**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In Re: **WILSON CREEK ENERGY, LLC, *et al.*,**[1] **Debtors.**	**Case No.: 25-70001-JAD** **Chapter 11** ***Joint Administration Requested***
WILSON CREEK ENERGY, LLC, *et al.*, **Movant,** **v.** **KIA II LLC, KEYBANK NATIONAL ASSOCIATION, LSQ FUNDING GROUP, L.C., R&D SVONAVEC VENTURES, LLC, BILL MILLER EQUIPMENT SALES, CLEVELAND BROTHERS EQUIPMENT, and WINGSPIRE EQUIPMENT FINANCE,** **Respondents.**	**Doc. No.:** **Related to Document No.** **Hearing Date:** **Hearing Time:** **Response Deadline:**

DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) APPROVING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Wilson Creek Energy, LLC (6202); Wilson Creek Holding, Inc. (7733); Maryland Energy Resource, LLC (5299); Mincorp Acquisition Corp. (4858); Mincorp Inc. (5688); PBS Coals, Inc. (2413); Roxcoal, Inc. (3768); Quecreek Mining, Inc. (1745), Croner, Inc. (0529); Elk Lick Energy, Inc. (8551); and Corsa Coal Corp. (0027). The Debtors' address is 1576 Stoystown Road, Friedens, Pennsylvania 15541.

The above-captioned debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"), represent as follows in support of this motion (the "Motion"):

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

2. Pursuant to sections 105(a), 361, 362, 363, 364(c)(l), 364(c)(2), 364(c)(3), 364(d), 364(e), 503, 506(c), 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (the "Bankruptcy Code"), Rules 2002, 4001, 6004 and 9014 of the Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Bankruptcy Local Rules for the Western District of Pennsylvania (the "Local Rules"), the Debtors seek entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "Interim DIP Order"), and, subsequently, a final order to be proposed granting the relief requested herein on a final basis (the "Final DIP Order" and, together with the Interim DIP Order, the "DIP Orders"), providing as follows:

a. Accessing the DIP Facility – authorizing the Debtors, as borrowers, to obtain a post-petition loan facility in the aggregate principal amount of up to $15 million with availability determined solely in the DIP Lender's discretion (the "DIP Facility" and all extensions of credit and amounts made or deemed made under the DIP Facility, the "DIP Loans"), and to otherwise incur the DIP Obligations (defined below) on the terms and conditions set forth in the Interim DIP Order;

b. Borrowing of Interim Funding Amount – authorizing the Debtors to borrow up to $10.5 million of DIP Loans on an interim basis (the "Interim Funding Amount") and use proceeds of such borrowings in accordance with the Interim DIP Order and the Budget (defined below);

c. DIP Liens – authorizing the Debtors to provide automatically perfected first priority liens (the "DIP Liens") in favor of the DIP Lender on and against substantially all of the Debtors' assets, including, without limitation, all real and personal property, whether now existing or hereafter acquired or arising, subject only to the Carve Out (defined below) and Permitted Encumbrances (defined below), including all property constituting "cash collateral" as defined in section 363 of the Bankruptcy Code. The DIP Liens shall be senior to all other liens and secured interests in or against the Debtor or the Debtor's assets or properties except for "Permitted Encumbrances" (which include pre-bankruptcy liens solely to the extent: (i) such prepetition liens were validly attached and perfected prior to the commencement of the bankruptcy cases (the "Petition Date"), and (ii) the DIP Lender agrees in writing not to prime such prepetition liens), in which case the DIP Liens shall be junior to only such validly attached and perfected prepetition liens as of the Petition Date, and in all cases, such DIP Liens shall be subject to the Carve Out. All obligations under the DIP Facility shall be secured by a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically, and properly perfected first priority lien on, and security interest in all present and after acquired property (whether tangible, intangible, real, personal, or mixed) of the Debtors, wherever located, including, without limitation, all accounts, inventory, as-extracted collateral (including any coal stockpiles or coal stored at any mines), equipment, vehicles, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks, and other general intangibles, and all products and proceeds thereof. For avoidance of doubt, the DIP Loan collateral package will include a lien on proceeds of avoidance actions);

d. Use of Cash Collateral – authorizing the Debtors to use the cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code, the "Cash Collateral") pursuant to section 363 of the Bankruptcy Code, subject to the Budget and the terms of the Interim DIP Order;

e. Adequate Protection – authorizing the Debtors to provide holders of secured claims in its assets (the "Prepetition Collateral") adequate protection in the form of replacement liens for any and all diminution in value of the Prepetition Collateral from and after the Petition Date for any reason, including, without limitation, any such diminution resulting from (i) the use of cash collateral, (ii) the priming of any security interests in and liens on any of the Prepetition Collateral (including by the Carve-Out) by the DIP Liens (as defined herein) pursuant to this Interim DIP Order, (iii) the use, sale, or lease of the Prepetition Collateral, and (iv) the imposition of the automatic stay under section 362(a) of the Bankruptcy Code. Additionally, the Debtors intend to make certain payments to KeyBank in accordance with the Budget. ;

f. Exercise of Remedies; Modification of Stay – authorizing the DIP Lender to exercise remedies under, and in accordance with, the Interim DIP Order upon the occurrence and during the continuance of an Event of Default (defined below) and modification of the automatic stay to the extent necessary to permit such exercise of remedies;

g. Performance of DIP Obligations – authorizing the Debtors to perform their obligations under, and pay the fees set forth in, the Interim DIP Order;

h. Section 506(c) Waiver – approving, subject to entry of the Final Interim Order, the waiver by the Debtors of any right to seek to surcharge against the DIP Collateral (as defined in the Interim DIP Order) pursuant to section 506(c);

i. Scheduling an Interim Hearing – scheduling, pursuant to Bankruptcy Rule 4001, an interim hearing (the "Interim Hearing") on the Motion to be held before this Court to consider entry of the Interim DIP Order;

j. Scheduling a Final Hearing – scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the "Final Hearing") for this Court to consider entry of the Final DIP Order authorizing and approving on a final basis the relief requested herein; and

k. granting related relief.

SUMMARY OF DIP LOAN AND USE OF CASH COLLATERAL

3. In accordance with Bankruptcy Rules 4001(b), (c) and (d), the following is a concise statement and summary of the material terms of the proposed DIP Loan, as set forth in the Interim DIP Order:[2]

[2] The summary of the terms of the DIP Facility, as encompassed within the Interim DIP Order set forth herein is a summary of material terms; accordingly, certain terms of the DIP Facility and Interim DIP Order may be omitted, in whole or in part. Interested parties should read the Interim DIP Order in its entirety. In the event of any inconsistencies between this summary and the Interim DIP Order, the Interim DIP Order shall control. If there are any inconsistencies between this DIP Motion and the Interim DIP Order, the terms of the Interim DIP Order shall control until entry of the Final DIP Order, at which time the terms of the Final DIP Order shall govern, including in the event of any inconsistency between the Interim DIP Order and the Final DIP Order. Unless otherwise stated, capitalized terms used in this summary shall have the meanings ascribed to them in the Interim DIP Order or Final DIP Order, as applicable.

Bankruptcy Rule	Summary of Material Terms
Parties *Fed. R. Bankr. P. 4001(c)(1)(B)*	**Borrowers**. Each of the Debtors, as debtors in possession. **Guarantors.** None. **DIP Lender**. KIA II, LLC (the "DIP Lender"). *See* Interim DIP Order at ¶ J(iii).
DIP Facility and Borrowing Limits *Fed. R. Bankr. P. 4001(c)(1)(B)*	The DIP Facility shall consist of a new term loan facility in the aggregate principal amount of up to $15 million, of which $10.5 million shall be made available upon the entry of the Interim Order (the "DIP Financing"). *See* Interim DIP Order at ¶¶ J(iii) & 3.
Roll-Up *Fed. R. Bankr. P. 4001(c)(1)(B)*	There shall be no Roll-up.
Interest Rate *Fed. R. Bankr. P. 4001(c)(1)(B)*	Interest on the DIP Facility shall accrue at a rate per annum equal to 13.5% per annum (the "Interest Rate"). All interest shall accrue daily on the principal amount outstanding and be computed on the basis of a 360-day year. After the occurrence and during the continuation of an Event of Default under the DIP Orders (as defined below), interest on the DIP Loans shall accrue at the Default Interest Rate, which shall be 15.0%, payable monthly in kind and capitalized as principal each month. *See* Interim DIP Order at ¶ J(iii).
Term *Fed. R. Bankr. P. 4001(c)(1)(B)*	The DIP Facility shall mature and be due and payable upon the earliest to occur of: (a) February 28, 2025, or (b) the closing of the sale of substantially all of the Debtors' assets; (c) the effective date of a confirmed Acceptable Plan, or (d) the date of acceleration of the DIP Loans or termination by the DIP Lender following an Event of Default (the "Maturity Date"). *See* Interim DIP Order at ¶ J(iii).
Adequate Protection *Fed. R. Bankr. P. 4001(b)(1)(B)(iv); 4001(c)(1)(B)(ii)*	The Debtors shall provide holders of secured claims in its assets adequate protection in the form of replacement liens for any and all actual diminution in value of the Prepetition Collateral from and after the Petition Date for any reason, including, without limitation, any such diminution resulting from (i) the use of cash collateral, (ii) the priming of any security interests in and liens on any of the Prepetition Collateral (including by the Carve-Out) by the DIP Liens (as defined in the proposed Interim DIP Order) pursuant to the proposed Interim DIP Order, (iii) the use, sale, or lease of the Prepetition Collateral, and (iv) the imposition of the automatic stay under section 362(a) of the Bankruptcy Code. Additionally, the Debtors intend to make certain payments to KeyBank in accordance with the Budget. The liens of participants in the Customer Account Sale Programs are Permitted Encumbrances and will not be subject to a priming lien. *See* Interim DIP Order at ¶¶ J(iii), J(vi) and K..
DIP Facility Events of Default *Fed. R. Bankr. P. 4001(c)(1)(B)*	The DIP Orders contain events of default that generally are usual and customary for debtor-in-possession financings of this type (collectively, the "Events of Default"). *See* Interim DIP Order at ¶ 26.
Liens and Priority Granted for New Credit	All obligations of the Debtors to the DIP Lender under the DIP Facility, including, without limitation, all principal and accrued interest, premiums, costs, fees, expenses and any other amounts due under the DIP Facility (collectively, the "DIP

Bankruptcy Rule	Summary of Material Terms
FED. R. BANKR. P. 4001(c)(1)(B)	Obligations”), shall be secured by substantially all of the Debtors’ assets, including, without limitation, all real and personal property, whether now existing or hereafter acquired or arising, subject only to the Carve Out (defined below) and Permitted Encumbrances (defined below), including all property constituting “cash collateral” as defined in section 363 of the Bankruptcy Code (the “DIP Liens”), pursuant to Bankruptcy Code §§ 364(d)(1). The DIP Liens shall be senior to all other liens and security interests in or against the Debtor or the Debtor’s assets or properties except for “Permitted Encumbrances” (which include pre-bankruptcy liens solely to the extent: (i) such prepetition liens were validly attached and perfected prior to the Petition Date; and (ii) the DIP Lender agrees in writing not to prime such prepetition liens), in which case the DIP Liens shall be junior to only such validly attached and perfected prepetition liens as of the Petition Date, and in all cases, such DIP Liens shall be subject to the Carve Out. The Debtors intend to continue their LSQ receivables program. All obligations under the DIP Facility shall be secured by a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically, and properly perfected first priority lien on, and security interest in all present and after acquired property (whether tangible, intangible, real, personal, or mixed) of the Debtors, wherever located, including, without limitation, all accounts, inventory, as-extracted collateral (including any coal stockpiles or coal stored at any mines), equipment, vehicles, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks, and other general intangibles, and all products and proceeds thereof. For avoidance of doubt, the DIP Loan collateral package will include a lien on proceeds of avoidance actions. *See* Interim DIP Order at ¶¶ J(iii), 5-6.
Superpriority Expense Claims for New Credit *FED. R. BANKR. P. 4001(c)(1)(B)(i)*	All of the claims of the DIP Lender on account of the DIP Obligations shall be entitled to the benefits of section 364(c)(1) and 364(e) of the Bankruptcy Code and shall have superpriority over any and all administrative expenses of the kind that are specified in sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code, (the “Superpriority DIP Claims”), subject only to the Carve-Out (defined below). The Superpriority DIP Claims will, at all times during the period that the DIP Loans remain outstanding, remain in priority to all other claims or administrative expenses, subject only to the Carve-Out. *See* Interim DIP Order at ¶¶ J(iii) and 7.
Carve-Out *FED. R. BANKR. P. 4001(c)(1)(B)(i)*	Liens and claims granted by the Interim DIP Order and the Final DIP Order shall be subordinate to the following (collectively, the “Carve Out”): (a) All fees required to be paid to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) plus interest at the statutory rate: (b) Subject to the Budget, all unpaid fees, costs, disbursements, and expenses, incurred or earned by legal counsel and other professionals engaged or retained by the Debtors or the Committee with the approval from the Bankruptcy Court (the “Carve Out Professionals”), at any time before or on the Carve Out Trigger Date (to be defined in the Interim DIP Order), whether allowed by the Bankruptcy Court prior to, on, or after delivery of the Carve Out Trigger Notice (to be defined in the Interim DIP Order) in an aggregate amount not to exceed the Post-Carve Out Trigger Notice Amount (to be defined in the Interim DIP Order) but an amount not exceeding $300,000).

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	(c) The proposed DIP Facility likewise provides for the funding of a Professional Fee Weekly Escrow. *See* Interim DIP Order at ¶ 31.
Parties with an Interest in Cash Collateral *FED. R. BANKR. P. 4001(c)(1)(B)(i)*	KeyBank. *See* Interim DIP Order at ¶ I.
Duration/Use of Cash Collateral *FED. R. BANKR. P. 4001(b)(1)(B)(ii)*	Subject to the terms and conditions of the Interim DIP Order, and in accordance with the Budget (as defined below), the Debtors may use Cash Collateral. *See* Interim DIP Order at ¶ 10.
Liens, Cash Payments, or Adequate Protection Provided for Use of Cash Collateral *FED. R. BANKR.P. 4001(b)(1)(B)(iv) 4001(c)(1)(B)(ii)*	Pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Identified Prepetition Secured Lenders against any actual diminution in value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Identified Prepetition Secured Lender, continuing, valid, binding, enforceable, non-avoidable and automatically perfected postpetition security interests in and liens on all of the Prepetition Collateral (the "Prepetition Adequate Protection Liens". *See* Interim DIP Order at ¶¶ 11-13.
DIP Budget *FED. R. BANKR.P. 4001(c)(1)(B)*	The use of DIP Facility proceeds and Cash Collateral is subject to the Budget attached as **Exhibit A** to the Interim DIP Order, as amended from time to time, plus any uses agreed to in writing by the DIP Lender. *See* Interim DIP Order at ¶ 15.
Covenants *FED. R. BANKR. P. 4001(c)(1)(B)*	The terms upon which the DIP Lender has agreed to provide the DIP Facility includes usual and customary affirmative and negative covenants for financings of this type. *See* Interim DIP Order at ¶ J(iii).
Fees, Expenses, and Additional Payments *FED. R. BANKR. P. 4001(c)(1)(B)*	**Fees and Expenses of Professionals and U.S. Trustee:** The Debtors shall pay the undisputed reasonable and documented professional fees, expenses and disbursements of the DIP Lender no later than ten (10) business days after the receipt by counsel for the Debtors, any committee, and the U.S. Trustee without the necessity of filing formal fee applications, including such amounts arising before the Petition Date. **Loan Fees:** The Debtors shall also pay the certain fees that are customary including, but not limited to, (i) interest due on the DIP Loans and any points, loan fees, service charges, commitment fees or other fees due to the DIP Lender in connection with the DIP Loans; (ii) all title examination, survey, escrow, filing, search, recording and registration fees and charges; (iii) all documentary stamp and other taxes and charges imposed by law on the issuance or recording of any documents related to the DIP Facility; (iv) all appraisal fees; (v) all title insurance premiums; (vi) all fees and disbursements of legal counsel engaged by the DIP Lender in connection with the DIP Loans, including, without limitation, counsel engaged in connection with the enforcement or administration of the Interim DIP Order; and (vii) any amounts required to be paid by the Debtors under the terms of the DIP Facility after the occurrence of an Event of Default. *See* Interim DIP Order at ¶¶ 2 & 30
Prepayments	N/A

Bankruptcy Rule	Summary of Material Terms
FED. R. BANKR. P. 4001(c)(1)(B)	
Terms of Use and Purposes for Use of DIP Proceeds and Cash Collateral *FED. R. BANKR. P. 4001(c)(1)(B) 4001(b)(1)(B)(ii)*	The Debtors are authorized to use proceeds of the DIP Financing in accordance with the Interim DIP Order and the Budget, subject to an allowed budget variance. Proceeds shall be used solely in accordance with the Budget plus any other uses agreed to in writing by the DIP Lender. *See* Interim DIP Order at ¶ 15.
Waiver or Modification of the Automatic Stay *FED. R. BANKR. P. 4001(c)(1)(B)(iv)*	Pursuant to the Interim DIP Order, the automatic stay provisions of section 362 of the Bankruptcy Code are modified to the extent necessary to implement and effectuate the terms of the Interim DIP Order. *See* Interim DIP Order at Paragraphs 11 & 17.
Stipulations of the Debtors *FED. R. BANKR. P. 4001(b)(1)(B)(iii)*	The Debtors have stipulated to, among other things, the validity, enforceability, perfection, priority, and amount, as applicable, of the claims, rights, and liens of the Identified Prepetition Secured Lenders with respect of the Prepetition Loan Obligations. *See* Interim DIP Order at ¶ G(i)-(iv).
Challenge Period *FED. R. BANKR. P. 4001(c)(1)(B)*	The stipulations and admissions contained in the Interim Order shall be binding upon (1) each Debtor and its respective estate under all circumstances; and (2) all other parties in interest, unless: (a) a party-in-interest obtains standing and files an applicable adversary proceeding, contested matter, or motion seeking derivative standing (a "<u>Challenge</u>") (i) within forty-five (45) calendar days following the Petition Date (the "<u>Lien Challenge Deadline</u>") for any action concerning the validity, extent, perfection, priority or enforceability of a Prepetition Loan Obligation or within thirty (30) calendar days after a completion of a sale of substantially all of the Debtors' assets (the "<u>Non-Lien Challenge Deadline</u>") for any action concerning any action for preferences, fraudulent transfers or conveyances, other avoidance power claims, or any other claims, counterclaims, or causes of action, objections, contests, or defenses (other than the Lien Challenge Issues) as to the Prepetition Secured Parties. If no Challenge is timely filed in respect of the Prepetition Loan Obligations then, among other things: (x) the Prepetition Loan Obligations shall constitute allowed claims, (y) the liens on the Prepetition Collateral securing the Prepetition Loan Obligations shall be deemed to be valid and (z) the Prepetition Loan Obligations and the liens on the Prepetition Collateral granted to secure the Prepetition Loan Obligations shall not be subject to any other or further challenge by any party-in-interest (including the Committee). *See* Interim DIP Order at ¶ 34.
Releases, Waivers, or Limitation on any Claim or Cause of Action *FED. R. BANKR. P. 4001(c)(1)(B)(viii)*	The Interim DIP Order contemplates, among other things, releasing the DIP Lender of certain claims and causes of action in connection with the DIP Facility and Prepetition Loans, as applicable. *See* Interim DIP Order at ¶ J(iii).
Effect of Stipulations and Releases; Challenge Period *FED. R. BANKR.P. 4001(b)(1)(B)(iii),*	Paragraphs 4 and 22 of the Interim DIP Order provides that the Stipulations and Releases contained in the Interim DIP Order are binding on the Debtors, any committee, or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors and any other person acting on behalf of the Debtors' estates, under all

