

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE: KNIGHT ENERGY HOLDINGS, LLC, <i>ET AL.</i> ¹ DEBTORS	CASE NO. 17-51014 (JOINT ADMINISTRATION REQUESTED) CHAPTER 11 CHIEF JUDGE ROBERT SUMMERHAYS
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**DEBTORS' MOTION FOR
AN ORDER AUTHORIZING THE DEBTORS TO
(A) USE CASH COLLATERAL, (B) OBTAIN POST-
PETITION FINANCING, (C) GRANTING SECURITY
INTERESTS AND SUPERPRIORITY ADMINISTRATIVE
EXPENSE STATUS TO THE DIP AGENT AND THE DIP LENDERS,
(D) GRANTING ADEQUATE PROTECTION TO EXISTING LIENHOLDERS,
(E) SCHEDULING A FINAL HEARING, AND (F) GRANTING RELATED RELIEF**

NOW INTO COURT, through undersigned counsel, the Debtors as debtors and debtors-in-possession in the above-captioned case, who hereby move for entry of an interim order (the “*Interim DIP Order*”)² and final order (the “*Final DIP Order*”, and together with the Interim DIP Order, the “*DIP Orders*”)) pursuant to Sections 105(a), 363, and 364 of title 11 of the United States

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Knight Energy Holdings, LLC (1930) (Case No. 17-51014); Knight Oil Tools, LLC (2667) (Case No. 17-51015); Knight Manufacturing, LLC (0600) (Case No. 17-51016); KDCC, LLC, f/k/a Knight Well Services, LLC (4156) (Case No. 17-51017); Tri-Drill, LLC (4957) (Case No. 17-51018); Advanced Safety & Training Management, LLC, (0510) (Case No. 17-51019); Knight Security, LLC (0923) (Case No. 17-51020); Knight Information Systems, LLC (0000) (Case No. 17-51021); El Caballero Ranch, Inc. (7345) (Case No. 17-51022); Rayne Properties, LLC (0000) (Case No. 17-51023); Knight Aviation, LLC (3329) (Case No. 17-51024); Knight Research & Development, LLC (3760) (Case No. 17-51025); Knight Family Enterprises, LLC (7190) (Case No. 17-51026); HMC Leasing, LLC (0814) (Case No. 17-51027) and HMC Investments, LLC (0000) (Case No. 17-51029). The Debtors' service address is 2272 SE Evangeline Thruway, Lafayette, Louisiana 70508 other than Knight Manufacturing, LLC and Advanced Safety & Training Management, LLC. Knight Manufacturing, LLC's service address is 2810-A Melancon Road, Broussard, Louisiana 70518 and Advanced Safety & Training Management, LLC's service address is 1042 Forum Drive, Broussard, Louisiana 70518.

² Unless otherwise indicated, capitalized terms used and not defined in the summary below have the meanings set forth elsewhere in this Motion or in the Interim DIP Order, as applicable. The summary below is qualified in its entirety by the Interim DIP Order. In the event that there is a conflict between this summary and the Interim DIP Order, the Interim DIP Order controls in all respects.

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Code, 11 U.S.C. §§ 101-1532 (as amended, the “**Bankruptcy Code**”), and Rules 4001(b) and (c) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) authorizing, among other things: (i) the Debtors, pursuant to Sections 105, 361, 362, 363, and 507 of the Bankruptcy Code to use cash collateral, as such term is defined in Section 363(a) of the Bankruptcy Code (“**Cash Collateral**”), and all other Prepetition Senior Credit Agreement Collateral of Cantor Fitzgerald Securities, as administrative agent and collateral agent (in such capacities, the “**Prepetition Agent**”) and the Prepetition Lenders (as defined below) under that certain credit agreement dated as of June 26, 2013, by and among, *inter alia*, the Debtors, the lenders from time to time party thereto (the “**Prepetition Lenders**,” and together with the DIP Lenders, the “**Lenders**), and the Prepetition Agent (as subsequently amended, restated, or otherwise modified from time to time, the “**Prepetition Senior Credit Agreement**”), (ii) the Debtors to obtain postpetition financing (the “**DIP Financing**”) from Cantor Fitzgerald Securities, as administrative agent and collateral agent (in such capacities, the “**DIP Agent**”) and the lenders (the “**DIP Lenders**”) under the Senior Secured Debtor-in-Possession Credit Agreement by and among, *inter alia*, the Debtors, the DIP Lenders from time to time party thereto, and the DIP Agent (as subsequently amended, restated, or otherwise modified from time to time, the “**DIP Financing Agreement**”) attached hereto as **Exhibit 2**, (iii) granting superpriority administrative claims and automatically perfected priming liens, first priority liens, junior liens, and security interests to the DIP Agent and the DIP Lenders to secure the obligations and indebtedness to the DIP Agent and the DIP Lenders as well as automatically perfected replacement liens and security interests and other adequate protection to the Prepetition Lenders and the Prepetition Agent with respect to their interests in the Prepetition Senior Credit Agreement Collateral (as defined below), (iv) granting related relief, and (v) scheduling interim and final hearings with respect to the relief requested herein.

