Docket #0010 Date Filed: 7/12/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	:	Chapter 11
	:	
HI-CRUSH INC., *et al.*,[1]	:	Case No. 20-33495 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	

DEBTORS' EMERGENCY MOTION FOR ENTRY OF ORDER (I) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (II) AUTHORIZING CONTINUATION OF EXISTING DEPOSIT AND INVESTMENT PRACTICES, (III) APPROVING THE CONTINUATION OF INTERCOMPANY TRANSACTIONS, AND (IV) GRANTING ADMINISTRATIVE EXPENSE STATUS TO CERTAIN POSTPETITION INTERCOMPANY CLAIMS

EMERGENCY RELIEF HAS BEEN REQUESTED. A HEARING WILL BE CONDUCTED ON THIS MATTER ON JULY 13, 2020 AT 3:30 P.M. PREVAILING CENTRAL TIME IN COURTROOM 400, 4TH FLOOR, 515 RUSK STREET, HOUSTON, TX 77002. IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

RELIEF IS REQUESTED NOT LATER THAN JULY 13, 2020.

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors' address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

20334952007120000000032

Please note that on March 24, 2020, through the entry of General Order 2020-10, the Court invoked the Protocol for Emergency Public Health or Safety Conditions.

It is anticipated that all persons will appear telephonically and also may appear via video at this hearing.

Audio communication will be by use of the Court's regular dial-in number. The dial-in number is +1 (832) 917-1510. You will be responsible for your own long-distance charges. You will be asked to key in the conference room number. Judge Jones' conference room number is 205691.

Parties may participate in electronic hearings by use of an internet connection. The internet site is www.join.me. Persons connecting by mobile device will need to download the free join.me application.

Once connected to www.join.me, a participant must select "join a meeting". The code for joining this hearing before Judge Jones is "judgejones". The next screen will have a place for the participant's name in the lower left corner. Please complete the name and click "Notify".

Hearing appearances should be made electronically and in advance of the hearing. You may make your electronic appearance by:

1) **Going to the Southern District of Texas website;**
2) **Selecting "Bankruptcy Court" from the top menu;**
3) **Selecting "Judges' Procedures & Schedules";**
4) **Selecting "view home page" for Judge David R. Jones;**
5) **Under "Electronic Appearance," select "Click here to submit Electronic Appearance";**
6) **Select "Hi-Crush Inc., et al." from the list of Electronic Appearance Links; and**
7) **After selecting "Hi-Crush Inc., et al." from the list, complete the required fields and hit the "Submit" button at the bottom of the page.**

Submitting your appearance electronically in advance of the hearing will negate the need to make an appearance on the record at the hearing.

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") respectfully state the following in support of this emergency motion (the "**Motion**"):

RELIEF REQUESTED

1. By this Motion, the Debtors request entry of an order, substantially in the form attached hereto (the "**Order**"):

(i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including

maintenance of their existing bank accounts, checks, and business forms;

(ii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit and investment practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code;

(iii) granting the Debtors an extension of time for a period of 60 days from the Petition Date (*i.e.* until September 10, 2020) within which to comply with certain bank account and related requirements of the Office of the United States Trustee (the "**U.S. Trustee**") or make such other arrangements as agreed with the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors' practices under their existing cash management system or other actions described herein;

(iv) authorizing, but not directing, the Debtors to continue the Intercompany Transactions (as defined herein);

(v) authorizing the Debtors to open and close Bank Accounts (as defined herein);

(vi) according administrative expense status to postpetition Intercompany Claims (as defined herein) arising from Intercompany Transactions among the Debtors; and

(vii) authorizing the Debtors to maintain the Fuel Card Program (as defined herein).

2. The Debtors also request that the Court authorize all banks with which the Debtors maintain their accounts to continue to maintain, service, and administer such accounts and authorize third-party payroll and benefits administrators and providers to prepare and issue checks on behalf of the Debtors.

JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the Southern District of Texas (the "**Court**") has jurisdiction to consider this Motion under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b), and this Court may enter a final order consistent with Article III of the United States Constitution.

4. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105(a), 345, 363, 503(b), and 507(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**"), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "**Bankruptcy Local Rules**"), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the "**Complex Case Procedures**").