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4001(c)(1)(B)(iii), (viii)	circumstances and for all purposes, subject to certain modifications in paragraph 22, including but not limited to a Challenge Period (defined in the proposed Interim DIP Order) for any committee and parties in interest (other than the Debtors and the DIP Lender). *See* Interim DIP Order at ¶ 34.
Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to the Perfection or Enforcement of a Lien *FED. R. BANKR. P. 4001(c)(1)(B)(vii)*	All DIP Liens shall be valid and automatically perfected upon the entry of the Interim DIP Order. *See* Interim DIP Order at ¶ 18.
Reporting Information *FED. R. BANKR.P. 4001(c)(1)(B)*	The DIP Lender shall receive customary financial reporting from the Debtors during the Chapter 11 Cases. *See* Interim DIP Order at ¶¶ 16 and 24.
Indemnification *FED. R. BANKR. P. 4001(c)(1)(B)(ix)*	The Debtors shall indemnify the DIP Lender and its affiliates, agents, and/or representatives (the "Indemnified Persons") and hold them harmless from and against all liabilities, claims, and disbursements (including reasonable and documented out-of-pocket costs and expenses) arising out of or relating to the transactions contemplated hereby, except, with respect to any conduct of such Indemnified Person, solely for gross negligence or willful misconduct, and then only to the extent determined by a final, non-appealable order of a court of competent jurisdiction. Indemnified Persons include: the DIP Lender each of their respective shareholders, directors, members, managers, principals, agents, advisors, officers, subsidiaries and affiliates in such capacity. *See* Interim DIP Order at ¶ 35.
Section 506(c) and 552(b) Waivers *FED. R. BANKR. P. 4001(c)(1)(B)*	The Interim DIP Order contemplates that the Final DIP Order will contain a waiver of section 506(c) of the Bankruptcy Code in favor of the DIP Lender with respect to the DIP Collateral and Prepetition Collateral, as applicable. The Interim DIP Order shall contain a waiver of the "equities of the case" exception under section 552(b) of the Bankruptcy Code in favor of the DIP Lender. *See* Interim DIP Order at ¶¶ 5, 6(iii) & 7.
Liens on Avoidance Actions *FED. R. BANKR. P. 4001(c)(1)(B)(xi)*	The DIP Facility does not provide for liens on claims or causes of action arising under chapter 5 of the Bankruptcy Code (collectively, the "Avoidance Actions"). However, the DIP Liens do include the proceeds of Avoidance Actions. *See* Interim DIP Order at ¶ 5.
Milestones *FED. R. BANKR. P. 4001(c)(1)(B)(vi)*	Unless otherwise agreed to in writing by the Lender: (i) On or before the third (3rd) Business Day after the Petition Date, the Interim DIP Order shall have been entered by the Bankruptcy Court, and such order shall not have been reversed, modified, amended, stayed or vacated; (ii) On or before the twenty-fifth (25th) day after the entry of the Interim Order, the Final DIP Order shall have been entered, and such order shall not have been reversed, modified, amended, stayed or vacated; (iii) No later than ten (10) days after the Petition Date, the Borrowers shall have filed required motions (the "Sale Procedures Motion") seeking an Order authorizing bid and sales procedures towards effectuating a Sales Transaction (the

Bankruptcy Rule	Summary of Material Terms
	"Sales Procedure Order"). (iv) On or before February 24, 2025, Borrowers shall conduct an auction pursuant to the Sales Procedure Order and shall file with the Court a notice of the final and winning bid; (v) On or before the February 26, 2025, the Court shall have entered an order approving the Sale. (vi) On or before February 28, 2025, the Sales Transaction shall close. *See* Interim DIP Order at Paragraph J(iii)

BACKGROUND

I. Chapter 11 Cases

4. On the date hereof (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code—thereby commencing these Chapter 11 Cases. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no request for the appointment of a trustee or examiner has been made and no statutory committee has been appointed in these Chapter 11 Cases.

5. Additional information regarding the Debtors and these Chapter 11 Cases and the facts and circumstances supporting the relief requested herein is set forth in the *Declaration of Kevin Harrigan, President and Chief Executive Officer of Wilson Creek Energy, LLC, in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration")[3] filed contemporaneously herewith and incorporated herein by reference. The Debtors rely on the First Day Declaration in support of this Motion.

[3] Capitalized terms used but not otherwise defined in this Motion shall have the meaning set forth in the First Day Declaration or the Proposed Interim Order, as applicable.

II. Summary of the Debtors' Prepetition Capital Structure

A. The Debtors' Cash Management System.

6. As set forth more fully in the *Debtors' Motion for Interim and Final Orders (A) Authorizing the Debtors to (I) Maintain their Cash Management System and Pay Bank Fees, (II) Waive Certain U.S. Trustee Requirements, (III) Continue Using Existing Checks and Business Forms, (IV) Perform Intercompany Transactions, and (B) Granting Related Relief* (the "Cash Management Motion") filed contemporaneously herewith, the Debtors manage their cash, receivables, and payables through a cash management system (the "Cash Management System"). Each of the Debtors uses the Cash Management System to efficiently collect, transfer, concentrate, and disburse funds generated from its operations. The Cash Management System also enables the Debtors to monitor the collection and disbursement of funds, and the administration of their bank accounts. The Debtors maintain accounting controls with respect to each of their bank accounts and can accurately trace the funds through the Cash Management System to ensure that all transactions are adequately documented and readily ascertainable.

7. A more complete description of the Cash Management System is set forth in the Cash Management Motion.

B. KeyBank's Prepetition Secured Indebtedness.

8. On December 14, 2020, the Debtors (except for Debtor Corsa Coal Corp.) (the "KeyBank Borrowers") entered into a five-year secured term loan with KeyBank National Association ("KeyBank" or "Lender") for $25 million (as amended from time to time, the "KeyBank Facility") through the Main Street Lending Program established pursuant to the Coronavirus Aid, Relief, and Economic Secured Act (the "CARES Act") by the board of governors

of the U.S. Federal Reserve System in which the KeyBank Borrowers borrowed the original principal amount of $25 million.

9. Pursuant to the most recent Amendment to the KeyBank Facility dated December 31, 2024 (the "7th Amendment"), the KeyBank Borrowers are obligated to make the following mandatory prepayments: One Million Five Hundred Thousand Dollars ($1,500,000) on January 31, 2025, (iii) Five Hundred Thousand Dollars ($500,000) on February 28, 2025, and (iv) Five Hundred Thousand Dollars ($500,000) on March 31, 2025 (unless paid in full prior to such date).

10. Additionally, the 7th Amendment requires that, "on or before January 31, 2024 (sic), Borrowers shall have received and countersigned and delivered a binding agreement or agreements for a Refinancing Transaction subject to limited conditions reasonably acceptable to Lender." See 7th Amendment, ¶ ¶3(d) (revising §5.36(d) of original agreement).

11. The Debtors have granted KeyBank and pledged senior, first priority security interests in, and liens upon, substantially all of their assets (subject to certain permitted encumbrances) (the "KeyBank Liens") as set forth in that certain Security Agreement dated December 14, 2020 by and between KeyBank and the KeyBank Borrowers (the "KeyBank Security Agreement"). Any alleged interest that KeyBank has in the Debtors' real property interests are not perfected.

12. As of the Petition Date, there is approximately $16.3 million in aggregate principal amount outstanding under the KeyBank Facility.

13. With the exception of the portion of the KeyBank Lien subordinated by the Subordination Agreement (hereinafter defined), the KeyBank Liens appear to be senior liens on the collateral set forth above with the exception to the Debtors' interests in real property and mineral rights.

C. Customer Account Sales Programs

14. Prior to the Petition Date, the Debtors granted or pledged security interests in certain accounts receivable to LSQ Funding Group, L.C., pursuant to an LSQ account sale agreement (the "LSQ Customer Account Sale Agreement"), and certain accounts receivable to Bank of America pursuant to the Debtors' account sale agreements (the "Additional Account Sale Agreements," together with the LSQ Customer Account Sale Agreement are hereinafter referred to as the "Customer Account Sale Programs").

15. The Customer Account Sale Programs provide prompt pay on the Debtors' receivables and are critical to the consistency of receipts and cash flow to the Debtors' operations.

16. The counterparts to the Customer Account Sale Programs required liens on certain accounts receivable and rights to payment arising from the sale of the Debtors' inventory. As a result of accommodations made by KeyBank prepetition, those participants hold first lien priority in certain accounts receivable.

17. The Debtors intend to continue to use the Customer Account Sale Programs in the ordinary course of their business and the DIP Lender has agreed that the liens arising from those programs shall be Permitted Encumbrances.

D. Equipment Leases and Other Secured Debt

18. In addition to the KeyBank Facility and the Customer Account Sale Programs indebtedness, the Debtors have granted or pledged security interests in:

a. four trailers to R&D Svonavec Ventures, LLC;

b. a CAT 785C Haul Truck, a Terex O&K Excavator, and three CAT 777F Haul Trucks to Bill Miller Equipment Sales;

c. a CAT 980M wheel loader to Cleveland Brothers Equipment; and

d. a Sub Fine 325 Sludge Separation Unit to Wingspire Equipment Finance;

(collectively and together with KeyBank and LSQ, the "Identified Prepetition Secured Lenders").

19. As of the Petition Date, the aggregate outstanding principal balance owed to the Identified Prepetition Secured Lenders, inclusive of the KeyBank Facility, is $21,114,641 (the "Prepetition Loan Obligations").

E. The Post-Petition Financing.

20. Based on the review and evaluation of the Debtors' financial forecasts and Budget by the Debtors' advisors, the Debtors require an immediate capital infusion in the form of the DIP Facility and access to Cash Collateral in order to continue to operate their businesses post-petition. *See* First Day Declaration at ¶ 38.

21. The DIP Facility and Cash Collateral are critically necessary to fund working capital needed to continue operations on a short-term basis until the Debtors' mines can be sold and transferred, including the amounts necessary to satisfy vendor obligations, pay suppliers (including substantial shipping costs required for the Debtors' mines to continue operations and sales), cover overhead costs, and pay expenses and billings related to the Debtors' operations. *See* First Day Declaration at ¶¶ 38 & 39.

22. Additionally, the immediate access to the DIP Facility and Cash Collateral will cover the projected costs of the Chapter 11 Cases and make any other payments that are essential for the continued management, operation, and preservation of the Debtors' businesses. The ability to satisfy these expenses when due is essential to the continued operation of the Debtors' businesses.

23. Accordingly, the Debtors have determined that, in the exercise of their sound business judgment, obtaining the DIP Facility under the terms set forth in the Proposed Interim

Order, in accordance with the Budget, is in the best interests of the Debtors, their estates, and their creditors.

24. To be clear, given the Debtors' current financial condition, financing arrangements, and capital structure, the Debtors are unable to obtain adequate financing from sources other than the DIP Lender on terms more favorable and feasible than the DIP Facility. Notwithstanding their efforts with the assistance of their advisors, including extended negotiations with numerous potential lender parties, the Debtors have been unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. If the Debtors are unable to access the DIP Facility, the Debtors believe the only viable alternative is an expedited shut down process, which will have negative effects on the Debtors' employees and other parties in interest and may lead to detrimental environmental impacts. *See* First Day Declaration at ¶¶ 42 & 44-45.

25. The Debtors also have been unable to obtain credit: (a) 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) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien.

26. Further, financing on a post-petition basis is not otherwise available without granting the DIP Lender: (i) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein; (ii) superpriority claims; and (iii) the other protections set forth in the proposed Interim DIP Order. *See* First Day Declaration at ¶¶ 41-43.

27. In summary, the DIP Lender is willing to make loans to the Debtors, but only in accordance with, and on the terms and conditions set forth in the Proposed Interim Order.

F. The Debtors' Marketing Efforts for Post-Petition Financing.

28. Due to the nature of the KeyBank Facility, the Debtors' ability to obtain DIP financing or any other pre-petition financing was substantially limited.

29. However, the Debtors did explore the possibility of obtaining a DIP loan from KeyBank, but KeyBank declined to extend postpetition funding.

30. The Debtors also had extensive negotiations with another potential third-party lender, but that option did not seem feasible. Ultimately, the Debtors selected the DIP Lender and the DIP Facility as it proved to be both definitive and optimum.

31. Notably, the DIP Lender likewise agreed to fund a Professional Fee Weekly Escrow considering the contemplated course and pace of these Chapter 11 Cases. The Budget will reflect the projected professional fees and expenses for case professionals. The DIP Lender consented to the Debtors funding of such fees on a weekly basis commencing the first Budget week following the Petition Date to the Case Professionals, who in turn shall hold such funds in their respective IOLTA or escrow accounts pending entry of an Order allowing for application of such amounts to fees for services rendered and expenses incurred. All funds paid into the Professional Fee Weekly Escrow remain subject to the fee application process or other interim compensation procedures established by the Court in the Chapter 11 Cases.

DIP ORDERS TO GOVERN DIP FACILITY

32. The Debtors and DIP Lenders have agreed that all terms governing the DIP Facility are encompassed within the proposed DIP Interim Order.

REQUIREMENTS UNDER LOCAL RULE 4001-2

33. Local Rule 4001-2(b)(1) requires that certain terms of the DIP Facility be highlighted and that the Debtors provide justification for the inclusion of each such highlighted

provision. Below, the Debtors identify and discuss the following provisions of the Proposed Interim DIP Order in accordance with Local Rule 4001-2(b)(1) in the context and circumstances of these Chapter 11 Cases.

I. Local Rule 4001-2(b)(1)(A)

34. Cross-Collateralization. Local Rule 4001-2(b)(1)(A) requires disclosure of provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (*i.e.*, clauses that secure prepetition debt by post-petition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law). The Interim DIP Order does not grant cross-collateralization protection to prepetition secured creditors.

II. Local Rule 4001-2(b)(1)(B)

35. Stipulation and Challenge Provisions. Local Rule 4001-2(b)(1)(B) requires disclosure of provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection, or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least one hundred twenty (120) days from the date of the order or (b) ninety (90) days from the date a committee is formed and retains counsel, to investigate such matters.

36. Pursuant to paragraph G of the Interim DIP Order, the Debtors make various stipulations, including, but not limited to, stipulations regarding: (a) the Debtors' prepetition loan obligations and the secured nature of such obligations; and (b) the Debtors' agreement not to challenge the prepetition liens of the Debtors' prepetition secured lenders.

37. Under paragraph 34 of the Interim DIP Order, the Debtors and their estates are bound by these stipulations in all events with the exception of certain challenges. To that end,

parties-in- interest may challenge these stipulations by obtaining standing and filing an applicable adversary proceeding or contested matter by the earlier of (i) forty-five (45) calendar days five (45) calendar days following the Petition Date to challenge the lien stipulations set forth in the proposed Interim DIP Order and (ii) thirty (30) calendar days after completion of a sale of substantially all of the Debtors' assets to assert other claims and actions, with such periods being subject to extension in certain circumstances. These stipulations and the related challenge period were required as a condition of the DIP Facility. The Debtors respectfully assert that these stipulations and the challenge period are necessary and appropriate under the circumstances of these Chapter 11 Cases.

III. Local Rule 4001-2(b)(1)(C)

38. Chapter 5 of the Bankruptcy Code Waiver. Local Rule 4001-2(b)(1)(C) requires disclosure of provisions that seek to waive or release, without notice and/or hearing, whatever rights the estates may have under applicable law, including without limitation, chapter 5 of the Bankruptcy Code. Other than the claims and causes of action waived by the Debtors pursuant to the stipulations discussed above (which stipulations are not binding on third parties until expiration of the challenge period), the Interim DIP Order does not waive or release any rights of the estates under applicable law, including without limitation, chapter 5 of the Bankruptcy Code.

IV. Local Rule 4001-2(b)(1)(D)

39. Liens on Avoidance Actions. Local Rule 4001-2(b)(1)(D) requires disclosure of provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, and 549. The DIP Liens will not include liens on avoidance actions but will include liens on the proceeds of avoidance actions. *See* Interim DIP Order at ¶ 5. As explained herein, the Debtors were unable to obtain DIP financing

on more favorable terms than the DIP Facility. Accordingly, the Debtors respectfully submit liens on avoidance actions proceeds is appropriate and necessary in these Chapter 11 Cases.

V. Local Rule 4001-2(b)(1)(E)

40. Roll-Up. Local Rule 4001-2(b)(1)(E) requires disclosure of provisions that deem prepetition secured debt to be post-petition debt or that use post-petition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in section 552(b) of the Bankruptcy Code. The DIP Facility does not contemplate a roll-up.