The Debtors' ability to use Cash Collateral and obtain the DIP Financing is critical to the Debtors' ability to continue as a going concern during the course of these Debtors' chapter 11 bankruptcy cases (the "**Chapter 11 Cases**"). The proceeds of the DIP Financing will be used to fund certain costs of administering the Debtors' estates.

Pursuant to Bankruptcy Rule 4001(c), the principal provisions of the DIP Financing Agreement and the Interim DIP Order, a proposed copy of which is attached as **Exhibit 1** hereto, are as follows (capitalized terms used but not immediately defined herein shall have the meanings ascribed to them later in this Motion or in the Interim DIP Order, as the case may be):

- a. **Nature and Amount of Financing.** Pursuant to the DIP Financing Agreement, all other Credit Documents (as defined in the DIP Financing Agreement), and all other related agreements and documents creating, evidencing, or securing indebtedness or obligations of any of the Debtors to the DIP Agent and the DIP Lenders on account of the DIP Financing or granting or perfecting liens or security interests by any of the Debtors in favor of and for the benefit of the DIP Agent and the DIP Lenders on account of the DIP Financing Agreement, as the same now exists or may hereafter be amended, modified, supplemented, ratified, assumed, extended, renewed, restated, or replaced, and any and all agreements and documents currently executed or to be executed in connection therewith or related thereto, by and among any of the Debtors, the DIP Agent and the DIP Lenders, the terms of which are referenced and incorporated herein as if set forth *in haec verba* (collectively, the "**DIP Financing Documents**"), the DIP Lenders will make drawings available to the Debtors (each such drawing, an "**Advance**") as follows: (a) during the Initial Funding Availability Period (as defined in the DIP Financing Agreement) of up to \$6 million, (b) during the Second Funding Availability Period (as defined in the DIP Financing Agreement) of up to \$1 million, and (c) during the Third Funding Availability Period (as defined in the DIP Financing Agreement) of up to \$3 million, in each case on a secured, administrative priority basis under Section 364(b) of the Bankruptcy Code. All Advances shall be used pursuant to the Budget (the "**Budget**") attached to the Interim DIP Order as may be amended from time to time pursuant to the Interim DIP Order and the DIP Financing Agreement. (Interim DIP Order ¶14). Additionally, upon the terms and conditions contained in the DIP Financing Documents and the DIP Order and relying on the representations and warranties contained in this Agreement, subject to the satisfaction of the conditions precedent set forth in Section 3.4 of the DIP Financing Agreement, the Lenders severally, but not jointly, may agree in their sole discretion to make Loans to the Borrowers to be used by the Borrowers for the sole purpose of making payments in respect of pre-Petition Date property and ad valorem tax amounts, which amount

of Loans are determined by the Lenders in their sole discretion but not to exceed \$4,500,000 in the aggregate. (DIP Financing Agreement, §2.1(b)).

- b. **Borrowing Limits.** Borrowings under the DIP Financing may be made from the date of execution of the DIP Financing Agreement as follows: (a) during the Initial Funding Availability Period (as defined in the DIP Financing Agreement) of \$6 million, (b) during the Second Funding Availability Period (as defined in the DIP Financing Agreement) of \$1 million and (c) during the Third Funding Availability Period (as defined in the DIP Financing Agreement) of \$3 million subject to termination of the commitment period following an event of default under the DIP Financing Agreement.
- c. **Borrowing Conditions.** Each borrowing under the DIP Financing shall be conditioned upon satisfaction or waiver of certain conditions precedent including among others: (a) the DIP Financing Documents shall have been executed and be in form and substance satisfactory to the DIP Agent and the DIP Lenders; (b) all consents, permits, licenses and approvals required to effect the DIP Financing shall have been attained; (c) the representations and warranties contained in the DIP Financing Documents shall be true and correct; (d) the Debtors shall have paid the fees and expenses required to be paid as of the date of such Advance under the DIP Financing Documents; (e) except for these Chapter 11 Cases, no action, suit, investigation or other proceeding (including without limitation, the enactment or promulgation of a statute or rule) by or before any arbitrator or any Governmental Authority shall be threatened or pending and no preliminary or permanent injunction or order by a state or federal court shall have been entered in connection with the DIP Financing Agreement or which, in the judgment of the Majority Lenders (as defined in the DIP Financing Agreement) (the “**Majority DIP Lenders**”), could reasonably be expected to result in a Material Adverse Change (as defined in the DIP Financing Agreement; (f) no event, development or circumstance that has or could reasonably be expected to result in a Material Adverse Change shall have occurred; (g) no Default or Event of Default (each as defined in the DIP Financing Agreement) shall have occurred and be continuing; (h) the Majority DIP Lenders shall have completed and be satisfied in their sole discretion with the corporate (or other organizational), financial due diligence of the Debtors; (i) the DIP Agent and the Majority DIP Lenders shall have received the Budget (as defined in the Interim DIP Order); (j) the Restructuring Support Agreement shall have been duly executed by the Debtors and each other party thereto, and shall be in full force and effect, subject to any necessary Bankruptcy Court approvals; (k) the Interim DIP Order shall have been entered by the Bankruptcy Court in these Chapter 11 Cases and shall be in full force and effect and shall not have been vacated, stayed, revised, modified, or amended in any manner without the prior written consent of the Majority DIP Lenders; (l) the Petition Date with respect to each Debtor shall have occurred, and the First Day Orders sought by the Debtors shall have been entered by the Bankruptcy Court; (m) all orders entered by the Bankruptcy Court pertaining to cash management, and all other motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith, shall be in form and substance

satisfactory to the Majority DIP Lenders; and the Debtors shall have retained a chief restructuring officer acceptable to the Majority DIP Lenders. (DIP Financing Agreement §§ 3.1, 3.2, and 3.3).