BACKGROUND

6. On the date hereof (the "**Petition Date**"), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the "**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 *Declaration of J. Philip McCormick, Jr., Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, (the "**First Day Declaration**"),[2] which is filed with the Court concurrently herewith and is fully incorporated herein by reference.

7. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

8. Simultaneously with the filing of this Motion, the Debtors have filed a motion with this Court pursuant to Bankruptcy Rule 1015(b) seeking joint administration of the Chapter 11 Cases.

BASIS FOR RELIEF

A. The Debtors' Cash Management System and the Bank Accounts

9. The Debtors' primary source of cash is revenues generated from the mining, production, and sale of their sand products. The Debtors oversee the collection, disbursement, and movement of cash from these operations through a cash management system (the "**Cash Management System**") that manages the Debtors' cash inflows and outflows through a number of bank accounts. To provide an overview of the movement of cash through the Cash Management System, a schematic diagram illustrating the flow of funds through the Cash Management System as of the Petition Date is attached hereto as Exhibit A. The Debtors' Cash Management System, which is managed by the Debtors' management at their headquarters in Houston, Texas, is critical to the Debtors' operations as it enables the Debtors to, among other things, (i) monitor cash receipts and ensure payment of necessary disbursements, (ii) track various intercompany transfers and transactions, and (iii) ensure accurate cash forecasting and reporting.

10. As of the Petition Date, the Cash Management System includes a total of 11 bank accounts (together with any accounts opened after the Petition Date, the "**Bank Accounts**"), which are held at Zions Bancorp., N.A., d/b/a Amegy Bank ("**Zions**") and J.P. Morgan Chase Bank N.A.

("**JPM Chase**") (collectively, the "**Banks**").[3] A schedule of the Bank Accounts is attached hereto as Exhibit B, and a summary of the Bank Accounts is included in the chart below.[4]

Account Name	Debtor Account Holder	Approx. Balance as of the Petition Date	Account Description
Master Operating Accounts			
D & I Silica Master Operating Account **Zions - 7705**	D & I Silica, LLC	$2.9 million	The Master Operating Accounts are the main collection and disbursement accounts for the Cash Management System. The Master Operating Accounts receive funds from customer receipts and make the majority of the third-party disbursements on behalf of the Debtors, often making disbursements when amounts are owed to a third party on behalf of more than one Debtor. The Master Operating Accounts also jointly fund the Ancillary Operating Accounts and the Payroll Account on an as-needed basis. Additionally, the Hi-Crush Master Operating Account funds the Investment Account (using excess funds at management's discretion). Payments from the Main Operating Accounts are made through various funds-transfer mechanisms, including wires, ACH payments, checks, and automatic vendor draws. The Master Operating Accounts are each subject to a deposit account control agreement and, as discussed further below, may have funds swept into the ABL Sweep Account if the Debtors become subject to cash dominion.
Hi-Crush Master Operating Account **Zions - 1598**	Hi-Crush Inc.	$2.1 million	

[3] One of the Debtors' non-debtor foreign affiliates, FB Industries Inc. (the "**Canadian Non-Debtor Affiliate**"), holds a bank account at the Royal Bank of Canada. The Debtors' management is in the process of winding down the operations of the Canadian Non-Debtor Affiliate. No funds will be transferred from the Debtors' Bank Accounts to the account held by the Canadian Non-Debtor Affiliate during the pendency of these Chapter 11 Cases without further order of the Court.

[4] The Debtors believe, and have undertaken reasonable efforts to ensure, that Exhibit B lists all of the bank accounts that comprise the Debtors' Cash Management System. In the event that any bank account has been inadvertently omitted from Exhibit B, the Debtors request that the relief sought by this Motion be deemed to apply to such account.