VI. Local Rule 4001-2(b)(1)(F)

41. Carve-Out. Local Rule 4001-2(b)(1)(F) requires disclosure of provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out. Paragraph 31 of the Interim DIP Order provides for a professional fee Carve-Out for professionals of the Debtors and professionals hired by any official committee of unsecured creditors (such committee, a "Committee"). The treatment of the Debtors' and Committee's professionals under the Carve-Out is identical and both are subject to the Professional Fee Weekly Escrow to be established. Accordingly, the Debtors submit that the Carve-Out does not create disparate treatment between such professionals.

VII. Local Rule 4001-2(b)(1)(G)

42. Priming Liens. Local Rule 4001-2(b)(1)(G) requires disclosure of provisions that prime any secured lien without the consent of that lienor. The DIP Facility is a "priming" facility. *See* Interim DIP Order at ¶ 6.

BASIS FOR RELIEF REQUESTED

I. Basis for Emergency Relief

43. The Debtors bring this Motion on an emergency basis given the immediate and irreparable harm that they will potentially suffer if they are denied the ability to obtain post-petition credit and to use Cash Collateral, which is necessary to sustain the Debtors' ongoing business operations and to achieve their future business objectives. The DIP Facility and Cash Collateral will permit the Debtors, on a short-term basis, to preserve the value of their bankruptcy estates, continue operating their business in an orderly fashion, maintain business relationships with vendors, suppliers, and employees, provide quality care for their residents, meet ongoing business disbursements, and satisfy other working capital and operational needs.

44. Without access to the DIP Facility and Cash Collateral, the Debtors will be unable to meet their ongoing financial obligations, thereby resulting in: (i) an inability keep their facilities in operation; (ii) the risk of an immediate loss of the workforce necessary to provide care for their residents; and (iii) the ultimate closure of their facilities, thereby displacing their residents and putting them in grave danger due to a disruption in the care provided by the Debtors.

II. Authority in Support of Post-Petition Financing

A. Entry into the DIP Facility is an Exercise of the Debtors' Sound Business Judgment.

45. The Debtors, along with their advisors, have determined that the most prudent course of action is to secure immediate access to post-petition financing and use of Cash Collateral to preserve the estates' ability to operate until an orderly transfer of their operations can be accomplished. For those reasons, the Debtors request that the Court enter the proposed Interim DIP Order and subsequently, the Proposed Final Order, authorizing the Debtors to, among other

things, access the DIP Facility and to use Cash Collateral, subject to the terms of the Interim DIP Order.

46. Bankruptcy courts routinely defer to a debtor's business judgment on certain business decisions, including the decision to borrow money, unless such decision is arbitrary and capricious. *See In re YL West 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) ("Courts have generally deferred to a debtor's business judgment in granting section 364 financing."); *Trans World Airlines, Inc. v. Travellers Int'l AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that the interim loan, receivables facility and asset-based facility were approved because they "reflect[ed] sound and prudent business judgment on the part of TWA . . . [were] reasonable under the circumstances and in the best interests of TWA and its creditors"); *cf. In re Filene's Basement, LLC*, No. 11- 13511, 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) ("Transactions under § 363 must be based upon the sound business judgment of the debtor or trustee."). In fact, "[m]ore exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

47. The Debtors' determination to enter into the DIP Facility represents an appropriate exercise of their sound business judgment and should be approved. The critical funding to be provided under the DIP Facility will allow the Debtors to preserve their operations and consummate one or more value-maximizing transactions during these Chapter 11 Cases. Absent sufficient cash to meet their obligations during these Chapter 11 Cases pending consummation of

a sale, the Debtors likely will be forced to liquidate their assets, to the detriment of their estates and creditors. *See* First Day Declaration at ¶ 44.

48. The Debtors worked closely with their advisors to determine their cash needs over the anticipated duration of these Chapter 11 Cases. *See* First Day Declaration at ¶ 40. The Debtors then negotiated the various components of the DIP Facility with the DIP Lender at arm's-length and in good faith. The Debtors determined that the terms of the resulting DIP Facility were reasonable and the only realistically available option under the circumstances. *See* First Day Declaration at ¶¶ 41-42. The Debtors believe that they have negotiated the best possible terms for the DIP Facility, which will permit them to maintain their current operations while they pursue a value- maximizing transaction. As such, and as further described in the First Day Declaration, the Debtors' decision to enter into the DIP Facility was a sound exercise of their business judgment. *See* First Day Declaration at ¶¶ 42-44; 46.

B. The Debtors Should Be Authorized to Obtain Post-Petition Financing under Section 364(c) of the Bankruptcy Code.

49. As described above, it is essential that the Debtors obtain access to sufficient post-petition financing and are authorized to use Cash Collateral to avoid immediate and irreparable harm to their assets pending the consummation of a value-maximizing transaction in these Chapter 11 Cases. The preservation of estate assets, the Debtors' continuing viability and their ability to maximize value for stakeholders depend heavily upon the expeditious approval of the relief requested herein.

50. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit out of the ordinary course of business, and (c) obtaining credit with specialized priority or with security. *See* 11 U.S.C. § 364. If a debtor in possession cannot obtain post-petition credit on an unsecured basis, pursuant to

section 364(b) of the Bankruptcy Code, a court may authorize a debtor to obtain credit or to incur debt, the repayment of which is entitled to superpriority administrative expense status or is secured by a senior lien on unencumbered property or a junior lien on encumbered property, or a combination of the foregoing. *See* 11 U.S.C. § 364(c).

51. The statutory requirement for obtaining post-petition credit under section 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that the debtor in possession is "unable to obtain unsecured credit allowable under [section 503(b)(1) of the Bankruptcy Code] as an administrative expense." 11 U.S.C. § 364(c); *see In re Ames Dep't Stores*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[A] debtor must show that it has made a reasonable effort to seek other sources of credit available under sections 364(a) and (b) [of the Bankruptcy Code]."); *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (debtor seeking secured credit under section 364(c) of the Bankruptcy Code must establish that it was unable to obtain unsecured credit pursuant to section 364(b) of the Bankruptcy Code), *modified on other grounds*, 75 B.R. 553 (Bankr. E.D. Pa. 1987).

52. Courts have articulated a three-part test to determine whether a debtor may obtain financing under section 364(c) of the Bankruptcy Code:

a. the debtor is unable to obtain unsecured credit under section 364(b) (*i.e.*, by granting a lender administrative expense priority);

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 the proposed lender.

See, e.g., *In re Los Angeles Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (applying these factors); *In re Aqua Assocs.*, 123 B.R. 192, 195–96 (Bankr. E.D. Pa. 1991) (same); *Ames Dep't Stores*, 115 B.R. at 39.

i. *<u>The Necessary Post-Petition Financing is Not Available on an Unsecured Basis</u>.*

53. The Debtors could not obtain post-petition financing on an unsecured or junior basis. To show that the credit required is not obtainable on an unsecured basis, a debtor need only demonstrate "by a good faith effort that credit was not available without" the protections of sections 364(c) of the Bankruptcy Code. *Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). Thus, "[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Id.* Where few lenders are likely to be able and willing to extend the necessary credit to the debtor, "it would be unrealistic and unnecessary to require [the] Debtor to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989).

54. The Debtors reasonably concluded that post-petition financing was not available on an unsecured basis following their good faith efforts to obtain funding prior to the Petition Date. As set forth above and in the First Day Declaration, the Debtors were unable to find a lender willing to provide an unsecured facility and, in fact, the Debtors struggled to obtain post-petition financing under the terms that they did. The Debtors' efforts to seek the necessary post-petition financing from sources within the Debtors' existing capital structure under these circumstances were reasonable and sufficient and satisfy the statutory requirements of section 364(c) of the Bankruptcy Code. The Debtors therefore made appropriate and sufficient efforts to confirm that post-petition financing is not available on an unsecured basis. *See* First Day Declaration at ¶¶ 41-42.

ii. *The DIP Facility is Necessary to Preserve and Protect the Assets of the Debtors' Estates.*

55. It is essential that the Debtors immediately obtain the financing contemplated by the DIP Facility to preserve and protect the value of their estates. The funding contemplated by the DIP Facility will provide the Debtors with working capital to maintain their mines and corporate functions, maintain their environmental obligations, and pay their employees, together with funding the costs of consummating a value-maximizing transaction in these Chapter 11 Cases. Without the infusion of cash provided by the DIP Facility, the Debtors anticipate that they would have no option but to cease operations completely and liquidate their assets, thus diminishing the value of their estates to the detriment of their creditors and leaving their approximately 365 employees without jobs. *See* First Day Declaration at ¶ 45. Accordingly, the DIP Facility is necessary to ensure that the Debtors are able to maximize the value of their estates. *See Burtch v. Ganz (In re Mushroom Transp. Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (debtors-in-possession have a duty to maximize their estates' assets).

iii. *The Terms of the DIP Facility are Fair, Reasonable, and Adequate under the Circumstances.*

56. In considering whether the terms of a post-petition financing are fair and reasonable, courts consider the terms in light of the relative circumstances and disparate bargaining power of both the debtor and potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 885–86 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds).

57. The terms of the DIP Facility and the proposed Interim Order were negotiated in good faith and at arm's-length between the Debtors and the DIP Lender, resulting in agreements

designed to permit the Debtors to obtain needed liquidity and to maximize the value of their assets during these Chapter 11 Cases. As a result, the Debtors believe that the terms of the DIP Facility are within the range of reasonableness and consistent with market expectations for facilities of this type. *See* First Day Declaration at ¶ 43. Accordingly, the Debtors believe the terms of the DIP Facility are fair, reasonable, and adequate under the circumstances.

C. <u>The Debtors Should be Authorized to Obtain Priming Liens under Section 364(d) of the Bankruptcy Code</u>.

58. Section 364(d)(1) of the Bankruptcy Code provides that a debtor may incur debt "secured by a senior or equal lien on property of the estate that is subject to a lien only if" the court finds, after notice and hearing, that (a) the debtors in possession are "unable to obtain such credit otherwise" and (b) "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." *See Shaw Indus., Inc. v. First Nat'l Bank of PA (In re Shaw Indus., Inc.)*, 300 B.R. 861, 863 (Bankr. W.D. Pa. 2003) (where debtor made efforts by "contact[ing] numerous lenders" and was unable to obtain credit without a priming lien, it had met its burden under section 364(d)); *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 630-31 (Bankr. S.D.N.Y. 1992) (holding that debtor must make an effort to obtain credit without the requirement of a priming lien but is not required to seek credit from every possible lender); *In re Dunes Casino Hotel*, 69 B.R. 784, 791 (Bankr. D.N.J. 1986) (holding that the debtor had made required efforts under section 364(d)(1) of the Bankruptcy Code based on evidence that the debtor had attempted unsuccessfully to borrow funds on an unsecured basis or secured by junior liens, but that at least three such lenders were willing to advance funds secured by a superpriority lien).

59. "'Adequate protection' as used in § 364(d) and other sections of the Bankruptcy Code may be provided by (1) periodic cash payments; (2) additional or replacement liens; or (3)

other relief resulting in the "indubitable equivalent" of the secured creditor's interest. 11 U.S.C. § 361." *Stoney Creek Technologies, LLC*, 364 B.R. 882, 890 (Bankr. Pa. E.D. 2007). Courts in the Third Circuit have recognized that the last category of potential forms of adequate protection "allows the bankruptcy court discretion to fashion adequate protection on a case by case basis." *Id.* (citing to *The Resolution Trust Corp. v. Swedeland Development Group, Inc., (In re Swedeland Development Group, Inc.),* 16 F.3d 552, 564 (3d Cir. 1994). Whether protection is "adequate" "depends directly on how effectively it compensates the secured creditor for loss of value" caused by the superpriority given to the post-petition loan." *Swedeland*, 16 F.3d at 564 (internal citations omitted).

60. The proposed relief contained in the Interim DIP Order grants the Identified Prepetition Secured Lenders with replacement liens on all of the Debtors' assets subject to the actual diminution of value in their respective prepetition collateral positions. Additionally, the DIP Budget provides for proposed adequate protection payments to KeyBank. As of January 6, 2025, the Debtors believe the Prepetition Secured Lenders have a significant equity cushion.

61. While an equity cushion alone is not determinative of whether a secured creditor is adequately protected, *see In re Timber Products, Inc.,* 125 B.R. 433, 436 n.11 (Bankr. W.D. Pa. 1990), the grant of replacement liens and adequate protection payments (in addition to the fact that the Debtors are likely to successfully sell its assets which could result in prompt and full payment of the KeyBank Loan) establishes that the Identified Prepetition Secured Lenders is adequately protected under these circumstances.

62. As such, the DIP Loans and proposed budget adequately protect the interests of Prepetition Secured Lenders and the priming of the Prepetition Loan Obligations satisfies the requirements of section 364(d)(1) of the Bankruptcy Code.

D. <u>The Debtors Should be Authorized to Pay the Fees Required by the DIP Facility</u>.

63. The Debtors believe that the fees contemplated by the DIP Facility are reasonable under the circumstances of these Chapter 11 Cases. The fees that the Debtors agreed to pay under the DIP Facility, which consist of, as applicable, (a) interest due on the DIP Loans and any points, loan fees, service charges, commitment fees or other fees due to the DIP Lender in connection with the DIP Loans; (b) all fees and disbursements of legal counsel engaged by the DIP Lender in connection with the DIP Loans, including, without limitation, counsel engaged in connection with the enforcement or administration of the Interim DIP Order and/or any other orders of this Court pertaining to the terms of the DIP Facility; and (c) any amounts required to be paid by the Debtors by the terms of the DIP Facility after the occurrence of an Event of Default, together with certain reasonable and documented costs and expenses of the DIP Lender associated with the preparation, due diligence, administration and closing of all DIP Facility, represent the most favorable terms to the Debtors on which the DIP Lender would agree to make the DIP Facility available. The Debtors considered these fees when determining, in their business judgment, that the DIP Facility constituted the best terms on which the Debtors could obtain post-petition financing. *See* First Day Declaration ¶ 42-43.

64. Courts routinely authorize post-petition lenders to impose fees beyond the explicit liens and rights specified in section 364 of the Bankruptcy Code. Moreover, such charges often are permitted where the associated financing is, in the debtor's business judgment, beneficial to the debtor's estate. *See, e.g.*, *In re Gibson Brands, Inc.*, No. 18-11025 (CSS) (Docket No. 71) (Bankr. D. Del. May 2, 2018) (approving interim post-petition financing fees including up-front premium of 3%); *In re Modular Space Holdings, Inc.*, No. 16-12825 (KJC) (Docket No. 165) (Bankr. D. Del. Jan. 18, 2017) (approving post-petition financing fees including letter of credit

premium of 4.5%); *In re Basic Energy Services, Inc.*, No. 16-12320 (JKC) (Docket No. 171) (Bankr. D. Del. Nov. 17, 2016) (approving post-petition financing fees including unused line premium of 5%); *In re Horsehead Holding Corp.*, No. 16-10287 (CSS) (Docket No. 252) (Bankr. D. Del. March 3, 2016) (approving post-petition financing fees including up-front premium of 2% and unused line premium of 4%); *In re Taylor-Wharton Int'l. LLC*, No. 15-12075 (BLS) (Docket No. 168) (Bankr. D. Del. Nov. 5, 2015) (approving post-petition financing fees including letter of credit premium of 10.5%); *In re Quiksilver, Inc.*, No. 15-11880 (BLS) (Docket No. 76) (Bankr. Del. Sept. 11, 2015) (approving post-petition financing fees including letter of credit fee of 3.5%). The Debtors also submit that the fees are in line with transactions of this type and should be approved on the facts and circumstances of these Chapter 11 Cases.

E. The Scope of the Carve-Out is Appropriate.

65. The proposed DIP Facility subjects the security interests and administrative expense claims of the DIP Lender to the Carve-Out. Similar carve-outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory Committee can retain assistance from counsel. *See Ames Dep't Stores*, 115 B.R. at 40. The DIP Facility does not directly or indirectly restrict the services for which professionals may be paid in these Chapter 11 Cases, and thus does not deprive the Debtors' estates or other parties in interest of possible rights and powers. *See id.* at 38 (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 these Chapter 11 Cases by ensuring that assets remain for the payment of professional fees of the Debtors and any official

Committee, notwithstanding the grant of superpriority and administrative liens and claims under the DIP Facility.

66. With respect to professional fees, the Carve-Out provides that, prior to delivery of a Carve-Out Trigger Notice, the Carve-Out will encompass all of the Debtors' and Committee's accrued and unpaid professional fees up until that point in time. Because the Carve-Out's treatment of professional fees is commensurate with each professional's anticipated efforts during these Cases, the Debtors submit that the Carve-Out's treatment of professional fees is appropriate. Further, the Carve-Out also includes the Professional Fee Weekly Escrow, which is an important mechanism to ensure the necessary and appropriate funding of the Carve-Out by requiring the Debtor to fund the Carve-Out in an amount equal to the professional fees set forth in the Budget for the week then ended. For the period following the delivery of a Carve-Out Trigger Notice, the Carve-Out provides for the payment of allowed and unpaid professional fees and disbursements incurred by the Case Professionals in an aggregate amount not in excess of $300,000 (the "Wind-Down Carve-Out Amount").

67. In addition, the Carve-Out includes (a) all fees required to be paid and owing to (i) the Clerk of the Court and (ii) the United States Trustee incurred in connection with the Debtors' Chapter 11 Cases, as determined by agreement between the Debtors and the United States Trustee or by final order of the Court, and does not impair the ability of any party to object to such fees, expenses, reimbursement or compensation. The Debtors submit that these other features of the Carve-Out are also appropriate in these circumstances.

F. Request for Use of Cash Collateral.

68. By this Motion, the Debtors also request authority to use Cash Collateral on the terms set forth in the proposed DIP Orders. The Debtors submit that this use of Cash Collateral is authorized pursuant to section 363(c) of the Bankruptcy Code.