- d. **Interest Rate.** Interest accrues at a fixed rate of 8.5% per annum. (DIP Financing Agreement § 2.7 and definition of “Applicable Rate”).
- e. **Maturity Date.** The earliest to occur of (a) January 31, 2018, (b) August 10, 2017, if the Bankruptcy Court shall not have entered the Interim DIP Order by the end of such date, (c) September 1, 2017, if the Bankruptcy Court shall not have entered the Final DIP Order by the end of such date, (d) the effective date of the Acceptable Plan of Reorganization (as defined in the DIP Financing Agreement) that is confirmed pursuant to an order entered by the Bankruptcy Court in these Chapter 11 Cases, (e) the consummation of a sale of all or substantially all of the Properties of the Debtors pursuant to Section 363 of the Bankruptcy Code, and (f) the acceleration of the Loans and the termination of the Commitments (each as defined in the DIP Financing Agreement) in accordance with the terms of the DIP Financing Agreement. (DIP Financing Agreement definition of “Termination Date”).
- f. **Certain Events of Default.** Among other Events of Default under the DIP Financing Agreement and the Interim DIP Order, an Event of Default occurs if (i) the Debtors fail to timely pay DIP Financing obligations, (ii) the Debtors fail to timely receive any consent or approval of a governmental authority necessary to perform under the DIP Financing Agreement, (iii) the occurrence of an event that has or could reasonably be expected to have, a material adverse effect on the business, assets, operations, prospects, or financial or other condition of a Debtor, (iv) the entry of an order amending, supplementing, staying, vacating, or otherwise modifying the DIP Financing Agreement, Interim DIP Order, or Final DIP Order without the DIP Lenders’ consent or as otherwise allowed under the DIP Financing Agreement, (v) a chapter 11 trustee or examiner with expanded powers is appointed in any of the Chapter 11 Cases, (vi) any of the Chapter 11 Cases is dismissed or converted to chapter 7 of the Bankruptcy Code, (vii) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay to the detriment of DIP Lender, (viii) the Interim DIP Order or the Final DIP Order ceases to be in full force and effect, (ix) the filing by any Debtor of any plan of reorganization or arrangement without the prior consent of the DIP Lender, or (x) any Debtor conducts its business in a manner that materially deviates from the budget delivered by the Debtors to the DIP Lender. (DIP Financing Agreement §7.1).
- g. **Liens.** Upon the date of entry of each DIP Order, the Obligations of the Debtors under the Credit Documents shall be secured by: (i) superpriority administrative claims pursuant to Section 364(c)(1) of the Bankruptcy Code, (ii) superpriority priming liens on those assets which currently secure the Prepetition Senior Credit Agreement (the “*Prepetition Senior Credit Agreement Collateral*”), (iii) first priority liens on all unencumbered assets and property of the Debtors, and (iv) junior liens on all assets and property of the Debtors other than the Prepetition

Senior Credit Agreement Collateral, that are encumbered by liens as of the date of the Interim DIP Order (such prior liens, the “*Prior Liens*”). (DIP Financing Agreement §2.16(a)-(d)). The property and assets securing the liens describe in clauses (ii)-(iv) of the preceding sentence, collectively, along with the Cash Collateral are referred to herein as the “*DIP Collateral*”.

In accordance with Fed. R. Bankr. P. 4001, the Debtors have identified below, by page and paragraph number, the location of each of the following provisions:

Provision	Contained in Credit Agreement or Proposed Order	Location in Credit Agreement or Proposed Order
(1) A grant of priority or a lien on property of the estate under § 364(c) or (d).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Credit Agreement §2.16(d) Interim DIP Order ¶¶ 19-21
(2) The providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Interim DIP Order ¶¶ 28-29
(3) A determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Interim DIP Order ¶¶ 8
(4) A waiver or modification of Code provisions or applicable rules relating to the automatic stay.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Credit Agreement §7.2(d) Interim DIP Order ¶¶ 38
(5) A waiver or modification of any entity’s authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Credit Agreement §7.1(y) Interim DIP Order ¶¶ 58

Provision	Contained in Credit Agreement or Proposed Order	Location in Credit Agreement or Proposed Order
(6) The establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Credit Agreement §7.1(a) Interim DIP Order ¶¶ 58-59
(7) A waiver or modification of the applicability of non-bankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Credit Agreement §8.11 Interim DIP Order ¶¶ 19, 30-33
(8) A release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Credit Agreement §6.6 Interim DIP Order ¶¶ 79-80
(9) The indemnification of any entity.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Credit Agreement §9.2
(10) A release, waiver, or limitation of any right under § 506(c).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Credit Agreement §6.6 Interim DIP Order ¶ 55
(11) The granting of a lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

In addition to the foregoing relief, the Debtors request that the Court:

(i) schedule, pursuant to Bankruptcy Rule 4001, an interim hearing on this Motion for this Court to consider entry of the Interim DIP Order and the relief set forth therein;

(ii) schedule, through the Interim DIP Order, pursuant to Bankruptcy Rule 4001(c)(2), the final hearing on this Motion (the “*Final Hearing*”) on or before September 1, 2017 to consider entry of the Final DIP Order authorizing borrowings under and approving the terms of the DIP Financing on a final basis as set forth herein; and

(iii) approve the Debtors' notice procedures with respect to the Final Hearing.