Account Name	Debtor Account Holder	Approx. Balance as of the Petition Date	Account Description
Ancillary Operating Accounts			
Hi-Crush Services Operating Account **Zions - 9232**	Hi-Crush Services LLC	$109,000	The Ancillary Operating Accounts are funded by the Master Operating Accounts on an as-needed basis. These accounts are used to make third-party disbursements, in the ordinary course of business, to specific suppliers and vendors on account of expenses incurred by the entity associated with each Ancillary Operating Account. The majority of disbursements made from the Ancillary Operating Accounts relate to small trade payables. The Hi-Crush Services Operating Account also historically funded the Payroll Account, however, the Payroll Account is now funded directly by the Hi-Crush Master Operating Account. Payments from the Ancillary Operating Accounts are typically made via check. All of the Ancillary Operating Accounts are subject to a deposit account control agreement, except for the Hi-Crush Services Operating Account. As discussed further below, those accounts subject to a deposit account control agreement may have funds swept into the ABL Sweep Account if the Debtors become subject to cash dominion.
Hi-Crush Wyeville Operating Account **Zions - 1514**	Hi-Crush Wyeville Operating LLC	$106,000	
Hi-Crush Augusta Operating Account **Zions - 1571**	Hi-Crush Augusta LLC	$7,000	
Hi-Crush Blair Operating Account **Zions - 8408**	Hi-Crush Blair LLC	$265,000	
Hi-Crush Whitehall Operating Account **Zions - 8760**	Hi-Crush Whitehall LLC	$21,000	
Payroll Account			
Payroll Account **Zions - 0237**	Hi-Crush Services LLC	$403,000	The Payroll Account is used to (i) fund and process employee payroll, and (ii) fund and process the various employee compensation and benefits programs that are maintained by the Debtors and which are described in detail in the Debtors' Wages Motion.[5]

[5] The "**Wages Motion**" is the *Debtors' Emergency Motion for Entry of an Order (I) Authorizing (A) Payment of Prepetition Workforce Obligations and (B) Continuation of Workforce Programs on a Postpetition Basis, (II) Authorizing Payment of Payroll Taxes, (III) Confirming the Debtors' Authority to Transmit Payroll Deductions, (IV) Authorizing Payment of Prepetition Claims Owing to Administrators, and (V) Directing Banks to Honor Prepetition Checks and Fund Transfers for Authorized Payments*, filed concurrently herewith.

Account Name	Debtor Account Holder	Approx. Balance as of the Petition Date	Account Description
			The Payroll Account is funded manually by the Debtors' treasury department every two weeks from the Master Operating Accounts in an amount sufficient to cover the Debtors' employee payroll and benefits obligations. As described in the Wages Motion, the Debtors utilize Automatic Data Processing, Inc. ("**ADP**") for payroll processing services, which makes an electronic draw on the Payroll Account after approval from the Debtors' Human Resources department. Amounts drawn by ADP from the Payroll Account total approximately $1.5 million per bi-weekly pay period. The Payroll Account also maintains additional excess funds of approximately $350,000.
Investment Account			
Investment Account **Zions - 8806**	Hi-Crush Inc.	$2.3 million	The Investment Account holds excess funds that are invested in a money market instrument that holds cash, U.S. Government securities and/or repurchase agreements that are fully collateralized by cash or government securities. The Debtors transfer excess cash from the Hi-Crush Master Operating Account to the Investment Account on a discretionary basis as directed by the Debtors' Treasurer. Likewise, the Debtors transfer cash from the Investment Account to the Hi-Crush Master Operating Account to fund operations at the Debtors' discretion, as needed. The Investment Account is subject to a securities account control agreement, and, as discussed further below, may have funds swept into the ABL Sweep Account if the Debtors become subject to cash dominion.
ABL Sweep Account			
ABL Sweep Account **JPM Chase - 6020**	Hi-Crush Inc.	$0	The ABL Sweep Account is an account that was opened in conjunction with and is required by the Debtors' ABL Agreement (as defined in the First Day Declaration). Under certain circumstances under the ABL Agreement, the Debtors may

Account Name	Debtor Account Holder	Approx. Balance as of the Petition Date	Account Description
			become subject to cash dominion, which would allow JPM Chase, as administrative agent under the ABL Facility (as described in the First Day Declaration), to utilize the ABL Sweep Account to sweep funds from certain of the Debtors' Bank Accounts to pay certain outstanding balances under the ABL Facility. The ABL Sweep Account is not used for any other functions and the Debtors are not currently subject to cash dominion.
ABL Reserve Account			
ABL Reserve Account **JPM Chase - 6288**	Hi-Crush, Inc.	$13.6 million	The Debtors opened the ABL Reserve Account pursuant to that certain Forbearance Agreement, dated as of June 22, 2020, between Debtor Hi-Crush Inc., the Debtor guarantors party thereto, JPM Chase, as administrative agent, and the lenders party thereto. The Debtors have since deposited funds to secure the letter of credit obligations arising under the ABL Agreement. JPM Chase has exclusive dominion and control over the ABL Reserve Account. The ABL Reserve Account can be funded by any of the Debtors' Bank Accounts.