69. Section 363(c) of the Bankruptcy Code provides as follows:

> (1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.
>
> (2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—
>
> > (a) each entity that has an interest in such cash collateral consents; or
> >
> > (b) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code further provides, in pertinent part, that "on request of an entity that has an interest in property . . . proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

70. The Debtors must maintain sufficient access to cash to satisfy their obligations and to maintain their assets pending consummation of a value-maximizing transaction in these Chapter 11 Cases. It is, therefore, essential to the success of these Chapter 11 Cases that the Debtors immediately obtain authority to use Cash Collateral. Although the Debtors hold some cash other than the contemplated DIP Facility proceeds, such cash alone is insufficient to satisfy the Debtors'

liquidity needs in these Cases.[4] The Debtors, therefore, seek immediate authority to use Cash Collateral and access the proceeds of the DIP Facility on an interim basis as set forth in this Motion and in the Interim Order to prevent immediate and irreparable harm to their estates pending the Final Hearing pursuant to Bankruptcy Rule 4001(b).

REQUEST FOR MODIFICATION OF THE AUTOMATIC STAY

71. Bankruptcy Code section 362 provides for an automatic stay upon the filing of a bankruptcy petition. The proposed Interim Order contemplates the modification of the automatic stay to the extent necessary to implement the provisions of the Interim Order, thereby permitting the DIP Lender to, among other things, file or record any UCC-1 financing statements, mortgages, deeds of trust, assignments, pledges, security deeds and other instruments and documents evidencing or validating the perfection of any DIP Liens and to enforce any DIP Liens as and to the extent authorized by the Interim Order. Accordingly, the Debtors respectfully request that this Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order.

REQUEST FOR A FINDING OF GOOD FAITH

72. The terms and conditions of the DIP Facility are fair and reasonable and were negotiated by the parties in good faith and at arm's-length. Therefore, the DIP Lender should be accorded the benefits of section 364(e) of the Bankruptcy Code to the extent any or all of the provisions of the DIP Facility, or any interim or final order of this Court pertaining thereto, are hereafter modified, vacated, stayed, or terminated by subsequent order of this or any other court.

REQUEST FOR INTERIM HEARING AND AUTHORITY TO

[4] The Debtors reserve all of their rights with respect to any such cash that may constitute Cash Collateral, including the right to request authority to use such cash pursuant to section 363(c)(2) of the Bankruptcy Code.

MAKE INTERIM BORROWINGS UNDER THE DIP FACILITY

73. Pursuant to Bankruptcy Rule 4001(b), the Debtors request that this Court conduct a hearing on the Debtors' request for interim relief, including for access to the Interim Funding Amount and for the other relief contemplated by the Interim Order. Bankruptcy Rule 4001(c) provides that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Fed. R. Bankr. P. 4001(c). Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g.*, *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985); *see also Ames Dep't Stores*, 115 B.R. at 38. After the 14-day period prescribed by Bankruptcy Rule 4001(c), the request for financing is not limited to those amounts necessary to prevent disruption of the debtor's business, and the debtor is entitled to borrow those amounts that it believes prudent in the operation of its business. *See, e.g.*, *Simasko Prod. Co.*, 47 B.R. at 449; *Ames Dep't Stores*, 115 B.R. at 36.

74. Pursuant to Bankruptcy Rule 4001(c), the Debtors respectfully request that this Court conduct a preliminary hearing on the Motion and authorize the Debtors from the entry of the Interim Order until the Final Hearing to obtain access to the Interim Funding Amount under the terms set forth in the Interim DIP Order and to utilize Cash Collateral to avoid immediate and irreparable harm to the Debtors' estates.

REQUEST TO ESTABLISH NOTICE
PROCEDURES AND SCHEDULE FINAL HEARING

75. The Debtors respectfully request that this Court schedule the Final Hearing and authorize them to serve the Motion and the signed Interim Order, which fixes the time, date, and

manner for the filing of objections, on the parties listed in the notice section that immediately follows.

NOTICE

76. Notice of this Motion has been provided by email, facsimile, or overnight mail to: (a) the Office of the United States Trustee for the Western District of Pennsylvania; (b) the Debtors; (c) all secured creditors; (d) the Offices of the Attorney's General of the Commonwealth of Pennsylvania and State of Maryland; (e) the thirty (30) largest unsecured creditors for the Debtors on a consolidated basis; (f) the Debtors' identified, interested taxing authorities, including the Internal Revenue Service; (g) the Debtors' identified, interested government and regulating entities including the Environmental Protection Agency, Pennsylvania Department of Environmental Protection, and Maryland Department of the Environment; (h) all Respondents and other affected parties as identified by the Debtors; (i) any party that has requested notice pursuant to Bankruptcy Rule 2002; (j) the DIP Lender; and (k) any known counsel for (a)-(j). The method of service for each party will be described more fully in the certificate of service prepared by the Debtors' proposed claims and noticing agent. The Debtors respectfully submit that, based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested, no further notice is required.

NO PRIOR REQUEST

77. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim DIP Order, substantially in the form attached hereto as **Exhibit A**, and the Final Order, granting: (i) the relief requested herein; and (ii) such other and further relief to the Debtors as the Court may deem proper.

Dated: January 6, 2025
Pittsburgh, PA

RAINES FELDMAN LITTRELL, LLP

By: */s/ Michael J. Roeschenthaler*
Michael J. Roeschenthaler (PA ID No. 87647)
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Proposed Counsel to the Debtors and Debtors in Possession

<u>EXHIBIT A</u>

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:	**Case No.: 25-______ -JAD**
WILSON CREEK ENERGY, LLC, *et al.*,[1]	**Chapter 11**
Debtors.	***Joint Administration Requested***
WILSON CREEK ENERGY, LLC, *et al.*,	**Doc. No.:**
Movant,	**Related to Doc. No.**
v.	**Hearing Date:** **Hearing Time:**
NO RESPONDENT.	**Response Deadline:**

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS USE OF CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) APPROVING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon consideration of the motion dated January 6, 2025 (the "DIP Motion")[2] of the above-captioned debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Wilson Creek Energy, LLC (6202); Wilson Creek Holding, Inc. (7733); Maryland Energy Resource, LLC (5299); Mincorp Acquisition Corp. (4858); Mincorp Inc. (5688); PBS Coals, Inc. (2413); Roxcoal, Inc. (3768); Quecreek Mining, Inc. (1745), Croner, Inc. (0529); Elk Lick Energy, Inc. (8551); and Corsa Coal Corp. (0027). The Debtors' address is 1576 Stoystown Road, Friedens, Pennsylvania 15541.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the DIP Motion.

cases (the "Chapter 11 Cases"), the Debtors seek entry of an order (this "Interim DIP Order") pursuant to sections 105, 361, 362, 363, 364(c)(l), 364(c)(2), 364(c)(3), 364(d), 364(e), and 507 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the Western District of Pennsylvania (the "Local Rules"), for, *inter alia*:

i. Approval of the DIP Facility: The Debtors, as borrowers, seek authority to obtain senior secured post-petition financing on a superpriority priming basis in the aggregate principal amount of up to $15,000,000.00 (the "DIP Facility"), with all extensions of credit and amounts made or deemed to be made under the DIP Facility (the "DIP Loans") subject to the terms and conditions of this Interim DIP Order and the "Material Terms of the DIP Facility" set forth below:

ii. Use of DIP Facility: The Debtors, seek authority to use proceeds of the DIP Facility for (a) fees, costs, and expenses (including any fees, costs, and expenses related to the DIP Facility) in relation to the Chapter 11 Cases, and (b) working capital and other general corporate purposes of the Debtors, and in accordance with this Interim DIP Order, any other Orders of the Court, and the Budget (as defined herein);

iii. Approval of Proposed Priority of DIP Liens and Grant of Superpriority Expense Claim: The Debtors seek the grant to the DIP Lender on account of the DIP Facility and all obligations owing thereunder (collectively, the "DIP Obligations") automatically perfected first priority senior security interests in and liens on all of the DIP Collateral (as defined herein), including all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code, which liens shall be on the terms set forth in this Interim DIP Order, as well as allowed superpriority administrative expense claim status for the DIP Lender in each of the Chapter 11 Cases of the Debtors and any cases or cases under Chapter 7 of the Bankruptcy Code in the event of the conversion of any of the Chapter 11 Cases ("Successor Cases"), all of which would be subject only to the Carve-Out (as defined herein);

iv. Authorization to Pay Fees and Expenses Related to the DIP Facility: The Debtors seek authorization to pay the principal, interest, fees, expenses and other amounts payable in connection with the DIP Facility as such become earned, due and payable, including, without limitation, Commitment fees, Exit fees, the reasonable fees and expenses of the DIP Lender's attorneys, advisors, accountants and other consultants, all to the extent provided in this Interim DIP Order;

v. Use of Cash Collateral: The Debtors seek authority to continue use of cash collateral;

vi. Provision of Adequate Protection. The Debtors seek authority to provide holders of secured claims in its assets (the "Prepetition Collateral") adequate protection in the form of replacement liens for any and all diminution in value of the Prepetition Collateral from and after the Petition Date for any reason, including, without limitation, any such diminution resulting from

(i) the use of cash collateral, (ii) the priming of any security interests in and liens on any of the Prepetition Collateral (including by the Carve-Out) by the DIP Liens (as defined herein) pursuant to this Interim DIP Order, (iii) the use, sale, or lease of the Prepetition Collateral, and (iv) the imposition of the automatic stay under section 362(a) of the Bankruptcy Code;

vii. Modification of the Automatic Stay: The Debtors seek to vacate and/or modify the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim DIP Order;

viii. Scheduling a Final Hearing: The Debtors seek to schedule a final hearing (the "Final Hearing") no later than 25 days following entry of the Interim DIP Order to consider the relief requested in the DIP Motion on a final basis and approval of the form of notice with respect to the Final Hearing;

ix. Waiver of Stay: The Debtors seek to waive any applicable stay with respect to effectiveness and enforceability of this Interim DIP Order (including under Bankruptcy Rule 6004); and

x. Additional Relief: The Debtors request such other and further relief as is just and proper and in furtherance of the relief sought in the DIP Motion.

The Court having considered the DIP Motion, the exhibits attached thereto, the *Declaration of Declaration of Kevin Harrigan, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and Various First Day Applications and Motions* (the "First Day Declaration"), and any other evidence submitted and arguments made at the interim hearing held on January 8, 2025 (the "Interim Hearing"); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the interim relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, their creditors and equity holders, and all parties-in-interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' request for the DIP Facility is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor; ***the Court makes the following findings of fact and conclusions of law*:**[3]

A. **Petition Date**. On January 6, 2025 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States

[3]The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to 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.

Bankruptcy Court for the Western District of Pennsylvania (the "Court") thereby commencing these Chapter 11 Cases.

B. **Debtors in Possession**. The Debtors continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed for any Debtor.

C. **Jurisdiction and Venue: Core Proceeding**. This Court has jurisdiction over these Chapter 11 Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a "core" proceeding pursuant to 28 U.S.C. § 157(b). Venue for these Chapter 11 Cases and the proceedings on the DIP Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The controlling statutory bases for the relief sought herein are sections 105, 361, 362, 263, 364, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and the applicable Local Rules.

D. **Committee Formation**. As of the date hereof, the United States Trustee for the Western District of Pennsylvania (the "U.S. Trustee") has not yet appointed an official committee of unsecured creditors in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (a "Committee").

E. **Notice**. Notice of the DIP Motion and Interim Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and as otherwise ordered by the Court, and no other or further notice of the DIP Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim DIP Order is required.

F. **Findings Regarding Corporate Authority**. Each Debtor has all requisite corporate power and authority to seek the relief sought in the DIP Motion, stipulate to certain facts set forth herein and otherwise perform its obligations hereunder.

G. **Debtors' Stipulations**. After consultation with their attorneys and financial advisors, and without prejudice to the rights of a Creditors' Committee or other parties in-interest as set forth in paragraph 34 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (paragraphs G(i) through G(iv) below are referred to herein, collectively, as the "Debtors' Stipulations"):

i. Prior to the Petition Date, the Debtors granted or pledged security interests in (i) substantially all of their assets (subject to certain permitted encumbrances) to KeyBank National Association ("KeyBank") as an eligible lender under the Main Street Lending Program, (ii) certain accounts receivable to LSQ Funding Group, L.C., pursuant to an LSQ account sale agreement (the "LSQ Customer Account Sale Agreement") (iii) four trailers to R&D Svonavec Ventures, LLC, (iv) a CAT 785C Haul Truck, a Terex O&K Excavator, and three CAT 777F Haul Trucks to Bill Miller Equipment Sales, (v) a CAT 980M wheel loader to Cleveland Brothers Equipment, and (vi) a Sub Fine 325 Sludge Separation Unit to Wingspire Equipment Finance (collectively, the "Identified Prepetition Secured Lenders").

ii. As of the Petition Date, the aggregate outstanding principal balance owed to the Identified Prepetition Secured Lenders is $21,114,641 (the "Prepetition Loan Obligations").

iii. With the exception of the Debtors' real property interests (fee, leasehold, or otherwise), KeyBank appears to have valid perfected first priority lien on substantially all of the Debtors' assets. The other Identified Prepetition Secured Lenders likewise appear to have valid fully perfected liens on their respective collateral. The liens of KeyBank and the other Identified Prepetition Secured Lenders are collectively referred to as the "Prepetition Liens".

iv. Subject to the consent of the Identified Prepetition Secured Lenders to entry of this Interim DIP Order, the Debtors shall not challenge or use any of the DIP Facility proceeds to challenge the Prepetition Liens of the Identified Prepetition Secured Lenders.

H. **Prepetition Liens**. Nothing herein shall constitute a finding or ruling by this Court that any alleged prepetition lien or security interest is valid, senior, enforceable, prior, perfected, or non-avoidable with respect to the Prepetition Liens.

I. **Cash Collateral**. As of the Petition Date, KeyBank has a security interest in all of the Debtors' cash collateral, as defined in section 363(a) of the Bankruptcy Code (the "Cash Collateral").

J. **Findings Regarding the DIP Loans and Need to Use Cash Collateral**.

i. *Request for Postpetition Financing*. The Debtors have requested authority to enter into the DIP Facility and use Cash Collateral on terms described herein to administer their Chapter 11 Cases and fund their operations, including, without limitation the Material Terms of the DIP Facility set forth below.

ii. *Need for Postpetition Financing and Use of Cash Collateral*. The Debtors have an immediate and ongoing need to use the Cash Collateral on an interim basis and to obtain credit on an interim basis by way of the DIP Facility in order to, among other things, administer and preserve the value of their estates and avoid a potential closure. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise finance their operations in an attempt to maximize recoveries for creditors requires the availability of working capital from the DIP Facility and the use of the Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, and parties-in-interest and potential recoveries for creditors. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business in the Interim Period without the DIP Facility and authorized use of the Cash Collateral.

iii. *Material Terms of the DIP Facility*. The following Material Terms of the DIP Facility were negotiated by and between the Debtors and the DIP Lender:

1. DIP LENDER(S):	KIA II LLC
2. BORROWERS:	The Debtors

3. PURPOSE OF LOAN:	To fund formal restructuring proceedings for the Debtors, which include the commencement of chapter 11 proceedings in the United States and a recognition CCAA proceeding in Canada.
4. AMOUNT OF DIP FACILITY	$15 million in the aggregate. (a) Interim DIP Loan: $10.5 million (b) Final DIP Loan: $4.5 million The form and substance of both the Interim DIP Order and the Final DIP Order shall be satisfactory to the DIP Lender in its discretion. The Interim DIP Loan will be funded on the Closing Date. Closing Date: The date on which the Bankruptcy Court enters the Interim DIP Order.
5. TYPE OF LOAN:	The Debtors shall obtain secured post-petition financing on a superpriority basis consisting of a secured, non-revolving line of credit facility in the aggregate principal amount of up to $15 million consisting of all new money loans.
6. COLLATERAL AND LIEN PRIORITY:	DIP Lender shall hold automatically perfected first priority liens (the "DIP Liens") on and against substantially all of the Debtors' assets, including, without limitation, all real and personal property, whether now existing or hereafter acquired or arising, subject only to the Carve-Out and Permitted Encumbrances, as well as all property constituting "cash collateral" as defined in section 363 of the Bankruptcy Code. Notwithstanding the automatic perfection upon entry of the Interim DIP Order, the DIP Lender shall have the right to file mortgages, UCC-1s and other documents of perfection in its discretion notwithstanding the automatic stay and the Debtors shall secure authority to cooperate in that regard and do so in good faith. All obligations under the DIP Facility shall be secured by a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically, and properly perfected first priority lien on, and security interest in all assets and property of the Debtors, real or personal, tangible or intangible, wherever located and whether now owned or hereafter acquired, including without limitation, all tangible and intangible prepetition and postpetition property in which the Debtors have an interest, whether now existing or hereafter acquired and all proceeds thereof. For avoidance of doubt, DIP Collateral shall include proceeds from all claims or causes of action to avoid a transfer of property (or an interest in property) or an obligation incurred by the Debtors pursuant to any applicable section of the Bankruptcy Code, including, without limitation, chapter 5 and section 724(a) of the Bankruptcy Code (collectively, the

	"Avoidance Actions"). The DIP collateral shall be further expanded in the Interim DIP Order.
7. SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIM.	On account of the DIP Facility and all obligations owing thereunder, the DIP Lender shall hold a superpriority administrative expense claim in the Chapter 11 Case, with priority senior to all other administrative claims in the Chapter 11 Case, subject only to the Carve-Out.
8. USE OF PROCEEDS.	The Debtors may use the DIP Loans exclusively for (a) working capital; (b) permitted payment of costs of administering the Chapter 11 Cases (including, without limitation, the estate professional fees and expenses set forth in the Budget and embodied in the Carve-Out (defined below)); (c) payment of such other prepetition obligations as set forth in the Budget or otherwise approved by the DIP Lender in its reasonable discretion, and as approved by the Court; (d) payment of interest, fees, expenses and other amounts (including legal and other professionals' fees and expenses of the DIP Lender) owed the DIP Lender pursuant to this Interim DIP Order; and (e) other general corporate purposes of the Debtors permitted by the Budget.
9. BUDGET	The Debtors shall provide a copy of the Interim DIP Budget to the DIP Lender for its review and approval prior to the Interim Hearing. There shall be permitted and agreed upon inflow and outflow variances during reporting periods. The Debtors shall be subject to the Interim DIP Budget until entry of the Final DIP Order. Prior to the Final DIP Hearing the Debtors shall provide a Final DIP Budget in form and substance that is acceptable to the DIP Lender. As a condition to further funding following entry of the Final DIP Order, the DIP Lender shall receive rolling weekly budgets commencing with the week during which the hearing to approve the Final DIP Order is scheduled, containing line items of sufficient detail to reflect the projected receipts, projected disbursements, and projected professional fee accruals of the Debtors, along with all other expenses related to the administration of the Chapter 11 Case for such period, which Final DIP Budget shall otherwise be in form and substance satisfactory to the DIP Lender, in its sole discretion (such budget, as supplemented in accordance with the Interim DIP Order or Final DIP Order, the "**Budget**"). The Debtors shall be permitted to operate in accordance with the Budget, subject to a variance covenant testing (excluding professional fees).
10. MATURITY DATE:	The DIP Facility shall mature on the earliest to occur of: (a) February 28, 2025, or (b) the closing of the sale of substantially all of the Debtors' assets; (c) the effective date of a confirmed Acceptable Plan, or (d) the date of acceleration of the DIP Loans or termination by the DIP Lender following an Event of Default.