In further support of this Motion, the Debtors rely upon and incorporate by reference the *Statement of Background Information and Declaration in Support of Debtors' Chapter 11 Petitions and First-Day Motions* (the "**First Day Declaration**"). In further support of this Motion, the Debtors submit the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief sought herein are Bankruptcy Code §§ 105(a), 362, 363, 364, and 507 Bankruptcy Rule 4001 and Local Rule 4001-1.

II. EMERGENCY CONSIDERATION

2. The Debtors request emergency consideration of this Motion. The Debtors believe an immediate and orderly transition into Chapter 11 is critical to the viability of their operations and the success of these Chapter 11 Cases. As discussed in detail below and in the First Day Declaration (as defined below), any delay in granting the relief requested could hinder the Debtors' operations and cause immediate and irreparable harm. As such, the Debtors believe that emergency consideration is necessary and request that this Motion be heard at the Debtors' first day hearings.

III. BACKGROUND

3. On the date hereof (the “*Petition Date*”), the Debtors filed voluntary petitions in this Court commencing these Chapter 11 Cases. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration, which is fully incorporated herein by reference.

4. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code Sections 1107 and 1108. As of the date hereof, no trustee or examiner has been requested in the Chapter 11 Cases, and no committee has been appointed.

5. The Debtors seek the use of Cash Collateral and the DIP Financing to, *inter alia*: (i) fund the Debtors’ chapter 11 administration expenses, including the fees of the Debtors’ professionals whose services are required to move these cases towards confirmation of a plan of reorganization, (ii) fund the confirmation process for a plan of reorganization, (iii) pay certain critical vendor operating expenses pre-approved by the DIP Lenders, and (iv) enable the Debtors to successfully emerge from chapter 11 as a financially viable reorganized debtor with sufficient working capital and funding to perform its business operations, pursuant to a confirmed plan of reorganization. These actions will maintain the value of the Debtors’ assets, and are in the best interests of the Debtors and their creditors.

6. If the Debtors are unable to use Cash Collateral and obtain the DIP Financing, they will be unable to fund the chapter 11 administration expenses and reorganize, and thus the value of their estates will be adversely affected. Through their use of Cash Collateral and by obtaining the DIP Financing, the Debtors will be able to fund the necessary costs and expenses to reorganize, which will increase the value of their estates and maximize payments to creditors.

7. The Prepetition Lenders are willing to consent to the Debtors' use of Cash Collateral pursuant to Bankruptcy Code Section 363 and the DIP Lenders are willing to provide the DIP Financing on a superpriority administrative claim basis and secured basis pursuant to Bankruptcy Code Sections 364(c) and 364(d). Subject to the Carve-Out (as defined in the DIP Financing Agreement) to satisfy certain fees and expenses of the Debtors' estates and these Chapter 11 Cases, the DIP Lenders are requesting superpriority priming liens on the Prepetition Senior Credit Agreement Collateral, first priority liens on all of the Debtors' unencumbered collateral, and junior liens on all assets and properties of the Debtors that are encumbered by Prior Liens as of the date of the Interim DIP Order to secure the DIP Financing. The DIP Lenders are willing to provide the DIP Financing to the Debtors pursuant to the terms of the DIP Financing Agreement, provided that the Court permits the DIP Lenders' claim to be treated as a superpriority administrative expense under Sections 364(c)(1) and 503(b)(1) of the Bankruptcy Code and allows the liens. As set forth in the DIP Financing Agreement, the Debtors currently seek the immediate entry of the Interim DIP Order authorizing the Debtors to enter the DIP Financing Agreement and to obtain the DIP Financing. The willingness of the DIP Lenders to provide such financing is conditioned upon the entry of the Interim DIP Order approving this Motion on or before August 10, 2017.

8. Specifically, the DIP Lenders' claims under the DIP Financing Agreement and any order approving the Motion shall constitute a superpriority administrative expense pursuant to 11 U.S.C. §§ 364(c)(1) and 503(b)(1) which will have priority over administration expenses pursuant to Sections 503(b) and 507(b).