11. The Cash Management System has three main components: cash collection, cash disbursement, and investment.

(i) Cash Collection

12. The Debtors' revenues (and their expected future revenues) are primarily generated by sand sales and related services. The Debtors receive payments from customers on account of such products and services, which are deposited directly into one of two accounts: the D & I Silica Master Operating Account (7705) or the Hi-Crush Master Operating Account (1598) (together, the "**Master Operating Accounts**"), depending on historical practices and the entity with which the

customer has a relationship. The Debtors typically receive customer receipts within sixty days after revenue is earned. Where payments are received in the Master Operating Accounts on account of goods or services provided by another Debtor, such payments are recorded in Hi-Crush Inc.'s and/or D & I Silica, LLC's books and records as intercompany payables due to such other Debtor.

(ii) Cash Disbursements

13. Cash concentrated in the Master Operating Accounts is used by the Debtors to satisfy various financial obligations. In particular, the Debtors satisfy the majority of their third-party obligations directly from the Master Operating Accounts. In addition, funds in the Master Operations Accounts are transferred into the Debtors' Ancillary Operating Accounts and the Payroll Account (0237), as needed. The Debtors issue or initiate payments to third parties by check, wire, or ACH Transfer, or authorize electronic draws directly to certain vendors. Where disbursements are made from the Master Operating Accounts on account of obligations of another Debtor, such disbursements are recorded in Debtor Hi-Crush Inc.'s and Debtor D & I Silica, LLC's books and records as intercompany receivables due from such other Debtor.

14. On average, the Debtors disburse approximately $30 million per month. Historically, the Debtors have paid the majority of their vendors by check, resulting in a large amount of check "float" on any given day – funds that are tied up in checks that have been issued but not yet processed or collected. The average amount of "float" on any given day is typically $6 million, though it fluctuates significantly depending on the time of the month and when the Debtors' various accounts payable come due. In addition to checks, the Debtors have relationships with eight of their vendors whereby, after approval of an invoice by the Debtors' Treasurer, the vendor is able to draw amounts owed to it directly from the Debtors' accounts on a weekly, bi-

weekly, or monthly basis depending on the specific arrangement. One of the vendors receives funds on an automatic basis and does not require the express approval of the Debtors. As discussed in more detail in the Wages Motion, the Debtors also disburse funds from the Payroll Account (0237) via ADP to its employees on account of wages and other employee benefits. By this Motion, the Debtors request authority to continue their cash collection and disbursement practices.

(iii) Investments

15. The Debtors' Cash Management System also consists of investment practices (the "**Investment Practices**") established to provide safe returns while maximizing the value of the Debtors' excess funds. The Debtors' Treasurer, after evaluating the Debtors' cash flow, directs Zions to transfer funds from the Hi-Crush Master Operating Account (1598) to the Investment Account (8806). If the Debtors require additional capital, the Debtors' Treasurer can also direct Zions to transfer money out of the Investment Account (8806). The Investment Account (8806) invests in a low-risk fund that includes a mix of cash, U.S. Government securities and/or repurchase agreements that are fully collateralized by cash or government securities. By this Motion, the Debtors seek approval to continue investing in the Investment Account (8806) consistent with its historical practices.

(iv) Bank Fees

16. The Debtors pay certain fees to the Banks related to the costs of administering its bank accounts (the "**Bank Fees**"). Depending on the earnings credit rate assigned by Zions, the Debtors infrequently owe monthly Bank Fees to Zions, which are automatically deducted from the Hi-Crush Master Operating Account (1598) when owed. The Debtors did not historically owe Bank Fees to JPM Chase; however, as of May 2020, the Debtors receive monthly invoices for Bank Fees owed on account of the ABL Sweep Account (6020) as well as on account of the ABL

Reserve Account (6288). Bank Fees owed to JPM Chase will be paid by check from the Master Operating Accounts. The Debtors estimate that approximately $500 of accrued but unpaid Bank Fees are outstanding as of the Petition Date. By this Motion, the Debtors seek authority to pay outstanding prepetition Bank Fees and to continue to pay the Bank Fees as they become due in the ordinary course.