	Acceptable Plan - A plan of reorganization for the Debtors that either (a) provides for the payment in full of all Obligations hereunder, (b) contains customary releases and exculpations for DIP Lender as of the effective date of the Plan of the DIP Lender and its principals, employees, agents and professionals (in their capacity as such) for any matters arising out of or relating to the Debtors, their estates, or the Chapter 11 Cases, and (c) is otherwise acceptable to the DIP Lender in its sole discretion.
11. TREATMENT OF DIP OBLIGATIONS:	The DIP Lender, in its sole discretion, may credit bid all or a portion of the DIP Facility in the event of the sale(s) of any portion or all of the Debtors' assets. This option does not reduce or otherwise modify the Debtors' obligation to repay any unused portion of the DIP Facility if the DIP Lender elects to credit bid.
12. INTEREST RATE:	**Interest Rate**: 13.5% per annum payable monthly in kind and capitalized as principal each month. **Default Rate**: 15% per annum **Calculation of Interest**. All interest hereunder shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).
13. FEES:	**Commitment Fee**: DIP Lender will be entitled to a fee equal to five percent (5%) of the DIP Loan Commitment, which shall be fully earned upon entry of the Interim DIP Order and payable on the Closing and funding date of the Interim DIP Loan. **Exit Fee.** DIP Lender will be entitled to a fee equal to five percent (5%) of the DIP Loan Commitment, which shall be fully earned upon entry of the Interim DIP Order and payable when the DIP Facility is paid in full or is otherwise accelerated due to an Event of Default.
14. EVENTS OF DEFAULT:	a. Debtors' failure to pay any principal or interest when due or the failure of the Debtors to pay any other amount payable hereunder within five (5) business days of the date when due; b. Debtors' failure to provide to the DIP Lender prior to the interim hearing on the DIP Motion the Interim DIP Budget, in form and substance reasonably acceptable to the DIP Lender. Thereafter, the Debtors shall provide to the DIP Lender each week an updated budget and variance report showing variances as described in the Interim DIP Order. This Event of Default is curable within three business days of the Debtors' receipt of a Notice of Default.

	c. Debtors' failure to provide to the DIP Lender prior to the interim hearing on the DIP Motion the Final DIP Budget, in form and substance reasonably acceptable to the DIP Lender. Thereafter, the Debtors shall provide to the DIP Lender each week an updated budget and variance report showing variances as described in the Final DIP Order. This Event of Default is curable within three business days of the Debtors' receipt of a Notice of Default. c. Debtors' failure to meet the Milestones, unless otherwise agreed upon by the DIP Lender. d. Debtors' failure to use all the DIP Loan proceeds in a manner consistent with the Interim DIP Order and maintain accurate accounting of the same and such event of default remains unremedied for a period of fifteen (15) days after the earlier of the date on which the default first became known to any officer of the Debtors or the date on which the Notice of Default is delivered. e. Debtors' failure to comply with the Interim DIP Order and Final DIP Order. f. The appointment of a chapter 11 trustee, an examiner with expanded powers, conversion of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code or dismissal of the Chapter 11 Cases. g. Either the Interim DIP Order or the Final DIP Order are amended, vacated, modified, or otherwise no longer in full force and effect, without the prior written consent of the DIP Lender. h. An event impairing or causing the DIP Lender to be unable to credit bid amounts advanced to the Debtors under the DIP Facility in the event of one or more sales, provided, however, such Event of Default may be cured if such rights are reinstated prior to the sales.
15. DEFAULT NOTICE AND DEBTORS' RIGHTS RELATING THERETO	Upon the occurrence and continuance of any Event of Default, the DIP Lender may (notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to, or order from, the Bankruptcy Court), subject to the terms, conditions and provisions of the Interim DIP Order or Final DIP Order, declare the commitment to fund under the DIP Facility to be terminated forthwith, following which Default Notice Period the commitment shall immediately terminate, and/or, by notice to the Debtors, declare its DIP Loans, with accrued interest thereon, and all other obligations owed to the DIP Lender to be due and payable, whereupon the same shall immediately become due and payable. Upon the occurrence and during the continuance of any uncured Event of Default, subject to the terms of the Interim DIP Order or Final DIP Order, the

	DIP Lender may exercise all of its rights and remedies set forth in the Interim DIP Order or Final DIP Order, in addition to all rights and remedies allowed under any applicable law, including the Uniform Commercial Code. The DIP Lender shall not have any obligation of any kind to make a motion or application to the Bankruptcy Court to exercise its rights and remedies. The Debtors' recourse in the Event of Default shall be set forth in the Interim DIP Order or Final DIP Order. Moreover, nothing shall bar the Debtors from seeking emergency relief from the Bankruptcy Court in the event a notice of default is delivered. For the avoidance of doubt, during the Default Notice Period, (i) the Debtors shall be permitted to continue to use the proceeds of the DIP Loans solely in the ordinary course of business and to satisfy the Carve-Out, and (ii) the Debtors may seek emergency relief from the Bankruptcy Court during the Default Notice Period to challenge any asserted Event of Default.
16. MILESTONES:	Unless otherwise agreed to in writing by the Lender: (i) On or before the third (3rd) Business Day after the Petition Date, the Interim DIP Order shall have been entered by the Bankruptcy Court, and such order shall not have been reversed, modified, amended, stayed or vacated; (ii) On or before the twenty-fifth (25th) day after the entry of the Interim Order, the Final DIP Order shall have been entered, and such order shall not have been reversed, modified, amended, stayed or vacated; (iii) No later than ten (10) days after the Petition Date, the Borrowers shall have filed required motions (the "Sale Procedures Motion") seeking an Order authorizing bid and sales procedures towards effectuating a Sales Transaction (the "Sales Procedure Order"). (iv) On or before February 24, 2025, Borrowers shall conduct an auction pursuant to the Sales Procedure Order and shall file with the Court a notice of the final and winning bid; (v) On or before the February 26, 2025, the Court shall have entered an order approving the Sale. (vi) On or before February 28, 2025, the Sales Transaction shall close.

17. REPS AND WARRANTIES:	(a) Each Debtor is duly organized and validly existing and in good standing (to the extent such concept is applicable in the relevant jurisdiction) under the laws of the jurisdiction of its organization. (b) Subject to the granting of the Interim DIP Order or Final DIP Order, as applicable, the relief sought by the Debtors in the DIP Motion are within the power of the Debtors and have been duly authorized by all necessary corporate and, if required, other organizational approval by the Debtors, (iii) constitute legal, valid and binding obligations of the Debtors, and (iv) do not require further the consent or approval except for approvals, consents, or other actions which have been duly obtained, taken, given or made and are in full force and effect.
18. CONDITIONS TO BORROWING:	(i) The Chapter 11 Cases shall have been filed in the Bankruptcy Court. (ii) The Interim DIP Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Lender. (iii) The DIP Lender shall have received an Interim DIP Budget, in form and substance satisfactory to the DIP Lender in its sole discretion, including as to all assumptions. (iv) No Event of Default shall exist at the time of, or immediately after giving effect to, the making of the Loans.
19. INDEMNIFICATION:	The Debtors shall indemnify the DIP Lender and its affiliates, agents, and/or representatives (the "<u>Indemnified Persons</u>") and hold them harmless from and against all liabilities, claims, and disbursements (including reasonable and documented out-of-pocket costs and expenses) arising out of or relating to the transactions contemplated hereby, except, with respect to any conduct of such Indemnified Person, solely for gross negligence or willful misconduct, and then only to the extent determined by a final, non-appealable order of a court of competent jurisdiction.
20. WAIVERS AND RELATED PROTECTIONS FOR DIP LENDER:	The Interim and Final DIP Orders shall be in form in substance satisfactory to the DIP Lender and provide the following waivers: (a) Waiver of the automatic stay to the extent necessary to effectuate and/or implement the Interim DIP Order and/or the Final DIP Order; (b) Waivers of nonbankruptcy laws relating to perfection and enforcement of DIP Liens; (c) The Interim DIP Order shall provide for waivers of the "equities of the case" exception to section 552(h), a section 506(c) waiver, marshalling, and equitable subordination. (d) Waivers of claims and causes of action against the DIP Lender, its affiliates, and representatives, as are customary to DIP financing under similar circumstances.

21. CARVE OUT	Liens and claims granted by the Interim DIP Order and the Final DIP Order shall be subordinate to the following (collectively, the "**Carve Out**"): (a) All fees required to be paid to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) plus interest at the statutory rate: (b) Subject to the Budget, all unpaid fees, costs, disbursements, and expenses, incurred or earned by legal counsel and other professionals engaged or retained by the Debtors or the Committee with the approval from the Bankruptcy Court (the "**Carve Out Professionals**"), at any time before or on the Carve Out Trigger, whether allowed by the Bankruptcy Court prior to, on, or after delivery of the Carve Out Trigger Notice in an aggregate amount not to exceed the Post-Carve Out Trigger Notice Amount (to be defined in the Interim DIP Order) but an amount not exceeding $300,000).

The Court finds that Debtors and the DIP Lender negotiated the Material Terms of the DIP Facility in good faith and at arms-length. Under the circumstances, and to the avoid immediate and irreparable harm that could result to the Debtors, their estates, their creditors, their employees, and all other stakeholders and parties in interest, the Court finds the Material Terms of the DIP Facility to be fair and reasonable and the relief sought there mandates the granting of the protections for the DIP Lender under sections 363 and 364 of the Bankruptcy Code as set forth in greater detail in this Interim DIP Order.

iv. *No Credit Available on More Favorable Terms*. Given the current facts and circumstances surrounding the Debtors and these Chapter 11 Cases, including, without limitation, the Debtors' current financial condition, financing arrangements, and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lender on terms more feasible and favorable than the DIP Facility despite efforts to do so prior to the Petition Date. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have 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) adequate credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. As described in the First Day Declaration, the Debtors have been unable to secure financing on a postpetition basis on better terms than those offered by the DIP Lender and such financing is not available without granting the DIP Lender: (1) perfected priming first security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth below; (2) superpriority claims against all assets of the Debtors; and (3) the other protections set forth in this Interim DIP Order.

v. *Priming of the Prepetition Liens*. The DIP Lender's priming of the Prepetition Liens on the collateral identified in Finding (G) above (the "Prepetition Collateral") under the clear and controlling interpretation of section 364(d) of the Bankruptcy Code, as contemplated by the DIP Facility and as further described below, will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses to the benefit of their estates and creditors (including the Identified Pre-Petition Secured Lenders), and enable the Debtors to advance a sale process that is intended to maximize recoveries for all creditors and preserve jobs for the Debtors' employees. Such relief is both appropriate and necessary under the circumstances. Accordingly, as of a result of the priming liens to be granted to the DIP Lender, each Identified Prepetition Secured Lender is eligible to receive adequate protection, as set forth in this Interim DIP Order, for any diminution in value of each of their respective interests in the Prepetition Collateral.

vi. *Permitted Encumbrances.* The DIP Lender has agreed that the liens granted pursuant to this Interim DIP Order for the DIP Facility shall not prime the preexisting or post-petition liens granted in connection with the LSQ Customer Account Sale Agreement or the Additional Account Sale Agreements (collectively, the "Customer Account Sale Programs"), which liens shall continue to have a first priority in the related accounts associated with the Customer Account Sale Programs.

vii. *Use of Proceeds of the DIP Facility*. As a condition to the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Lender and the Debtors have agreed, that proceeds of the DIP Facility shall be used, in each case in a manner consistent with the terms and conditions of this Interim DIP Order and in accordance with the Interim DIP Budget (as the same may be modified from time to time consistent with the terms of this Interim Order),[4] solely for: (a) working capital; (b) permitted payment of costs of administering the Chapter 11 Cases (including, without limitation, the estate professional fees and expenses set forth in the

[4]A copy of the Budget is attached hereto as **Exhibit A**.

Budget and embodied in the Carve-Out (defined below)); (c) payment of such other prepetition obligations as set forth in the Budget or otherwise approved by the DIP Lender in its reasonable discretion, and as approved by the Court; (d) payment of interest, fees, expenses and other amounts (including legal and other professionals' fees and expenses of the DIP Lender) owed the DIP Lender pursuant to this Interim DIP Order; and (e) other general corporate purposes of the Debtors permitted by the Budget. The DIP Lender is relying upon the Budget in providing the DIP Facility and consenting to the terms of this Interim DIP Order. All references in this Interim DIP Order restricting the use of the Cash Collateral to payment of amounts consistent with the Budget shall mean the most recently approved Budget, subject to the permitted variances described below.

viii. *Application of Proceeds of the DIP Loans.* As a condition to the extension of credit under the DIP Facility and authorization to use the Cash Collateral, the Debtors and the DIP Lender have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply the proceeds of the DIP Collateral (as defined herein) in accordance with this Interim DIP Order.

K. **Adequate Protection**. Subject to the provisions of paragraph 34 hereof, the Prepetition Secured Lenders are entitled to receive adequate protection to the extent of any actual diminution in value of their respective interests in the Prepetition Collateral. Pursuant to sections 361, 363 and to the extent applicable - 507(b) of the Bankruptcy Code, as adequate protection the Identified Prepetition Secured Lenders will receive replacement liens on all assets of the Debtors arising or created after the Petition Date, junior to the first priority liens of the DIP Lender.

Nothing in this Interim DIP Order shall constitute a finding that any other creditor has any interest in any of the Prepetition Collateral. In the event any creditor is ultimately found to have had an interest in any of the Prepetition Collateral, each will receive adequate protection to the extent of any actual diminution in value of its interests in the Prepetition Collateral in the form of replacement liens having the priority set forth herein on all assets of the Debtors. Notwithstanding the foregoing, KeyBank shall be provided as adequate protection replacement liens on all assets of the Debtors, junior to only the first priority liens of the DIP Lender, which liens shall be subject to the Carve-Out. For avoidance of doubt, all adequate protection liens granted pursuant to this Interim DIP Order shall be subject to the Carve-Out, including, without limitation the Professional Fee Weekly Escrow (defined below), which includes funds earmarked for expenses incurred by estate professionals in the Budget and the Carve-Out.

L. **Sections 506(c) and 552(b)**. In light of: (i) the DIP Lender's agreement that its liens and superpriority claims shall be subject to the Carve-Out and the Professional Fee Weekly Escrow, and (ii) the payment of expenses as set forth in the Budget in accordance with and subject to the terms and conditions of this Interim DIP Order, the DIP Lender is entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and a waiver of the provisions of section 506(c) of the Bankruptcy Code, each waiver being subject to entry of a Final DIP Order.

M. **Good Faith of the DIP Lender**.

i. *Willingness to Provide Financing*. The DIP Lender has indicated a willingness to provide financing to the Debtors subject to the terms set forth in the Material Terms of the DIP Facility, which include, among other things, (a) entry of this Interim DIP Order and subsequently the Final DIP Order; (b) approval of the terms and conditions associated with the DIP Facility as set forth herein; (c) satisfaction of the closing conditions described in Material Terms of the DIP Facility; and (d) findings by this Court that the DIP Facility is essential and necessary to the Debtors' estates, that the DIP Lender is extending credit to the Debtors pursuant to this Interim DIP Order in good faith, and that the DIP Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim DIP Order will have the protections provided by section 364(e) of the Bankruptcy Code. Based upon the record presented at the Interim Hearing and the facts and circumstances surrounding these Chapter 11 Cases, it is clear that the DIP Facility has been negotiated in good faith and at arm's length between the Debtors, on the one hand, and the DIP Lender. The DIP Facility is essential and necessary to the Debtors' estates and finding as such, the liens and protections set forth in this Interim DIP Order are mandated under Sections 363 and 364 of the Bankruptcy Code. All of the DIP Obligations and all other liabilities and obligations of the Debtors under this Interim DIP Order owing to the DIP Lender shall be deemed to have been extended the DIP Lender in "good faith", as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code. The DIP Lender shall be entitled to the full protection of section 364(e) of the Bankruptcy Code if this Interim DIP Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

ii. *Business Judgment and Good Faith Pursuant to Section 364(e)*. The extensions of credit under the DIP Facility, and the interest and fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, are appropriate for secured financing to debtors in possession, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The terms and conditions of the DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors and the DIP Lender, with the assistance and counsel of their respective advisors. Use of the Cash Collateral and the credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made, or extended as an exercise of the Debtors' reasoned business judgment and in good faith by both the Debtors and the DIP Lender within the meaning of section 364(e) of the Bankruptcy Code.

N. **Immediate Entry**. Sufficient cause exists for immediate entry of this Interim DIP Order pursuant to Bankruptcy Rule 4001(c)(2). Absent the immediate grant by the Court of the interim relief sought by the DIP Motion, each Debtor's estate will be immediately and irreparably harmed pending the Final Hearing. The Debtors' obtaining the DIP Facility in accordance with the terms of this Interim DIP Order is in the best interests of each Debtor's estate and is consistent with each Debtor's exercise of its fiduciary duties.

