,908,000**
Net Cash Flow	**$0**	**$74,870**	**$0**	**$0**	**$0**	**($1,704,500)**	**$0**	**$0**	**$0**	**($2,271,500)**	**$0**	**$0**	**($43,000)**	**($3,944,130)**
Est. beginning cash balance	**$598,000**	**$598,000**	**$672,870**	**$672,870**	**$672,870**	**$672,870**	**$68,370**	**$68,370**	**$68,370**	**$68,370**	**$96,870**	**$96,870**	**$96,870**	**$598,000**
Net Cash Flow	0	74,870	0	0	0	(1,704,500)	0	0	0	(2,271,500)	0	0	(43,000)	(3,944,130)
DIP Borrowing	0	0	0	0	0	1,100,000	0	0	0	2,300,000	0	0	0	3,400,000
Est. ending cash balance	**$598,000**	**$672,870**	**$672,870**	**$672,870**	**$672,870**	**$68,370**	**$68,370**	**$68,370**	**$68,370**	**$96,870**	**$96,870**	**$96,870**	**$53,870**	**$53,870**

Tonopah Solar Energy
Thirteen-Week Cash Flow Forecast
Petition date of January 21, 2026

Notes:

[1] The Debtor has entered into a power purchase agreement for the sale of electricity. Payment is due 30 days after the end of the month of the sale of electricity.

[2] Disbursements for repairs and maintenance and other trade services required to operate the facility such as the steam generation system, general services by O&M, and waste and water treatment.

[3] Other Operating Disbursements consists of fuel, minor parts and third-party services, including fees paid to the Energy Manager.

[4] Includes, among other items, independent contractor fees pursuant to Independent Contractor motion.

[5] Per agreement with the prospective DIP lender, the DIP loan shall bear interest at 4.5 % p.a. Accrued but unpaid interest shall be paid on the Termination Date, as defined in the DIP loan agreement, and not on a monthly basis.

[6] Projected bankruptcy costs reflect conservative assumptions and estimates.

[7] Includes only monthly fees; excludes success or other fees payable to SSG in accordance with their engagement letter and any order approving their retention.

[8] Other bankruptcy-related and miscellaneous expenses.