B. The Debtors Should Be Authorized to Maintain and Continue Ordinary Course Intercompany Transactions and Postpetition Intercompany Claims Among the Debtors Should Be Accorded Administrative Expense Status

17. The Debtors also maintain relationships with each other in the ordinary course of business (collectively, the "**Intercompany Transactions**") that may result in intercompany receivables and payables (the "**Intercompany Claims**"). The Intercompany Transactions are frequently conducted pursuant to the Debtors' arrangements (both formal and informal) relating to the gathering, transportation, and processing of sand. The Intercompany Transactions are made to (i) reimburse certain Debtors for various expenditures associated with their businesses, (ii) fund the Bank Accounts for general corporate and capital expenditures, or (iii) transfer funds to or from the Master Operating Accounts. The Intercompany Transactions are typically tracked through book entries, but are occasionally settled in cash.

18. In connection with the daily operation of the Cash Management System, as funds are disbursed throughout the Cash Management System and as business is transacted between the Debtors, at any given time there may be an Intercompany Claim owed by one Debtor to another Debtor. For example, as discussed above, the Master Operating Accounts frequently receive third-party receipts and make third-party payments on behalf of products or services provided by or for a different Debtor. The Master Operating Accounts also fund the rest of the Cash Management System on an as-needed basis in the ordinary course of business, resulting in Intercompany Claims.

While the Debtors do occasionally settle Intercompany Claims in cash, due to the fluidity of the Cash Management System, Intercompany Claims frequently exist. As discussed above, the Intercompany Claims are reflected in the Debtors' books and records as intercompany receivables and payables, and the Debtors track all fund transfers in their respective accounting systems and can ascertain, trace, and account for all Intercompany Transactions. The Debtors propose to make such records available upon request by the U.S. Trustee and any statutory committee appointed in these Chapter 11 Cases. If the Intercompany Transactions were to be discontinued, the Cash Management System and the Debtors' operations would be disrupted unnecessarily to the detriment of the Debtors, their creditors, and other stakeholders. The Debtors seek the authority to continue the Intercompany Transactions in the ordinary course of business consistent with past practices.

19. To ensure that each individual Debtor will not fund the operations of another entity at the expense of such Debtor's creditors, the Debtors request that all postpetition Intercompany Claims be accorded administrative claim status. If postpetition Intercompany Claims are accorded administrative claim status, then each individual Debtor on whose behalf another Debtor has utilized funds or incurred expenses will continue to bear ultimate repayment responsibility, thereby protecting the interests of each individual Debtor's creditors. Accordingly, the Court should grant administrative expense status to postpetition Intercompany Claims.[6]

C. The Debtors Should Be Authorized to Continue to Use Their Existing Cash Management System and the Bank Accounts

20. The Cash Management System is an ordinary course, customary, and essential business practice, the continued use of which is essential to the Debtors' business operations during

[6] Nothing herein constitutes a request to validate the nature or amount of any Intercompany Transaction or Intercompany Claim, whether arising prepetition or postpetition.

the Chapter 11 Cases and the Debtors' goal of maximizing value for the benefit of all parties in interest. To require the Debtors to adopt a new cash management system at this early and critical stage would be expensive, impose needless administrative burdens, and cause undue disruption. Any disruption in the collection and disbursement of funds as currently implemented would adversely (and perhaps irreparably) affect the Debtors' ability to maximize estate value and repay their creditors. Moreover, such a disruption would be wholly unnecessary because the Cash Management System provides a valuable and efficient means for the Debtors to address their cash management requirements and, to the best of the Debtors' knowledge, the Bank Accounts are held at financially stable institutions insured by the Federal Deposit Insurance Corporation (the "**FDIC**"). For the aforementioned reasons, maintaining the existing Cash Management System without disruption is in the best interests of the Debtors, their estates, and their stakeholders. Accordingly, the Debtors request that they be allowed to maintain and continue to use the Cash Management System, including maintenance of the Bank Accounts.