O. **Interim Hearing**. Notice of the Interim Hearing and the relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties-in-interest, including: (i) the Office of the United States Trustee for the Western District of Pennsylvania, Federal Building, 1000 Liberty Avenue, Suite 1316, Pittsburgh, PA 15222; (ii) Counsel for DIP Lender, Michael Shiner (mshiner@tuckerlaw.com) and Beverly Weiss Manne (bmanne@tuckerlaw.com), Tucker Arensberg, P.C., 1500 One PPG Place, Pittsburgh, PA 15222; (iii) all secured creditors; (iv) the Offices of the Attorney's General of the Commonwealth of Pennsylvania and State of Maryland; (v.) the thirty (30) largest unsecured creditors for the Debtors on a consolidated basis; (vi.) the Debtors' identified, interested taxing authorities, including the Internal Revenue Service; (vii.) the Debtors' identified, interested government and regulating entities including the Environmental Protection Agency, Pennsylvania Department of Environmental Protection, and Maryland Department of the Environment; (viii.) all respondents and other affected parties as identified by the Debtors; (ix.) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (x) any known counsel for (i)-(ix). The Debtors have made reasonable efforts to afford the best notice possible under the circumstances in compliance with Bankruptcy Rules 4001(b) and (c) and applicable Local Rules and no other notice is required in connection with the relief set forth in this Interim DIP Order. Based upon the foregoing findings and conclusions, the DIP Motion, the DIP Declaration, the First Day

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. Interim Financing Approved. The DIP Motion is granted as set forth herein as are the Material Terms of the DIP Facility and the protections afforded the DIP Lender for entering into the DIP Facility and agreeing to extend credit thereunder. The interim DIP financing as set forth in this Interim DIP Order is authorized and approved, and the use of the Cash Collateral on is also authorized on an interim basis, in each case subject to the terms and conditions set forth herein. All objections to this Interim DIP Order to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled on the merits in their entirety. Subject to the terms of this Interim DIP Order, the rights of all parties in interest to object to the final relief sought by the DIP Motion are reserved in full.

Authorization of the DIP Facility

2. Authorization of the DIP Facility. The DIP Facility is hereby approved on an interim basis. The Debtors are hereby authorized to enter into and perform pursuant to the Material Terms of the DIP Facility and this Interim DIP Order, which remains subject to entry of a Final DIP Order. The Debtors are expressly and immediately authorized and empowered to execute any documentation required per the Material Terms of the DIP Facility, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim DIP Order, the

terms and conditions described in the DIP Motion and the Material Terms of the DIP Facility, including, to the extent required by the DIP Lender, the delivery of any instruments, certificates, agreements, mortgages, and documents which may be required or necessary for the performance by the Debtors obligations under the DIP Facility and the creation and perfection of the DIP Liens. The Debtors are hereby authorized and directed to pay, in accordance with this Interim DIP Order, the principal, interest, fees, payments, expenses, and other amounts described herein, in the DIP Motion, or in the Material Terms of the DIP Facility as such amounts become earned, due and payable and without need to obtain further Court approval, including closing fees, unused line fees, and the reasonable fees and disbursements of the DIP Lender's attorneys, advisors, accountants, and other consultants incurred in connection with the DIP Loan, whether or not such fees arose before or after the Petition Date. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations, or otherwise, will be applied as required by this Interim DIP Order and the Material Terms of the DIP Facility. Actions taken pursuant to this Interim DIP Order and the Material Terms of the DIP Facility are enforceable against each of the Debtors and their estates in accordance with their terms.

3. Authorization to Borrow. To prevent immediate and irreparable harm to the Debtors' estates, from the entry of this Interim DIP Order through and including the earliest to occur of (i) entry of the Final DIP Order or (ii) the Termination Date (as defined below), the

Debtors shall be deemed to have requested, and the DIP Lender is hereby authorized and directed to immediately make, the interim DIP Loan in the amount of $10.5 million, the proceeds of which shall be used to in accordance with the Budget.

4. DIP Obligations. This Interim DIP Order shall constitute and evidence the validity and binding effect of the DIP Obligations, which shall be enforceable against the Debtors, their estates and any successors thereto, including any trustee appointed in the Chapter 11 Cases, or in Successor Cases. Upon entry of this Interim DIP Order, the DIP Obligations will include all loans, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Lender under, or secured pursuant to the Material Terms of the DIP Facility and this Interim DIP Order, including all principal, accrued interest, costs, fees, expenses and other amounts. The Debtors shall be jointly and severally liable for the DIP Obligations. On the Termination Date the DIP Obligations shall be due and payable and the use of Cash Collateral shall automatically cease, except as provided in paragraph 28 herein. To the fullest extent permissible under the Bankruptcy Code, no obligation, payment, transfer, or grant of collateral security hereunder (including any DIP Obligation or DIP Liens shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable and/or conflicting law (including under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any

avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person, entity or agency, except as set forth in paragraph 33 below.

5. DIP Liens. As security for the DIP Obligations, effective and perfected immediately upon entry of this Interim DIP Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, and without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the DIP Lender of any property, the DIP Lender is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition first priority liens on, and security interests in (collectively, the "DIP Liens"), all property of the Debtors, including, without limitation, all tangible and intangible prepetition and postpetition property in which the Debtors have an interest, whether real or personal, whether now existing or hereafter acquired and all proceeds thereof, including property of any kind that was subject to valid, perfected, and unavoidable liens in existence immediately prior to the Petition Date, such as the Prepetition Secured Liens (the "DIP Collateral"). The DIP Collateral shall include, without limitation, (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever

located), instruments, documents, securities (whether or not marketable) and investment property (including all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, electronic document rights, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, fee interests in real property owned by the Debtors, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all owned real property interests and rights, all interests in real property leases (including, for the avoidance of doubt, any ground leases), interests in metals reserves, real property possession rights, profits in real property, any and all property interests in coal, coal and/or oil and gas leases, minerals (including, but not limited to, rare earth minerals), oil and gas rights, access and production rights, and all proceeds of all such real property or other interests (provided, however, to the extent the imposition of the DIP Liens would create a basis for a non-Debtor party to assert a default or terminate any right, leasehold, or real property interest held by the Debtor, such property and/or interest shall not be part of the DIP Collateral); (c) subject to entry of a Final DIP Order, the Debtors' rights under section 506(c); (d) all Prepetition Collateral, whether or not subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date; and (e) to the extent not otherwise included, all proceeds, tort claims, insurance claims and other rights to payments not otherwise included in the foregoing and proceeds and products of the foregoing and all accessions to, substitutions and replacements for, and rent and profits of, each of the foregoing. The DIP Collateral shall include the proceeds of claims or causes of action to avoid a transfer of property (or an interest in property) or an obligation incurred by the Debtors pursuant to any applicable section of the Bankruptcy Code, including, without limitation, chapter 5 and section 724(a) of the Bankruptcy Code (collectively, the "Avoidance Actions").

6. DIP Lien Priority. The DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority, and superior to any other security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP Liens shall be subject to the Carve-Out and any Permitted Encumbrances (as defined above) or otherwise described in this Interim DIP Order. The DIP Liens shall consist of:

i. Priming DIP Liens on Prepetition Collateral. Valid, binding, continuing, enforceable, and fully perfected, first and senior priority security interests and liens upon all DIP Collateral that is the Prepetition Collateral, which security interests in and liens upon, pursuant to section 364(d)(1) of the Bankruptcy Code, shall be prior and senior in all respects to (i) the security interests and liens in favor of the Identified Prepetition Secured Lenders and any other creditor ultimately found to have an interest in the Prepetition

Collateral; and (ii) the Prepetition Adequate Protections Liens (as defined herein) with respect to the DIP Collateral.

ii. Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, and fully perfected, first priority security interests and liens upon all prepetition and post-petition property of the Debtors, whether existing on the Petition Date or thereafter acquired that, on or as of the Petition Date (or perfected thereafter as permitted by section 546(b) of the Bankruptcy Code) or the date acquired (if acquired after the Petition Date) is not subject to a properly perfected, valid, enforceable and unavoidable lien (collectively, the "Unencumbered Property").

iii. DIP Liens Not Subordinate. Other than as set forth herein, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee or other estate representative appointed in the Chapter 11 Cases or any trustee and parties to any Successor Cases, and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to impairment in any manner by sections 506(c) (subject to entry of a Final DIP Order), 510, 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens. In no event shall any person who pays (or through the extension of credit to any Debtor, causes to be paid) any of the DIP Obligations be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or priorities granted to or in favor of, or conferred upon, the DIP Lender by the terms of this Interim DIP Order unless and until the DIP Obligations owed to the DIP Lender have been indefeasibly paid in full in cash.

7. DIP Superpriority Claims. Upon entry of this Interim DIP Order, in addition to the DIP Liens granted herein, the DIP Lender is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases of the Debtors and any Successor Cases for any of the Debtors (collectively, the "DIP Superpriority Claim(s)") for all DIP Obligations: (a) subject only to the Carve-Out (which includes protections for the Professional Fee Weekly Escrow), having priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases of the Debtors and any Successor Cases for any of the Debtors, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c) (subject to entry of a Final DIP Order), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by

law; and (c) shall be payable, solely from the assets of the Debtors. The DIP Superpriority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code and shall be payable from all prepetition and postpetition property of the Debtors.

8. No Obligation to Extend Credit. The DIP Lender shall have no obligation to make any loan or advance, or to issue, amend, renew or extend any letters of credit or bankers' acceptance pursuant to the Material Terms of the DIP Facility and this Interim DIP Order, unless all of the conditions precedent to the making of such extension of credit or the issuance, amendment, renewal, or extension of such letter of credit or bankers' acceptance have been satisfied in full or waived by the DIP Lender in accordance with the terms of this Interim DIP Order.

9. Use of Proceeds of DIP Facility. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facility, in accordance with the Budget (subject to such variances as set forth below), only for the purposes specifically set forth in this Interim DIP Order, and in compliance with the terms and conditions in this Interim DIP Order.

Authorization to Use Cash Collateral

10. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim DIP Order, and in accordance with the Budget, the Debtors are authorized to use the Cash Collateral until the earlier of the DIP Termination Date or the Maturity

Date; *provided, however*, that during the Remedies Notice Period (as defined herein), the Debtors may use the Cash Collateral and the DIP Facility's already advanced proceeds in accordance with the terms of any order granting the DIP Motion, whether on an interim or final basis, solely to pay necessary expenses set forth in the Budget to avoid immediate and irreparable harm to the Debtors' estates or as otherwise agreed by the DIP Lender in its sole discretion, and the Carve-Out shall be funded following delivery of the Carve-Out Trigger Notice (as defined herein) as provided in paragraph 28 of this Interim DIP Order. Nothing in this Interim DIP Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Interim DIP Order, the DIP Facility, the Material Terms of the DIP Facility, or by subsequent order of this Court.

11. <u>Adequate Protection Liens for Identified Pre-Petition Secured Lenders</u>.

i. *Prepetition Adequate Protection Liens*. Pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Identified Prepetition Secured Lenders against any actual diminution in value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Identified Prepetition Secured Lender, continuing, valid, binding, enforceable, non-avoidable and automatically perfected postpetition security interests in and liens on all of the Prepetition Collateral (the "Prepetition Adequate Protection Liens").

12. Priority of Prepetition Adequate Protection Liens.

i. The Prepetition Adequate Protection Liens shall be subject to the Carve-Out and the provisions of paragraph 36 as set forth in this Interim DIP Order and shall otherwise be junior only to the DIP Liens and DIP Superpriority Claims.

ii. KeyBank's Adequate Protection Replacement Liens on all assets of the Debtors, shall be junior to only the first priority liens of the DIP Lender but subject to the fees and expenses incurred by estate professionals and the Carve-Out.

13. Subject to paragraph 36 and except as provided herein or in the Material Terms of the DIP Facility, the Prepetition Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed by the Court in any of the Chapter 11 Cases of the Debtors or any Successor Cases for any of the Debtors, or upon the dismissal of any of the Chapter 11 Cases of the Debtors or any Successor Cases for any of the Debtors.

14. Adequate Protection Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the DIP Lender hereunder is insufficient to compensate for any diminution in value of its respective interests in the DIP Collateral during the Chapter 11 Cases of the Debtors or any

successor cases for any of the Debtors. The receipt by the DIP Lender of the adequate protection provided herein shall not be deemed an admission that its interests are adequately protected.

Provisions Common to DIP Financing and use of the Cash Collateral

15. Budget. All borrowings under the DIP Facility and all use of the Cash Collateral shall be in compliance with the Budget, as the same may be modified from time to time by the consent of the DIP Lender and the Debtors' Budget, subject to the following (the "Permitted Variance"): (a) the actual total cash receipts, determined on a cumulative rolling four-week basis, shall not be less than 80% of the projected total cumulative cash receipts as set forth in the approved Budget for the relevant period of determination, and (b) the actual total disbursements, determined on a cumulative rolling four-week basis, shall not be greater than 110% of the projected disbursements as set forth in the approved Budget for the relevant period of determination. The Debtors shall not use any portion of the proceeds of the DIP Facility or any Cash Collateral, directly or indirectly, in excess of the Permitted Variance to the Budget. Any amendment to the Budget is subject to approval by the DIP Lender, which shall not be unreasonably withheld, and shall be filed promptly with the Court, and no such Budget shall authorize any payments on account of any prepetition claim except in accordance with the Budget or as otherwise permitted

or required by an order of this Court.[5] With respect to the Allowed Professional Fees (as defined herein) incurred by Case Professionals (as defined herein), each Cash Professional shall use commercially reasonable efforts to record time entries, in accordance with the requirements of the Bankruptcy Code and the guidelines issued by the Office of the United States Trustee. Services rendered by Case Professionals to and for the benefit of the Debtors shall be subject to the Budget approved in this Interim DIP Order.

16. Budget Compliance. The Debtors shall at all times comply with the Permitted Variance to the Budget. The first test to confirm whether the Debtors are within the Permitted Variance shall occur after the Interim DIP Order has been in place for four full weeks, and tests shall continue weekly thereafter, based on the Debtors' performance against Budget during the most recent four-week period. The Debtors shall provide a variance report to the DIP Lender by Friday of each week comparing the previous week's budget-to-actuals and shall provide backup information upon request. The Debtors' failure to comply with the Permitted Variance to the Budget or to provide the reports and other information required pursuant to the Material Terms of the DIP Facility shall constitute an Event of Default, following the expiration of any applicable grace period.

[5]The Budget attached to this Interim DIP Order as **Exhibit A-1** has been approved by and is satisfactory to the DIP Lender.

17. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim DIP Order, including to (a) permit the Debtors to grant the DIP Liens and the DIP Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP Lender may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Lender pursuant to Material Terms of the DIP Facility, the DIP Facility, and this Interim DIP Order, as applicable; and (d) authorize the Debtors to pay, and the DIP Lender to retain and apply, payments made in accordance with the terms of this Interim DIP Order, the DIP Motion and the Material Terms of the DIP Facility.

18. Perfection of DIP Liens and Adequate Protection Liens. This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Prepetition Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, 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 or mortgage) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Prepetition Adequate Protection Liens, or to evidence or entitle the DIP Lenders to the priorities granted herein. Notwithstanding the foregoing, the DIP

Lender is authorized to file, in the applicable registries of deeds and other appropriate public records, as it in its sole discretion deems necessary or advisable, (i) notice of this Interim Order, and (ii) 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 all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Prepetition Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Lender all such financing statements, mortgages, notices, and other documents as the DIP Lender may reasonably request. The DIP Lender, in its discretion, may file a 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 instrument.

19. Protections of Rights of the DIP Lender.

i. Unless the DIP Lender shall have provided their prior written consent, or all DIP Obligations have been indefeasibly paid in full in cash and the lending commitments under the DIP Facility have terminated, there shall not be entered in any of the Chapter 11 Cases of the Debtors or any Successor Cases for any of the Debtors any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the DIP Collateral or the Prepetition Collateral and/or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, or the DIP Superpriority Claims; (ii) the use of the Cash Collateral for any purpose other than as permitted in this Interim DIP Order; or (iii) any modification of any of the DIP Lender's rights under this Interim DIP Order with respect any DIP Obligations owed to the DIP Lender.

ii. Until the DIP Obligations have been indefeasibly paid in full in cash, the Debtors shall (i) maintain books, records, and accounts; (ii) reasonably cooperate with, consult with, and provide to the DIP Lender all such information and documents that any or all of the Debtors are obligated to provide under this Interim DIP Order; (iii) upon reasonable notice, permit the DIP Lender and its advisors to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour (upon reasonable advance notice and on commercially reasonable terms) the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants, and other professional advisors (other than legal counsel); and (iv) permit the DIP Lender and its advisors to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, sale, operations, and assets.

20. Credit Bidding. Pursuant to Section 363(k) of the Bankruptcy Code, the DIP Lender (either directly or through an acquisition vehicle) may credit bid up to the full amount of the applicable outstanding DIP Obligations, in each case including any accrued and unpaid interest and expenses (each a "Credit Bid") in any sale of any DIP Collateral or Prepetition Collateral, as applicable, whether such sale is effectuated through section 363 or section 1129 of the Bankruptcy Code, by a Chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. The DIP Lender shall be considered a "Qualified Bidder" with respect to its rights to acquire all or any of the assets by Credit Bid.

21. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in the Chapter 11 Cases of the Debtors or any Successor Cases for any of the Debtors, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c), or 364(d) or in violation of the Material Terms of the DIP Facility at any time prior to the indefeasible repayment in full in cash of all DIP Obligations and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' estates, and such facilities are secured by any DIP Collateral, then all the cash

proceeds derived from such credit or debt shall immediately be turned over to the DIP Lender to be applied to the DIP Obligations and following indefeasible payment in full in cash of the DIP Obligations.

22. Cash Collection. Unless otherwise agreed to in writing by the DIP Lender, the Debtors shall maintain no accounts except those identified in any cash management order entered by the Court (a "Cash Management Order"). Following the occurrence and during the continuance of an Event of Default, the Debtors and the financial institutions where the Debtors' collection accounts are maintained (including those accounts identified in any Cash Management Order) are authorized and directed to remit, without offset or deduction, funds in such cash collection accounts upon receipt of any direction to that effect from the DIP Lender.

23. Maintenance of DIP Collateral. Until the indefeasible payment in full in cash of all DIP Obligations, all prepetition secured obligations to the Identified Prepetition Secured Lenders, all amounts owed under the Carve-Out, and the termination of the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Facility; and (b) maintain the cash management system in effect as of the Petition Date, as modified by any Cash Management Order, or as otherwise required by this Interim DIP Order.