9. In addition, the other key terms of the proposed DIP Financing are as follows:

(a) Among other events of default as more specifically set forth in the Interim DIP Order, it is an event of default if:

- The Debtors shall fail to list for sale on or before August 9, 2017 (i) the real property located at 2288 E. County Rd. 30-A, Santa Rosa Beach, FL, (ii) the real property located at the SE Corner of Interstate Hwy. 40 and N. Cimarron Rd., Oklahoma City, OK; and (iii) the real property located at 507 Park Road, Frierson, LA (collectively, the “Non-Core Collateral”).
- The Debtors shall fail to file on or before September 1, 2017, (i) a joint chapter 11 plan of reorganization with terms and conditions agreed upon by the Majority DIP Lenders on the terms agreed to in the RSA and Term Sheet (the “Plan”) (ii) a corresponding disclosure statement (the “Disclosure Statement”); and (iii) a motion (the “Disclosure Statement and Solicitation Motion”) seeking, among other things, (A) approval of the Disclosure Statement, (B) approval of procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan, and (C) to schedule the hearing to consider confirmation of the Plan (the “Confirmation Hearing”);
- The Bankruptcy Court shall not have entered an order on or before September 1, 2017 approving the DIP Financing in form and substance acceptable to the DIP Agent at the direction of the Majority DIP Lenders (the “Final DIP Order”);
- The Bankruptcy Court shall not have entered an order in form and substance acceptable to the Majority DIP Lenders on or before October 23, 2017 authorizing the Debtors’ assumption of the Restructuring Support Agreement;
- On or before October 23, 2017, the Bankruptcy Court shall not have entered an order in form and substance reasonably acceptable to the Majority DIP Lenders approving the Disclosure Statement and the relief requested in the Disclosure Statement and Solicitation Motion;
- On or before five (5) business days after entry of the order approving the Disclosure Statement and Solicitation Motion, the Debtors shall not have commenced solicitation on the Plan by mailing solicitation materials to the creditors and equity interest holders eligible to vote on the Plan;
- The Bankruptcy Court shall not have commenced the Confirmation Hearing on or before December 5, 2017;
- The Bankruptcy Court shall not have entered an order in form and substance acceptable to the Majority DIP Lenders confirming the Plan on or before December 8, 2017; or
- All conditions precedent to the Effective Date (as defined in the Restructuring Support Agreement) shall not have been satisfied or waived by December 23, 2017.

Upon the occurrence of (i) the sum of the Debtors' cash on its balance sheet and the then applicable undrawn availability under the tranches of the DIP Facility other than the Discretionary Tax Loans (as defined in the DIP Financing Agreement) being equal to or less than \$1,000,000 or (ii) an Event of Default set forth in paragraph 58 (s) or (w) through (bb) of the Interim DIP Order (a "Toggling Default"), the DIP Agent at the direction of the Majority DIP Lenders shall have the option to elect (the date of such election, the "363 Sale Proceedings Initiation Date") to waive any such Toggling Default (if such Toggling Default triggered the right to make this election) and for the Debtors to initiate steps to sell substantially all of the assets and property selected by the Majority DIP Lenders (the "Assets") pursuant to Bankruptcy Code §§ 363 and 365 free and clear of liens, claims, encumbrances and other interests (save and except for any Prior Liens) to the fullest extent permissible by law pursuant to Bankruptcy Code §§ 105, 363, and 365, which transfer and/or assignment shall be made to the DIP Lenders and the Prepetition Lenders or another entity designated by the DIP Agent at the direction of the Majority DIP Lenders and Prepetition Agent at the direction of the Majority Prepetition Lenders pursuant to an order of the Bankruptcy Court acceptable to the Majority DIP Lenders and the Majority Prepetition Lenders (the "363 Sale"). The 363 Sale shall be subject to consideration of higher bids by the Debtors pursuant to Court approved bid procedures that shall be in form and substance reasonably acceptable to the Majority DIP Lenders. In the event the 363 Sale occurs, the DIP Agent at the direction of the Majority DIP Lenders and the Prepetition Agent at the direction of the Majority Prepetition Lenders shall be permitted to credit bid all or any portion of DIP Claims or the Senior Prepetition Credit Agreement Claims (or any combination thereof) as consideration for the transfer and/or assignment of the Assets. The Debtors shall cooperate with either or both of the Agents in the execution and closing of the 363 Sale. On the 363 Sale Proceedings Initiation Date, the Events of Default in paragraph 58 (s) and (w) through (bb) of the Interim DIP Order will be replaced with the Events of Default below:

- on or before two (2) days after the 363 Sale Proceedings Initiation Date, the Debtors shall not have (a) issued a mutually-agreeable public press release announcing the 363 Sale process for the Assets, along with the requisite timeline and contact information for interested parties to receive a customary non-disclosure agreement, and (b) from such date through the Auction (as defined below), provided any parties who execute the non-disclosure agreement access to the same virtual dataroom that has been made available to the DIP Lenders;