21. As part of the relief requested herein, and to ensure that their transition into chapter 11 is as smooth as possible, the Debtors seek an order authorizing the Debtors to (i) maintain and continue to use the Bank Accounts in the same manner and with the same account numbers, styles, and document forms as are currently employed; (ii) deposit funds in and withdraw funds from the Bank Accounts in the ordinary course by all usual means, including, without limitation, checks, wire transfers, drafts, and electronic funds transfers or other items presented, issued, or drawn on the Bank Accounts; (iii) pay ordinary course Bank Fees in connection with the Bank Accounts, including prepetition Bank Fees; (iv) perform their obligations under the documents and agreements governing the Bank Accounts; and (v) for all purposes, treat the Bank Accounts as accounts of the Debtors in their capacities as debtors-in-possession.

22. The Debtors will work closely with the Banks to ensure appropriate procedures are in place to prevent checks issued by the Debtors prepetition from being honored absent this Court's approval and to ensure that no third party with automatic debit capabilities is able to debit amounts attributable to the Debtors' prepetition obligations.

23. The Debtors request that if any Bank honors a prepetition check or other item drawn on any account that is the subject of this Motion (i) at the direction of the Debtors to honor such prepetition check or item, (ii) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (iii) as a result of a good faith error, that the Bank be deemed not liable to the Debtors or to their estates on account of such prepetition check or other item being honored postpetition. The Debtors believe that such flexibility accorded to the Banks is necessary to induce the Banks to continue providing cash management services to the Debtors.

24. Additionally, in each instance in which the Debtors hold one or more accounts at a bank that is a party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen days of the date of entry of an Order granting this Motion, the Debtors will (i) contact such Bank, (ii) provide such Bank with the Debtors' employer identification numbers, and (iii) identify each of their accounts as held by a debtor-in-possession in a bankruptcy case. While the Debtors do not believe that they hold any accounts at a bank that is not a party to a Uniform Depository Agreement with the U.S. Trustee, if any such accounts are identified, the Debtors will use their good faith efforts to cause such bank to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within forty-five days of the date of entry of an Order granting this Motion, to the extent that such Bank is a domestic bank. In the interest of maintaining the continued and efficient operation of the Cash Management System during the pendency of the Chapter 11 Cases, the Debtors request that all Banks be authorized to continue to administer, service, and maintain the

Bank Accounts as such accounts were administered, serviced, and maintained prior to the Petition Date, without interruption and in the ordinary course (including making deductions for Bank Fees), and, when requested by the Debtors in their sole discretion, to honor any and all checks, drafts, wires, electronic funds transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date.

25. The Debtors further request that they be authorized to implement such reasonable changes to the Cash Management System as the Debtors may deem necessary or appropriate, including, without limitation, closing any Bank Account and opening any additional bank accounts following the Petition Date (the "**New Accounts**") wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, any New Accounts that the Debtors open will be at one of the Debtors' current Banks or at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at such bank that is willing to immediately execute such an agreement, and any New Account that the Debtors open in the United States will be (i) at one of the existing Banks or with a bank that is organized under the laws of the United States of America or any state therein and that is insured by the FDIC or the Federal Savings and Loan Insurance Corporation, (ii) designated a "Debtor-in-Possession" account by the relevant bank, and (iii) at a bank that agrees to be bound by the terms of the proposed Order. The Debtors request that the relief sought by this Motion extend to any New Accounts and that any order approving this Motion provide that the New Accounts are deemed to be Bank Accounts that are similarly subject to the rights, obligations, and relief granted in such order. The Debtors will provide the U.S. Trustee and the Ad Hoc Group (defined below) with prompt notice of the closing of any Bank Accounts and the opening of any New Accounts. In furtherance of the foregoing, the Debtors also

request that the relevant banks be authorized to honor the Debtors' requests to open or close (as the case may be) such Bank Account(s) or New Account(s).

D. The Debtors Should Be Granted an Extension of Time to Comply with Certain Requirements of the U.S. Trustee

26. The Debtors further request, pursuant to sections 105(a) and 363 of the Bankruptcy Code, that this Court grant an extension of time for the Debtors to comply with certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with (i) the Debtors' existing practices under the Cash Management System, or (ii) any action taken by the Debtors in accordance with any order granting this Motion or any other order entered in the Chapter 11 Cases.