24. Disposition of DIP Collateral. Until the indefeasible payment in full in cash of all DIP Obligations and the prepetition secured obligations owed to the Identified Prepetition Secured

Lenders, the Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral or Prepetition Collateral other than in the ordinary course of business without the prior written consent of the DIP Lender, except as otherwise ordered by the Court.

25. DIP Termination Date. On the DIP Termination Date: (a) all applicable DIP Obligations shall be immediately due and payable, all commitments to extend credit under the applicable DIP Facility will terminate, other than as required in paragraph 33 with respect to the Carve-Out; (b) all authority to use Cash Collateral shall cease, *provided*, *however*, that during the Remedies Notice Period (as defined herein), the Debtors continue to have authority to use Cash Collateral and the DIP Facility's already advanced proceeds in accordance with the terms of any order granting the DIP Motion, whether on an interim or final basis, solely to pay necessary expenses set forth in the Budget to avoid immediate and irreparable harm to the Debtors' estates or as otherwise agreed by the DIP Lender in its sole discretion; *provided further* that following delivery of the Carve-Out Trigger Notice, the Debtors shall be entitled to fund the Carve-Out (including the Professional Fee Weekly Escrow) in accordance with paragraph 33 of this Interim DIP Order; and (c) upon the expiration of the Remedies Notice Period, the DIP Lender shall be entitled to exercise rights and remedies in accordance with this Interim DIP Order. For the purposes of this Interim DIP Order, "DIP Termination Date" shall mean the earliest of: (1) February 28, 2025; (2) conversion of the bankruptcy cases of the Debtors to ones under chapter 7 or dismissal

of the case of the Debtors; or (3) the expiration of the Remedies Notice Period after an uncured Event of Default.

26. Events of Default. The occurrence of any of the following events, unless waived by the DIP Lender in writing shall constitute an event of default (an "Event of Default"): (a) Debtors' failure to pay any principal or interest when due or the failure of the Debtors to pay any other amount payable hereunder within five (5) business days of the date when due; (b) Debtors' failure to provide to the DIP Lender prior to the interim hearing on the DIP Motion a cash flow forecast, in form and substance reasonably acceptable to the DIP Lender (as amended, extended, varied, supplemented, or otherwise modified from time to time), that shall set forth in reasonable detail (x) all receipts and disbursements of the Borrower on a weekly basis and (y) all receipts and disbursements of the Debtors on a cumulative basis through such DIP Budget (and thereafter, following the Interim DIP Order being in place for four full weeks the Debtors shall provide to the DIP Lender each week an updated rolling budget and variance reports (which is subject to cure per the Material Terms of the DIP Facility)); (c) Debtors' failure to meet the Milestones, unless otherwise agreed upon by the DIP Lender; (d) Debtors' failure to use all the DIP Loan proceeds in a manner consistent with the Interim DIP Order and maintain accurate accounting of the same (and such event of default remains unremedied for a period of fifteen (15) days after the earlier of the date on which the default first became known to any officer of the Debtors or the date on which the Notice of Default is delivered); (e) Debtors' failure to comply with the Interim DIP Order and

Final DIP Order; (f) the appointment of a chapter 11 trustee, an examiner with expanded powers, conversion of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code or dismissal of the Chapter 11 Cases; (g) either the Interim DIP Order or the Final DIP Order are amended, vacated, modified, or otherwise no longer in full force and effect, without the prior written consent of the DIP Lender; and (h) an event impairing or causing the DIP Lender to be unable to credit bid amounts advanced to the Debtors under the DIP Facility in the event of one or more sales (provided, however, such Event of Default may be cured if such rights are reinstated prior to the sales).

27. Case Milestones. The failure of the Debtors to comply with any of the Milestones set forth in the DIP Facility Term Sheet shall (a) constitute an immediate Event of Default under the DIP Facility Term Sheet and this Interim DIP Order; (b) subject to the expiration of the Remedies Notice Period (as defined below), result in the automatic termination of the Debtors' authority to use the Cash Collateral under this Interim DIP Order; and (c) permit the DIP Lender, subject to paragraph 31, to exercise the rights and remedies provided for in this Interim DIP Order.

28. Rights and Remedies Upon Event of Default. Upon the occurrence of an Event of Default, the DIP Lender shall give written notice of such Event of Default (the "Default Notice") to counsel for the Debtors, counsel to the Official Committee of Unsecured Creditors (if any), counsel for KeyBank, National Association, and to the Office of the United States Trustee (the "Notice Parties") (which notice shall be given by e-mail transmission, the automatic stay being

deemed lifted for such purpose to the extent necessary). Upon the delivery of a Default Notice, the Debtors and the DIP Lender consent to a hearing on an expedited basis to consider whether: (i) an Event of Default has occurred; and (ii) any other appropriate relief or remedies on not less than three (3) business days' notice. During the three (3) business days following the date a Default Notice is delivered (such three (3) business day period before referred to as the "Remedies Notice Period"), the Debtors shall continue to have authority to use Cash Collateral and the DIP Facility's already advanced proceeds in accordance with the terms of any order granting the DIP Motion, whether on an interim or final basis, solely to pay necessary expenses set forth in the Budget to avoid immediate and irreparable harm to the Debtors' estates. At the end of the Remedies Notice Period, unless and until the Bankruptcy Court has entered an order to the contrary or as otherwise agreed between the Debtors, in consultation with the Committee (if appointed), and the DIP Lender, the Debtors' rights to use the DIP Facility or cash collateral shall immediately cease, and all cash collateral or proceeds of the DIP Facility shall be held pending further order of the Bankruptcy Court, except as necessary to fund the Carve-Out. The automatic stay in the Chapter 11 Cases otherwise applicable to the DIP Lender is hereby terminated four (4) business days after the date a Default Notice is delivered (the "Remedies Notice Period"). Unless the Court orders otherwise, the automatic stay, as to the DIP Lender, shall be automatically terminated at the end of the Remedies Notice Period without further notice or order. Except as may be ordered by the Court, upon expiration of the Remedies Notice Period, the DIP Lender shall be permitted to exercise all remedies against the Debtors, as applicable, and as otherwise available at law without further order of or application or motion to the Court consistent with this paragraph of the Interim DIP Order; *provided however*, that the DIP Lender shall not have any right to the Carve-Out or the Professional Fee Weekly Escrow. Upon the occurrence and during the continuation of an Event of Default and the expiration of the Remedies Notice Period, the DIP Lender and any liquidator or other professional will have the right to access and utilize, on a royalty-free basis, any trade names, trademarks, copyrights or other intellectual property to the extent necessary or appropriate in order to sell, lease or otherwise dispose of any of the DIP Collateral, including pursuant to any Court approved sale process.

29. <u>Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim DIP Order</u>. The DIP Lender has acted in good faith in connection with this Interim DIP Order and is entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Interim DIP Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim DIP Order are hereafter reargued, reconsidered, reversed, modified, amended, or vacated by a subsequent order of this Court or any other court, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code to the maximum extent set forth therein. Any such modification, amendment or vacatur shall not affect the extent, validity, perfection, priority, allowability, enforceability or non-avoidability of

any advances previously made or made hereunder, or lien, claim or priority granted, perfected, authorized or created hereby, unless such modification, amendment or vacatur pertains to an authorization to obtain credit or incur debt, or to the granting of a priority or lien, that is stayed pending appeal. Any liens or claims granted to the DIP Lender hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Interim DIP Order shall be governed in all respects by the original provisions of this Interim DIP Order, including to all rights, remedies, privileges and benefits granted herein.

30. DIP and Other Expenses. The Debtors are authorized and directed to pay (a) all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses due and outstanding as of the Petition Date of the DIP Lender related to the DIP Facility and the Chapter 11 Cases. Payment of all such fees and expenses shall not be subject to allowance by the Court. Professionals for the DIP Lender shall not be required to submit invoices in any particular format, however any time that such professionals seek payment of fees and expenses from the Debtors, each professional shall provide copies of its invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine) to the U.S. Trustee and counsel for a Committee (if appointed) contemporaneously with the delivery of such

fee and expense statements to the Debtors. Any objections raised by the Debtors, the U.S. Trustee or a Committee (if appointed) with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) days of the receipt of such invoice; if after ten (10) days such objection remains unresolved, it will be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtors. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on any and all reasonable and documented fees, costs, and out-of-pocket expenses of the DIP Lender related to the DIP Facility incurred on or prior to such date without the need for any professional engaged by the DIP Lender to first deliver a copy of its invoice to any other party as provided for herein. No attorney or advisor to the DIP Lender shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court.

31. Carve-Out.

i. As used in this Interim DIP Order, the "Carve-Out" means, after delivery of a written notice, delivered by email or U.S. Mail by the DIP Lender to the Debtors, their counsel, the U.S. Trustee, and counsel to any committees, or any default under the DIP Loan or of the occurrence of the Maturity Date (the "Carve-Out Trigger Notice"), the sum of the following amounts as of the earlier of (a) the day the DIP Lender issues a Carve-Out Trigger Notice, or (b) the Maturity Date: (i) all unpaid professional fees and disbursements incurred by the Debtors and any statutory committees appointed in the Chapter 11 Cases pursuant to sections 327 and 1103 of the Bankruptcy Code for any of their respective professionals retained by order of the Court, which order has not been reversed, vacated or stayed, unless such stay has been vacated (the "Case Professionals") at any time prior to the delivery of the Carve-Out Trigger Notice to the extent allowed by this Court (the "Allowed Professional Fees"), in an aggregate amount not to exceed the amounts set forth in the Budget for Professional Fees prior to the delivery of a Carve-Out Trigger Notice (net of the Professional Fee Weekly Escrow); and (ii) the payment of allowed and unpaid professional fees and disbursements incurred by the Case Professionals following the delivery of the Carve-Out Trigger Notice in an aggregate amount not in excess of $300,000 (the "Wind-Down Carve-Out Amount"), plus (iii) the payment of fees pursuant to 28 U.S.C. § 1930(a) and any fees required to be paid to the Clerk of the Court for the Debtors for the time period beginning on the Petition Date and ending on the Carve-Out effective date, which fees shall not be limited to amounts that may be set forth in the Budget.

ii. Notwithstanding the foregoing, so long as no Carve-Out Trigger Notice has been issued by the DIP Lender, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 328, 330 and 331 of the Bankruptcy Code or otherwise budgeted for as part of the Professional Fee Weekly Escrow, but solely to the extent the same are reflected as estimated professional fees and disbursements in the most recent Budget approved by the DIP Lender prior to the delivery of a Carve-Out Trigger Notice, as the same may be due and payable and otherwise allowed and payable by order of the Court, and the same shall not reduce the Wind-Down Carve-Out Amount. The Carve-Out shall not be deemed increased if actual fees of Case Professionals are higher in fact than the estimates provided on the Budget. No portion of the Carve-Out may be used in contravention of the restrictions or the limitations on the use of the Carve-Out set forth in this Interim DIP Order.

iii. *Professional Fee Weekly Escrow*. The Budget shall reflect the projected Professional Fees and Expenses for Case Professionals. The DIP Lender consents to the Debtors funding of such fees on a weekly basis commencing the first Budget week following the Petition Date to the Case Professionals, who in turn shall hold such funds in their respective IOLTA or escrow accounts pending entry of an Order allowing for application of such amounts to fees for services rendered and expenses incurred. All funds paid into the Professional Fee Weekly Escrow remain subject to the fee application process or other interim compensation procedures established by the Court in the Chapter 11 Cases.

iv. *No Direct Obligation to Pay Professional Fees*. The DIP Lender shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Case Professionals incurred in connection with the Chapter 11 Cases or any Successor

Cases under any chapter of the Bankruptcy Code. Nothing in this Interim DIP Order or otherwise shall be construed to obligate the DIP Lender in any way to pay compensation to or to reimburse expenses of any Case Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

v. *Payment of Carve-Out After Carve-Out Trigger Notice*. Any payment or reimbursement made for services rendered on or after the delivery date of the Carve-Out Trigger Notice in respect of any Allowed Professional Fees shall permanently reduce the Wind-Down Carve-Out Amount on a dollar-for-dollar basis. Any funding of the Carve-Out shall be added to and made a part of the DIP Obligations and secured by the DIP Collateral and otherwise entitled to the protections granted under this Interim DIP Order, the Bankruptcy Code and applicable law. Subject to the above, the Debtors are permitted to fund the Professional Fee Weekly Escrow following a Carve-Out Trigger Notice.

32. Limitations on Use of DIP Proceeds, Cash Collateral, and Carve-Out. Except as otherwise set forth in this Interim DIP Order, the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral and the Carve-Out may not be used in connection with: (a) except to contest the occurrence of an Event of Default, preventing, hindering, or delaying the DIP Lender's enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (b) using or seeking to use Cash Collateral except as provided for in this Interim DIP Order; (c) selling or otherwise disposing of DIP Collateral without the consent of the DIP Lender; (d) using or seeking

to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Lender; (e) incurring any indebtedness without the prior consent of the DIP Lender; (f) seeking to amend or modify any of the rights granted to the DIP Lender under this Interim DIP Order, including seeking to use the Cash Collateral and/or DIP Collateral on a contested basis; (g) objecting to or challenging in any way the DIP Liens, the DIP Obligations, the Prepetition Secured Liens, the DIP Collateral (including the Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of the DIP Lender; (h) asserting, commencing, or prosecuting any claims or causes of action whatsoever, including any actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions to recover or disgorge payments, against the DIP Lender or any of its affiliates, or their respective agents, attorneys, advisors, professionals, officers, directors, and employees; (i) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, and/or the DIP Liens; or (j) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations; *provided, however*, that, notwithstanding any other provision herein, the Carve-Out and Wind-Down Carve-Out shall not include, apply to, or be available for any fees or expenses incurred by any party in connection with the investigation, initiation, or prosecution of any claims, causes of action, adversary proceedings, or other litigation against the Debtors, the DIP Lender, or any affiliates of any of the foregoing entities, or any of their respective officers, directors, employees, agents, advisors, and counsel, including but not limited to challenging the amount, validity, perfection, priority, or enforceability of or asserting any defense, counterclaim or offset to, the obligations and liens and security interests in favor of the Debtors or the DIP Lender. Notwithstanding the foregoing, nothing herein shall preclude or impair the rights of the Debtors and their professionals to advance a sale process in accordance with any procedures or Orders of the Court.

33. Payment of Compensation. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses or shall affect the right of the DIP Lender to object to the allowance and payment of such fees and expenses. The Debtors shall be permitted to pay fees and expenses allowed and payable by final order (that has not been vacated or stayed, unless the stay has been vacated) under sections 328, 330, 331, and 363 of the Bankruptcy Code, as the same may be due and payable, in accordance with the terms of this Interim DIP Order or any other Order of the Court establishing compensation procedures.

34. Effect of Stipulations on Third Parties.

i. The admissions, stipulations, agreements, releases, and waivers set forth in this Interim DIP Order, including without limitation paragraph G (collectively, the "Prepetition Lien and Claim Stipulations"), shall be binding upon the estates and all other parties in interest unless:

A. a party-in-interest (including the Committee, if any, or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) (each, a

"Challenge Party") has timely filed an adversary proceeding, contested matter, or motion seeking derivative standing concerning the validity, extent, perfection, priority, or enforceability of the Prepetition Loan Obligations or Prepetition Liens ("Lien Challenge Issues" and, as to a filed document initiating a proceeding, a "Lien Challenge Complaint") (subject to the limitations contained herein, including in this paragraph) within forty-five (45) calendar days following the Petition Date (the "Lien Challenge Deadline");

B. a Challenge Party has timely filed an adversary proceeding, contested matter, or motion seeking derivative standing concerning any action for preferences, fraudulent transfers or conveyances, other avoidance power claims, or any other claims, counterclaims, or causes of action, objections, contests, or defenses (other than the Lien Challenge Issues) as to the Prepetition Secured Parties (the "Non-Lien Challenge Issues" and, as to a filed document initiating a proceeding, a "Non-Lien Challenge Complaint") (subject to the limitations contained herein, including this paragraph) thirty (30) calendar days after completion of a sale of substantially all of the Debtors' assets (the "Non-Lien Challenge Deadline");

C. *provided* that if a chapter 11 trustee is appointed or the Chapter 11 Cases are converted to chapter 7 prior to the expiration of Lien Challenge Deadline or the Non-Lien Challenge Deadline, the chapter 11 trustee or chapter 7 trustee, as applicable shall have an additional fourteen (14) days to file a Lien Challenge Complaint or Non-Lien Challenge Complaint, as applicable, subject to any further extension by order of the Court;

D. *provided further* that any such period is subject to extension as may be specified by this Court for cause shown, or if the Identified Prepetition Secured Lenders or any one of them, as applicable, agrees in writing to such an extension with respect to any Lien Claims Issues or Non-Lien Challenge Issues (collectively, "Challenge Issues" and any proceeding initiated by a Lien Challenge Complaint or Non-Lien Challenge Complaint being a "Challenge Proceeding"); or

E. an order is entered and becomes final in favor of the Challenge Party sustaining any such Challenge Proceeding duly made in accordance with the foregoing.

ii. The filing of a motion for derivative standing or other similar relief by the Committee (if any) (a "Derivative Standing Motion") shall toll the Lien Challenge Deadline and

Non-Lien Challenge Deadline until such time as the Court enters a final order with respect to the Derivative Standing Motion or as the Court may otherwise order.

iii. If no Challenge Proceeding is timely filed in respect of the Prepetition Loan Obligations or Prepetition Liens, then (x) the Prepetition Loan Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment, recovery, for all purposes in this Bankruptcy Case and any subsequent chapter 7 case, (y) the Prepetition Liens on the Prepetition Collateral securing the Prepetition Loan Obligations shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified herein, not subject to setoff, subordination, defense, avoidance impairment, disallowance, recharacterization, reduction, recoupment, or recovery, and (z) the Prepetition Loan Obligations, Identified Prepetition Secured Lenders, and the Prepetition Liens on the Prepetition Collateral granted to secure the Prepetition Loan Obligations shall not be subject to any other or further challenge by any party- in-interest (including the Committee), and every party-in-interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including any successor thereto (including any estate representative or a chapter 7 or 11 trustee appointed or elected for any of the Debtors).

iv. In the event of a successful Challenge Proceeding, the Court may fashion any appropriate remedy in accordance with applicable law.