- on or before the date falling two (2) days after the 363 Sale Initiation Date, the Debtors shall not have: (a) executed an asset purchase agreement (the “Stalking Horse Agreement”) with one or both of the Agents or an entity designated by the DIP Agent at the direction of the Majority DIP Lenders and the Prepetition Agent at the direction of the Majority Prepetition Lenders (either Agent or such entity as party to the Stalking Horse Agreement, the “Stalking Horse Bidder”) under which the Stalking Horse Bidder shall agree to purchase the Assets under terms and conditions acceptable to the Majority DIP Lenders and the Majority Prepetition Lenders (including with respect to the credit bid of any claims under the Prepetition Senior Credit Agreement or the DIP Financing as consideration for the Assets and reasonable and customary bid protections), and (b) filed a motion in form and substance acceptable to the Majority DIP Lenders for approval of (x) the Stalking Horse Agreement, and (y) bidding procedures in form and substance acceptable to the Majority DIP Lenders with respect to the 363 Sale (the “Bidding Procedures”);
- on or before the date falling thirty (30) days after the 363 Sale Proceedings Initiation Date, the Debtors shall not have obtained entry of an order (the “Bidding Procedures Order”) in form and substance acceptable to the Majority DIP Lenders approving the Stalking Horse Agreement, and the Bidding Procedures and scheduling an auction (the “Auction”) and a sale hearing date (the “Sale Hearing”) to approve the 363 Sale;
- on or before the date set in the Bidding Procedures Order, the Debtors shall not have (a) held the Auction, or (b) subject to the Bidding Procedures, canceled the Auction, and in either of cases (a) or (b) declared a successful bidder for the Assets; and
- on or before the date set in the Bidding Procedures Order, the Bankruptcy Court shall not have held the Sale Hearing and entered an order in form and substance acceptable to the Majority DIP Lenders approving the terms of the 363 Sale (the “Sale Order”); or
- on or before January 31, 2018, the closing of the 363 Sale shall not have occurred.

**IV.
LEGAL ARGUMENT**

The Debtors Have Satisfied the Legal Requirements for Approval of the Use of Cash Collateral and the DIP Financing.

A. The Court Should Authorize the Debtors to Use Cash Collateral and Provide Adequate Protection.

10. A debtor's use of property of the estate, including cash collateral, is governed by Section 363 of the Bankruptcy Code. Pursuant to Section 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral if "(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 [Section 363]." 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code further provides that "on request of an entity that has an interest in property . . . to be used, sold or leased, by the trustee, the court . . . 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).

11. Although the Bankruptcy Code does not expressly define "adequate protection," Section 361 of the Bankruptcy Code provides a non-exhaustive list of examples of adequate protection including: (i) a lump sum or periodic cash payments; (ii) replacement liens; and (iii) administrative priority claims. See 11 U.S.C. § 361. Generally, courts decide what constitutes adequate protection on a case-by-case basis. See *In re Braniff Airways, Inc.*, 783 F.2d 1283, 1286 (5th Cir. 1986); see also *Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Group, Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994) ("[A] determination of whether there is adequate protection is made on a case by case basis."). The purpose of adequate protection is to ensure that a secured party's economic position is not worsened because of the filing of a bankruptcy case. *In re DeSardi*, 340 B.R. 790, 804 (Bankr. S.D. Tex. 2006).

12. Consistent with the purposes underlying the provision of adequate protection, the proposed Interim DIP Order provides adequate protection to protect against diminution in value. Indeed, the Prepetition Agent, at the direction of the Majority Lenders (as defined in the Prepetition Senior Credit Agreement), has consented to the use of the Prepetition Senior Credit Agreement Collateral (including Cash Collateral) and the proposed adequate protection described herein.

13. Accordingly, the requirements of Section 363 of the Bankruptcy Code are satisfied, and the Court should authorize the Debtors to use Cash Collateral in accordance with the terms herein and in the Interim DIP Order.

B. The Debtors Have Satisfied the Legal Requirements to Obtain the DIP Financing.

14. Bankruptcy Code Section 364 states that a debtor-in-possession that is authorized to operate its business may obtain financing either in the ordinary course of business or outside the ordinary course of business. First, Bankruptcy Code Section 364(a) allows the debtor to obtain unsecured credit and to incur unsecured debt in the ordinary course of business. See 11 U.S.C. § 364(a). Second, after notice and a hearing, the Court may authorize a debtor-in-possession to obtain unsecured credit or incur unsecured debt outside the ordinary course of business allowable as an administration expense under Bankruptcy Code Section 503(b)(1). 11 U.S.C. § 364(b). If the debtor-in-possession is unable to obtain unsecured credit on this basis, Bankruptcy Code Section 364(c) allows the Court, after notice and a hearing, to authorize the debtor-in-possession to obtain credit or to incur debt that has priority over administrative expenses under Bankruptcy Code Section 503(b)(1), that is secured by a lien on unencumbered estate property, or that is secured by a junior lien on encumbered estate property. 11 U.S.C. §§ 364(c)(1), (2) and (3).

15. Other than the requirement of notice and a hearing, the only statutory prerequisite under Bankruptcy Code Section 364(c) for obtaining credit on a secured basis and superpriority

basis is that the debtor-in-possession must be unable to obtain unsecured credit allowable as an administrative expense under Bankruptcy Code Section 503(b)(1). 11 U.S.C. § 364(c)(2); *see also, In re Garland Corp.*, 6 B.R. 456, 461 n. 11 (B.A.P. 1st Cir. 1980) (secured credit under Section 364(c)(2) is authorized, after notice and a hearing, upon showing that unsecured credit cannot be obtained); *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (debtor must show that it has made a reasonable effort to seek other sources of financing under Sections 364(a) and (b) of the Bankruptcy Code).