27. To supervise the administration of chapter 11 cases, the U.S. Trustee has established the *Region 7 Guidelines for Debtors-in-Possession* (the "**UST Requirements**"). The UST Requirements require chapter 11 debtors to, among other things: (i) close all existing bank accounts and open new debtor-in-possession bank accounts; (ii) establish one debtor-in-possession account for all estate monies required for the payment of taxes, including payroll taxes; (iii) maintain a separate debtor-in-possession account for cash collateral; and (iv) obtain checks for all debtor-in-possession accounts that bear (a) the designation "Debtor-in-Possession," (b) the bankruptcy case number, and (c) the type of account. The UST Requirements are designed to demarcate clearly prepetition transactions and operations from postpetition transactions and operations, and to prevent the inadvertent postpetition payment of prepetition claims. As set forth above, the Debtors submit that (i) they are able to work with the Banks to ensure that this goal of separation between the prepetition and postpetition periods is observed, and (ii) enforcement of certain of these UST Requirements would disrupt the Debtors' operations and impose a financial burden on the Debtors' estates.

28. It would be onerous, unnecessarily inconvenient, and would fail to produce any realizable benefits to the Debtors' estates to require the Debtors to close all of the Bank Accounts and open new debtor-in-possession accounts.

29. Further, it would be unnecessary and inefficient to require the Debtors to abide by the UST Requirement to establish specific debtor-in-possession accounts for tax payments (including payroll taxes) and to deposit in such accounts sufficient funds to pay any tax liability (when incurred), whether associated with the Debtors' payroll or other tax obligations. The Debtors can pay their tax obligations most efficiently in accordance with their existing practices. Any diversion from the Debtors' existing practices will complicate payment of the Debtors' tax obligations. Further, the U.S. Trustee will have wide latitude to monitor the flow of funds into and out of such accounts. The creation of new debtor-in-possession accounts designated solely for tax obligations would be unnecessarily burdensome.

30. To minimize expenses to their estates, the Debtors also seek authorization to continue using all checks substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' status as debtors-in-possession; *provided*, *however*, that in the event the Debtors generate new checks during the pendency of the Chapter 11 Cases other than from their existing stock of checks, such checks will include a legend referring to the Debtor as "Debtor-in-Possession." The Debtors also seek authority to use all correspondence and other business forms (including, without limitation, letterhead, purchase orders, and invoices) without reference to the Debtors' status as debtors-in-possession.[7] Changing the Debtors' existing checks,

[7] Although the operating guidelines established for debtors-in-possession by the U.S. Trustee would require the Debtors to obtain and use new checks bearing the "Debtor-in-Possession" designation, the Debtors do not believe that such guidelines impose any limitation on the Debtors' other correspondence and business forms. Nevertheless, out of an abundance of caution, the Debtors seek explicit authority to continue using their existing correspondence and business forms without reference to the Debtors' status as debtors-in-possession.

correspondence, and other business forms would be expensive, unnecessary, and burdensome to the Debtors' estates. Further, such changes would disrupt the Debtors' business operations and would not confer any benefit upon parties that deal with the Debtors. For these reasons, the Debtors request that they be authorized to use their existing check stock, correspondence, and other business forms without being required to place the label "Debtor-in-Possession" on any of the foregoing.

31. Additionally, the UST Requirements mandate that chapter 11 debtors, to, among other things, deposit all estate funds into an account with an authorized depository that agrees to comply with the requirements of the Office of the U.S. Trustee. All of the Bank Accounts are designated as authorized depositaries by the U.S. Trustee and, therefore, comply with the UST Requirements.[8]

E. The Debtors Should Be Authorized to Continue Their Deposit and Investment Practices

32. As part of the Cash Management System, the Debtors routinely deposit funds into the Bank Accounts (the "**Deposit Practices**"), each of which are insured by the FDIC. The Debtors request (i) authorization to continue to deposit funds in accordance with existing practices under the Cash Management System, subject to any reasonable changes the Debtors may implement to the Cash Management System, and (ii) an initial 60-day period to come into compliance with their obligations under Section 345(b) or otherwise reach agreement with the U.S. Trustee, without prejudice to the Debtors' right to seek an extension of such period, to the extent that such requirements are inconsistent with the Deposit Practices.