35. Indemnification. The Debtors shall indemnify and hold harmless the DIP Lender each of their respective shareholders, directors, members, managers, principals, agents, advisors, officers, subsidiaries and affiliates in such capacity (each, an "Indemnified Person") from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of action, and reasonable costs and expenses incurred, suffered, sustained or required to be paid by an Indemnified Person by reason of or resulting from the DIP Facility, the transactions contemplated thereby or hereby, or any claim, action, litigation, investigation or proceeding relating to any of the foregoing, whether or not any of such Indemnified Person is a party thereto and whether or not brought by the Borrowers or any other person or entity, except to the extent resulting from the fraud, gross negligence or willful misconduct of such Indemnified Person, as determined by a final non-appealable order of a court of competent jurisdiction.

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

37. Section 506(c) Claims. No costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the DIP Lender or any of its respective claims, the DIP Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Lender, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender.

38. No Marshaling/Applications of Proceeds. The DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral, as the case may be, and proceeds shall be received and applied pursuant to this Interim DIP Order notwithstanding any other agreement or provision to the contrary.

39. Section 552(b). The DIP Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Lender with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

40. Limits on Lender Liability. Nothing in this Interim DIP Order or any other documents related thereto shall 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 any activities by the Debtors in the operation of their businesses or in connection with the administration of these Chapter 11 Cases. The DIP Lender shall not, solely by reason of having made loans under the DIP Facility, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute). Nothing in this Interim DIP Order, shall 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 Debtors. The DIP Lender is not a control person or insider of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the DIP Facility.

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

42. Joint and Several Liability. Nothing in this Interim DIP Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Facility.

43. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim DIP Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Lender's right to seek any other or supplemental relief in respect of the Debtors; (b) any of the rights of any of the DIP Lender under the Bankruptcy Code or under non-bankruptcy law, including the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Chapter 11 Cases to cases 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. Notwithstanding anything herein to the contrary, the entry of this Interim DIP Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', a Committee's (if appointed), or any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Interim DIP Order. Entry of this Interim DIP Order is without prejudice to any and all rights of any party in interest with respect to the terms and approval of the Final DIP Order.

44. No Waiver by Failure to Seek Relief. The failure of the DIP Lender to seek relief or otherwise exercise its rights and remedies under this Interim DIP Order or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Lender, a Committee (if appointed), or any party in interest.

45. Binding Effect of Interim DIP Order. Immediately upon entry by this Court, the terms and provisions of this Interim DIP Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Lender, all other creditors of any of the Debtors, any Committee (or any other court appointed committee) appointed in the Chapter 11 Cases, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases of the Debtors, any Successor Cases of the Debtors, or upon dismissal of any Case or Successor Case.

46. No Modification of Interim DIP Order. Until and unless the DIP Obligations have been indefeasibly paid in full in cash, and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Lender, (i) any modification, stay, vacatur or amendment to this Interim DIP Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including any administrative expense of the kind specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code) in any of the Chapter 11 Cases of the Debtors or Successor Cases of the Debtors, equal or superior to the DIP Superpriority Claims, other than the Carve-Out; (b) without the prior written consent of the DIP Lender for any order allowing use of Cash Collateral (other than as permitted during the Remedies Notice Period) resulting from DIP Collateral; (c) without the prior written consent of the DIP Lender, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens; or (d) without the prior written consent of the DIP Lender, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens). The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Interim DIP Order without the prior written consent, as provided in the foregoing, of the DIP Lender, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Lender.

47. Discharge. The DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted), on or before the effective date of such confirmed plan of reorganization, unless each of the DIP Lender has otherwise agreed in writing.

48. Survival. The provisions of this Interim DIP Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases of the Debtors; (b) converting any of the Chapter 11 Cases of the Debtors to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases of the Debtors or any Successor Cases of the Debtors; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases of the Debtors or Successor Cases of the Debtors. The terms and provisions of this Interim DIP Order, including the claims, liens, security interests, and other protections granted to the DIP Lender granted pursuant to this Interim DIP Order, notwithstanding the entry of any such orders described in (a)-(d), above, shall continue in the Chapter 11 Cases of the Debtors, in any Successor Cases of the Debtors, or following dismissal of the Chapter 11 Cases of the Debtors or any Successor Cases of the Debtors, and shall maintain their priority as provided by this Interim DIP Order until, in respect of the DIP Facility,

all the DIP Obligations, pursuant to this Interim DIP Order, have been indefeasibly paid in full in cash, and all commitments to extend credit under the DIP Facility are terminated.

49. Final Hearing. The Final Hearing to consider entry of the Final DIP Order and final approval of the DIP Facility is scheduled for January **[__], 2025, at [].M. (Prevailing Eastern time)** before the Honorable Jeffery A. Deller, United States Bankruptcy Judge at the United States Bankruptcy Court for the Western District of Pennsylvania. On or before January [___], 2025, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim DIP Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim DIP Order and the DIP Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) counsel for a Committee (if appointed); and (c) any party which has filed prior to such date a request for notices with this Court. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final DIP Order shall file written objections with the Clerk of the Court no later than on ________ **(Prevailing Eastern time)**, which objections shall be served so as to be received on or before such date by: (i) counsel to the Debtors, Raines Feldman Littrell LLP, 11 Stanwix St., Suite 1200, Pittsburgh, Pennsylvania 15222, Attn: Daniel R. Schimizzi (dschimizzi@raineslaw.com) and Michael Roeschenthaler (mroeschenthaler@raineslaw.com); (ii) counsel for the DIP Lender, Michael Shiner and Beverly Weiss Manne, Tucker Arensberg, P.C. 1500 One PPG Place, Pittsburgh, PA 15222 (mshiner@tuckerlaw.com; bmanne@tuckerlaw.com); (iii) counsel to KeyBank, National

Association Stephen Lerner (stephen.lerner@squirebp.com); (iv) counsel to the Committee (if appointed); and (iv) the U.S. Trustee.

50. Retroactive Effect of this Interim DIP Order. This Interim DIP Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable retroactive to the Petition Date immediately upon execution thereof.

51. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce the terms of, any and all matters arising from or related to the DIP Facility, and/or this Interim DIP Order.

BY THE COURT:

Date: January ____, 2025
Pittsburgh, PA

____
[INSERT JUDGE]
United States Bankruptcy Court

EXHIBIT A

DIP Budget

Corsa Interim DIP Budget dated, January 6, 2026

$ Amounts in USD '000s (unless stated otherwise)

	Actual/Forecast	F'cast	F'cast	F'cast	F'cast	F'cast	F'cast	F'cast	F'cast	F'cast	F'cast	Post-Petition
	Week Number	1	2	3	4	5	6	7	8	9	10	10-Week
	Week Ending (Friday)	01/10/25	01/17/25	01/24/25	01/31/25	02/07/25	02/14/25	02/21/25	02/28/25	03/07/25	03/14/25	Total
	RECEIPTS											
1.	Operating Receipts	$ 3,383.0	$ 1,484.0	$ 2,419.0	$ 1,380.0	$ 2,354.0	$ 5,773.0	$ 5,277.0	$ 2,779.0	$ 3,894.0	$ 4,448.0	$ 33,191.0
	Total Operating Receipts	**3,383.0**	**1,484.0**	**2,419.0**	**1,380.0**	**2,354.0**	**5,773.0**	**5,277.0**	**2,779.0**	**3,894.0**	**4,448.0**	**33,191.0**
	OPERATING DISBURSEMENTS											
2.	Payroll & Related Expense	(2,227.0)	(108.0)	(1,695.0)	(394.0)	(1,746.0)	(1,160.0)	(1,695.0)	(106.0)	(1,743.0)	(160.0)	(11,034.0)
3.	Trade Payables	(1,250.0)	(1,250.0)	(1,250.0)	(1,250.0)	(1,250.0)	(1,250.0)	(1,250.0)	(1,250.0)	-	-	(10,000.0)
4.	Transportation	-	(876.0)	-	(1,330.0)	(360.0)	(1,694.0)	(377.0)	-	-	-	(4,637.0)
5.	Critical Vendor	(6,000.0)	-	-	-	-	-	-	-	-	-	(6,000.0)
6.	Equipment Leases & Related Debt	(248.0)	-	-	(155.0)	(7.0)	(100.0)	-	(155.0)	-	-	(665.0)
7.	Fuel	(72.0)	(72.0)	(72.0)	(72.0)	(72.0)	(72.0)	(72.0)	(72.0)	(72.0)	-	(648.0)
8.	Insurance & Workers Comp.	(347.0)	(264.0)	-	(207.0)	-	-	(300.0)	(207.0)	-	-	(1,325.0)
9.	Ordinary Course Professionals	(5.0)	(50.0)	(5.0)	(5.0)	(50.0)	(5.0)	(5.0)	(5.0)	-	-	(130.0)
10.	Projects/Cap Ex	-	-	-	-	-	-	-	-	-	-	-
11.	Regulatory/Bonding	(14.0)	-	-	(497.0)	-	-	-	-	-	-	(511.0)
12.	Royalties	-	-	(441.0)	-	-	-	-	(763.0)	-	-	(1,204.0)
13.	Sales & Marketing	(12.0)	(12.0)	(12.0)	(12.0)	(12.0)	(12.0)	(12.0)	(12.0)	-	-	(96.0)
14.	Taxes	-	(32.0)	-	(71.0)	-	(46.0)	(13.0)	(34.0)	-	(29.0)	(225.0)
15.	Utilities	(89.0)	(89.0)	(89.0)	(89.0)	(89.0)	(89.0)	(89.0)	(89.0)	(44.0)	-	(756.0)
	Total Operating Disbursements	**(10,264.0)**	**(2,753.0)**	**(3,564.0)**	**(4,082.0)**	**(3,586.0)**	**(4,428.0)**	**(3,813.0)**	**(2,693.0)**	**(1,859.0)**	**(189.0)**	**(37,231.0)**
	Operating Cash Flow	**(6,881.0)**	**(1,269.0)**	**(1,145.0)**	**(2,702.0)**	**(1,232.0)**	**1,345.0**	**1,464.0**	**86.0**	**2,035.0**	**4,259.0**	**(4,040.0)**

DIP Budget

Corsa Interim DIP Budget dated, January 6, 2026

$ Amounts in USD '000s (unless stated otherwise)

Actual/Forecast	F'cast	F'cast	F'cast	F'cast	F'cast	F'cast	F'cast	F'cast	F'cast	F'cast	Post-Petition
Week Number	1	2	3	4	5	6	7	8	9	10	10-Week
Week Ending (Friday)	01/10/25	01/17/25	01/24/25	01/31/25	02/07/25	02/14/25	02/21/25	02/28/25	03/07/25	03/14/25	Total
RESTRUCTURING FEES											
16. Debtor - US Counsel	-	(120.0)	(90.0)	(90.0)	(120.0)	(80.0)	(80.0)	(80.0)	(80.0)	(80.0)	(820.0)
17. Debtor - CA Counsel	-	(15.0)	(45.0)	(15.0)	(15.0)	(15.0)	(15.0)	(15.0)	(15.0)	(15.0)	(165.0)
18. Debtor - FA	-	(60.0)	(50.0)	(50.0)	(60.0)	(50.0)	(40.0)	(40.0)	(50.0)	(40.0)	(440.0)
19. Claims Agent	-	(5.0)	(5.0)	(5.0)	(5.0)	(10.0)	(10.0)	(15.0)	(15.0)	(15.0)	(85.0)
20. UCC (F.A. and Counsel)	-	-	(35.0)	(35.0)	(55.0)	(35.0)	(35.0)	(35.0)	(35.0)	(35.0)	(300.0)
21. DIP Lender Professionals	-	(75.0)	-	(125.0)	(40.0)	(40.0)	(40.0)	(70.0)	(40.0)	-	(430.0)
22. CCAA Information Officer	-	(17.5)	(17.5)	(17.5)	(17.5)	(17.5)	(17.5)	(17.5)	(17.5)	(17.5)	(157.5)
23. Key Bank Adequate Protection	-	(109.0)	-	-	-	(109.0)	-	-	-	-	(218.0)
24. Utility Deposit	(98.2)	-	-	-	-	-	-	-	-	-	(98.2)
25. 503(b)(9) Claims	-	-	-	-	-	-	-	-	-	-	-
26. KEIP	-	-	-	-	-	-	-	-	-	-	-
27. DIP Interest & Fees	(750.0)	-	-	-	-	-	-	-	-	-	(750.0)
28. US Trustee Fees	-	-	-	-	-	-	-	-	-	(403.3)	(403.3)
Total Restructuring Fees	**(848.2)**	**(401.5)**	**(242.5)**	**(337.5)**	**(312.5)**	**(356.5)**	**(237.5)**	**(272.5)**	**(252.5)**	**(605.8)**	**(3,867.1)**
Net Cash Flow Before DIP Financing	**$ (7,729.2)**	**$ (1,670.5)**	**$ (1,387.5)**	**$ (3,039.5)**	**$ (1,544.5)**	**$ 988.5**	**$ 1,226.5**	**$ (186.5)**	**$ 1,782.5**	**$ 3,653.2**	**$ (7,907.1)**
CASH ROLL-FORWARD											
Beginning Bank Cash	$ 1,219.6	$ 3,990.4	$ 2,319.9	$ 932.4	$ 2,392.9	$ 848.4	$ 1,836.9	$ 3,063.4	$ 2,876.9	$ 4,659.4	$ 1,219.6
(+) Net CF Before DIP Financing	(7,729.2)	(1,670.5)	(1,387.5)	(3,039.5)	(1,544.5)	988.5	1,226.5	(186.5)	1,782.5	3,653.2	(7,907.1)
(+) DIP Borrowing	10,500.0	-	-	4,500.0	-	-	-	-	-	-	15,000.0
Ending Bank Cash Balance	**$ 3,990.4**	**$ 2,319.9**	**$ 932.4**	**$ 2,392.9**	**$ 848.4**	**$ 1,836.9**	**$ 3,063.4**	**$ 2,876.9**	**$ 4,659.4**	**$ 8,312.5**	**$ 8,312.5**
DIP FACILITY BALANCE											
Beginning Balance	$-	$ 10,500.0	$ 10,500.0	$ 10,500.0	$ 15,000.0	$ 15,000.0	$ 15,000.0	$ 15,000.0	$ 15,000.0	$ 15,000.0	$-
(+) Drawdowns	10,500.0	-	-	4,500.0	-	-	-	-	-	-	15,000.0
Ending Balance	**$ 10,500.0**	**$ 10,500.0**	**$ 10,500.0**	**$ 15,000.0**	**$ 15,000.0**	**$ 15,000.0**	**$ 15,000.0**	**$ 15,000.0**	**$ 15,000.0**	**$ 15,000.0**	**$ 15,000.0**
DIP Availability	*$ 4,500.0*	*$ 4,500.0*	*$ 4,500.0*	*$-*	*$-*	*$-*	*$-*	*$-*	*$-*	*$-*	*$-*

Footnotes are provided on the following page.

DIP Budget Notes

Corsa Interim DIP Budget dated, January 6, 2026

$ Amounts in USD '000s (unless stated otherwise)

(#)	Line Item	Notes
1.	Operating Receipts	* Receipts are built up by location, volume and price per ton. * Timing of receipts are based on historical collections and payment arrangement programs with LSQ, BoA and USS.
2.	Payroll & Related Expense	* Payroll and payroll deductions are based on the trailing three week average. * Payroll taxes are paid quarterly. * Benefits are based on historical run rates and due dates within month. * Weeks ending 1/31/25 and 2/14/25 include a $165K PTO bonus program payout and $1M retention bonus program for line workers, respectively. PTO bonus program pays out PTO to minimize overtime, and results in avoiding employees losing PTO who opt to work over the holiday period.
3.	Trade Payables	* Trade payables based on historical run rate per week. * Assumes cash on delivery.
4.	Transportation	* Trucking transportation expense is paid on a biweekly basis. * Railroad & Freight transportation is paid based on net 30 day terms.
5.	Critical Vendor	* $6.0M for critical vendors due to a limited number of executory contracts.
6.	Equipment Leases & Related Debt	* Equipment leases are paid in the ordinary course.
7.	Fuel	* Based on the trailing three month weekly average.
8.	Insurance & Workers Comp.	* Includes general business and liability insurance which is paid in the first week of each month. Financing arrangement was renewed on 11/1/24. * Worker's Comp. premium, loss and deficit loss funding are paid on the 15th of each month.
9.	Ordinary Course Professionals	* Includes audit fees.
10.	Projects/Cap Ex	* No new capital projects are budgeted during the duration of the case and prepetition claims are unpaid.
11.	Regulatory/Bonding	* Based on timing and amount paid in the prior quarter.
12.	Royalties	* Royalties relate to payment for mineral rights based on a percentage of net sales.
13.	Sales & Marketing	* Based on the trailing three month weekly average. Does not include any employee compensation.
14.	Taxes	* Tax expense includes excise, sales and corporate taxes and timing is based on the prior quarter.
15.	Utilities	* Based on the trailing three month weekly average.
16.	Debtor - US Counsel	* Fees are escrowed on a weekly basis, one week in arrears.
17.	Debtor - CA Counsel	* Fees are escrowed on a weekly basis, one week in arrears.
18.	Debtor - FA	* Fees are escrowed on a weekly basis, one week in arrears.
19.	Claims Agent	* Fees not subject to holdback.
20.	UCC (F.A. and Counsel)	* Fees are escrowed on a weekly basis, one week in arrears.
21.	DIP Lender Professionals	* Fees are escrowed on a weekly basis, one week in arrears.
22.	CCAA Information Officer	* Fees are escrowed on a weekly basis, one week in arrears.
23.	Key Bank Adequate Protection	* Adequate protection includes interest expense.
24.	Utility Deposit	* Two weeks' average utility expense.
25.	503(b)(9) Claims	* Amounts to be determined.
26.	KEIP	* Amounts to be determined.
27.	DIP Interest & Fees	* 5% fee on drawn commitment up front, plus 13.5% interest and 5% exit fee paid from sale proceeds.
28.	US Trustee Fees	* US Trustee fees are included in the week ending 3/14/25 for illustrative purposes. The Debtor will pay UST fees in accordance with the UST Chapter 11 quarterly payment schedule.