16. The Bankruptcy Code offers a debtor-in-possession additional flexibility to the extent that it needs to borrow additional funds. Bankruptcy Code Section 364 provides a progression of various protections to induce a postpetition lender to extend credit to a debtor-in-possession. *In re Sun Runner Marine, Inc.*, 945 F.2d 1089, 1092-93 (9th Cir. 1991). These include administrative priority, superpriority and secured status. 11 U.S.C. § 364. In addition, parties who extend credit are protected under § 364(e) from the effects of a reversal on appeal of the authorization to incur debt as long as they have acted in good faith.

17. To demonstrate that the requisite credit is not obtainable on an unsecured basis, the debtor need only demonstrate “by good faith effort that credit was not available” without the protections afforded to potential lenders by Section 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.* at 1088; *see also In re Ames*, 115 B.R. at 40 (holding that debtor made a reasonable effort to secure financing when it selected the least onerous financing option from the two remaining lenders); *In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987) (“Given the ‘time is of the essence’ nature of this type of financing, we would not require

this or any debtor to contact a seemingly infinite number of possible lenders.”). Where few lenders are likely to be able and willing to extend the necessary credit to a 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 Savings Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n. 4 (N.D. Ga. 1989).

18. In these Chapter 11 Cases, with the exception of the collateral of JP Morgan and Iberia, most of, if not all of, the Debtors’ assets are encumbered by liens in excess of the Debtors’ estimate of the value of those assets. Additionally, there are no available funds from which Chapter 11 administration expenses can be made for the Debtors without the consent of the Majority Lenders (as defined in the Prepetition Senior Credit Agreement). Under such circumstances, stand-alone postpetition financing on an unsecured basis simply to fund Chapter 11 operations during the case would be virtually impossible to obtain.

19. The DIP Lenders have agreed to provide the DIP Financing to fund chapter 11 operations and expenses during the case, as well as “emergence” or “exit” financing to support confirmation of a reorganization plan providing for a restructuring of the Debtors’ existing debt and capital structure.

20. The Debtors firmly believe that, under the circumstances of these cases, the proposed DIP Financing is the best option available to the Debtors.

C. The Debtors’ Decision to Enter into the DIP Financing Is Supported by Sound Business Judgment.

21. Courts generally give broad deference to the business decisions of a debtor. See, e.g., *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *In re Lionel Corporation*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1987). In particular, a bankruptcy court should defer to a debtor’s

reasonable business judgment regarding the need for funds, so long as the proposed financing agreement does not contain terms that either leverage the bankruptcy process or that benefit a third party rather than the bankruptcy estate. See, e.g., *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that an interim loan, receivables facility and asset-based facility were approved because they “reflect[ed] sound and prudent business judgment ..., [were] reasonable under the circumstances and in the best interest of [the debtor] and its creditors”). This was explained by the bankruptcy court in *In re Ames Department Stores, Inc.*, 115 B.R. 34 (Bankr. S.D.N.Y. 1990):

“[A] court’s discretion under Section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”

Id. at 40.

22. Here, the Debtors’ decision to enter into the DIP Financing represents a reasonable exercise of business judgment. The Debtors, have *de minimis* cash and an extensive amount of work to be performed by their professionals which must commence immediately in order to pursue confirmation of a plan of reorganization. Thus, absent the financing to be provided under the DIP Financing, the Debtors will not be able to meet their chapter 11 operating and administrative obligations. Put another way, the Debtors would be forced to cease operations and abandon the chance to reorganize and successfully emerge from chapter 11 unless they have the funds to pay the costs which must be incurred immediately. The success of these Chapter 11 Cases therefore turns on the Debtors’ ability to continue operations and implement their long-term strategy of restructuring. The DIP Financing will permit the Debtors to accomplish these goals, and achieve their stated objective of maximizing value for all constituencies.

D. The Terms of the DIP Financing are Reasonable under the Circumstances and Should Be Approved.

23. The terms of the DIP Financing are similar to those often included in complex financing arrangements. Indeed, the DIP Financing Agreement and the Interim DIP Order reflect the give and take that result from complex financing negotiations. Courts have recognized that a debtor often must make significant concessions in exchange for financing. *See, e.g., In re Ellingsen MacLean Oil Co.*, 65 B.R. 358, 365 (Bankr. W.D. Mich. 1986), *aff'd*, 834 F.2d 599 (6th Cir. 1987) (chapter 11 postpetition financing is “fraught with dangers for creditors . . .”). Accordingly, courts recognize that a debtor may need to “enter into a hard bargain with a creditor in order to acquire the needed funds to complete reorganization.” *Id.* at 365.

24. Similarly, lenders often agree to subordinate or “carve-out” from their collateral funds to pay professionals. *See Harvis Trien & Beck, P.C. v. Federal Home Mortgage Corp. (In re Blackwood Assocs., L.P.)*, 187 B.R. 856, 860 (Bankr. E.D.N.Y. 1995) (court advised that if professionals really want to be paid they had best insist upon a “real carve out”); *In re Ames*, 115 B.R. at 40 (noting practice of district to insist on carve-out for fees in order to preserve adversary system).

E. The Court Should Schedule Interim and Final Hearings on This Motion Pursuant To Bankruptcy Rules 4001(b) and 4001(c).

25. Bankruptcy Rule 4001(b) provides that a final hearing on a motion for authorization to use cash collateral pursuant to Bankruptcy Code Section 363 may not be commenced earlier than fourteen (14) days after the service of such motion and Bankruptcy Rule 4001(c)(2) provides that a final hearing on a motion to obtain postpetition financing pursuant to Bankruptcy Code Section 364 may be commenced not earlier than fourteen (14) days after service of the motion. Upon request, however, a bankruptcy court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral under and to obtain postpetition financing to the extent necessary to avoid immediate and irreparable harm to a debtor’s estate.

Courts apply the business judgment standard applicable to other business decisions when considering whether to conduct a preliminary hearing on the use of cash collateral and obtain postpetition financing. *See, e.g., In re Simasko Production Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985). After this 14-day period, 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., id.*

26. Pursuant to Bankruptcy Rules 4001(b) and (c), the Debtors request the Court conduct an expedited interim hearing on the Motion (the "***Interim Hearing***") and, after the entry of the Interim DIP Order, allow the Debtors to enter the DIP Financing Agreement by the required deadline, borrow funds in accordance therewith, and, at the Final Hearing, to allow the Debtors to borrow under the DIP Financing on a final basis.

27. The Debtors have an urgent and immediate need for cash to fund chapter 11 administration expenses and operations. The Debtors have been unable to obtain financing on terms more favorable than presented herein, although they have attempted to do so. Absent entry of an Interim DIP Order on or before August 10, 2017 and ability to borrow the monies thereunder, the Debtors' efforts to confirm a plan and restructure their businesses, will likely falter. Under the circumstances, the granting of the relief requested by the Motion is warranted.

28. The Debtors respectfully submit that, given their immediate need to use the Cash Collateral and enter the DIP Financing, expedited notice as contemplated by Bankruptcy Rule 4001 is sufficient to permit this Court to approve, on an interim basis, the Debtors' request for approval to use Cash Collateral and obtain the DIP Financing. The Debtors will provide notice by electronic mail, U.S. mail, or the Court's ECF noticing of the Interim Hearing to, among others: (a) the Prepetition Agent, (b) each Prepetition Lender, (c) each holder of a Prior Lien, (c) the DIP

Agent, (d) each DIP Lender, (e) the Office of the United States Trustee for the Western District of Louisiana, (f) the Debtors' known twenty largest unsecured creditors, (g) all other secured creditors, and (h) all other parties requesting notice pursuant to Bankruptcy Rule 2002.

29. In light of the foregoing, and pursuant to Bankruptcy Rules 4001(b) and 4001(c), the Debtors request that the Court schedule the Final Hearing on this Motion no later than September 1, 2017, and that the Court authorize the Debtors to enter into the DIP Financing on a final basis at such hearing.

NOTICE

30. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Debtors and their counsel; (iii) Clearlake Capital Group, L.P. and/or its counsel; (iv) Cantor Fitzgerald Securities and/or its counsel; (v) Whitney National Bank and/or its counsel; (vi) JP Morgan Chase Bank and/or its counsel; (vii) Iberia Bank and/or its counsel; (viii) any party whose interests are directly affected by this specific pleading; (ix) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (x) counsel for and the members of any official committees appointed by this Court; (xi) the consolidated 30 largest unsecured creditors of the Debtors; and (xii) all governmental agencies having a regulatory or statutory interest in these cases (collectively, the "***Initial Notice Parties***"). No other or further notice need be provided.

31. In the event the Court enters the Interim Order, the Debtors propose to serve notice of the entry thereof on the Initial Notice Parties and all parties that have filed (prior to such service date) requests for notice pursuant to Bankruptcy Rule 2002. The notice will provide that any objections to the relief granted in the Interim Order must be filed with the Court and served upon counsel for the Debtors no later than fourteen (14) days after the date this Motion was served upon such objecting party (the "***Objection Deadline***"). If an objection is timely filed and served prior

to the Objection Deadline, such objection will be heard at the Final Hearing on the Motion. If no objections are timely filed and served, the Debtors will file a certification of counsel to that effect, attaching the Final Order.

CONCLUSION

32. Based upon all the foregoing, as set forth in this Memorandum, the Motion, the First Day Declaration, and all other papers, documents, or other evidence submitted in support of the Motion, the Debtors respectfully request that the Court grant the Motion in its entirety and: (1) authorize the Debtors' use of Cash Collateral on an interim basis; (2) approve the DIP Financing on an interim basis; (3) enter the Interim DIP Order, in substantially the form attached hereto as Exhibit 1; (4) authorize the Debtors to borrow on an interim basis under the terms of the DIP Financing Documents and the Interim DIP Order, pending a final hearing on this Motion; (5) grant the DIP Agent and DIP Lenders the security, liens, and superpriority claims provided for under the Interim DIP Order; (6) grant the Adequate Protection Liens provided for in the Interim DIP Order; (7) schedule a final hearing on this Motion; and (8) grant to the Debtors such other relief as the Court deems necessary and appropriate.

This 8th day of August, 2017.

Respectfully submitted,

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