[8] Zions First National Bank, an authorized depository, is a division of Zions Bancorp., N.A., one of the Debtors' Banks.

33. In addition, as part of the Cash Management System, the Debtors maintain their excess cash in conservative investments that satisfy prudent investment guidelines, which have a primary objective of preserving principal, while secondarily maximizing yield and liquidity (the "**Investment Policy**"). As discussed above, consistent with the Investment Policy, the Debtors transfer excess cash to the Investment Account at their discretion. Pursuant to the Investment Policy, the Debtors invest in a high-credit-quality prime money market fund.

34. The Investment Account, held at Zions, invests excess cash only in a money market instrument held at Fidelity Investments that seeks to obtain a high a level of current income and preserve principal and liquidity. The money market instrument holds cash, U.S. Government securities and/or repurchase agreements that are fully collateralized by cash or government securities. The U.S. Government securities are frequently issued by entities that are chartered or sponsored by Congress, and the money market's investments are in compliance with industry-standard regulatory requirements for money market funds for the quality, maturity, liquidity, and diversification of its investments.

35. Accordingly, the Debtors respectfully submit that the Debtors' approach to managing their cash reserves balances their need to access liquidity on a daily basis with protections that are comparable to those contemplated by section 345(b) of the Bankruptcy Code. Requiring the Debtors to bond the Investment Account, as contemplated by section 345(b) of the Bankruptcy Code, would impose considerable costs on these estates. The Debtors respectfully request that the Court authorize the Debtors to continue utilizing the Investment Account in the ordinary course of business consistent with the Investment Policy.

F. The Debtors Should Be Authorized to Maintain the Fuel Card Program and Pay Prepetition Amounts Related Thereto

36. In the ordinary course of business, the Debtors assign fuel credit cards (the "**Fuel Cards**") issued by WEX Bank ("**WEX**") to certain light trucks used in the Debtors' field operations to pay limited vehicle-related expenses (the "**Fuel Card Program**"). As of the Petition Date, there are approximately 120 active Fuel Cards under the Fuel Card Program for use in purchasing fuel for the trucks.

37. The Debtors' average monthly expenditure under the Fuel Card Program is approximately $25,000. The Debtors' accounting staff monitors the expenses charged to the credit cards used in the Fuel Card Program to ensure compliance with company policies and use of the Fuel Cards is only approved for appropriate expenses.

38. To avoid any disruptions to their Fuel Card Program, the Debtors request authority to satisfy prepetition obligations that may be owing to WEX on account of the Fuel Cards. The Debtors estimate such obligations are approximately $30,000.

39. The Debtors also seek authority to continue using the Fuel Card Program postpetition in the ordinary course of business, subject to any changes the Debtors may make to the Fuel Card Program in the ordinary course of their businesses.

40. The Fuel Card Program is critical to the Debtors' ability to carry out their ongoing operations without disruption because they enable eligible employees to purchase fuel for company vehicles and pay for small but critical expenses incurred in the Debtors' daily operations without undue delay.

APPLICABLE AUTHORITY

A. The Bankruptcy Code Permits the Debtors to Continue to Use the Cash Management System and the Bank Accounts

41. Section 363(c)(1) of the Bankruptcy Code authorizes a debtor-in-possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The purpose of Section 363(c)(1) is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without unneeded oversight by its creditors or the court. *See In re HLC Props., Inc.*, 55 B.R. 685, 686 (Bankr. N.D. Tex. 1985) (finding "no need to further burden the docket or the staff of the Court with a superfluous order" when a transaction is in the ordinary course of business). The authority granted by section 363(c)(1) extends to a debtor in possession's continued use of its customary cash management system and, thus, supports the relief requested. *See, e.g., Charter Co. v. Prudential Ins. Co. Am. (In re Charter Co.)*, 778 F.2d 617, 621 (11th Cir. 1985) (holding that an order authorizing the debtor to employ a cash management system that was "usual and customary in the past" was "entirely consistent" with section 363(c)(1) of the Bankruptcy Code). Accordingly, it is respectfully submitted that section 363(c)(1) of the Bankruptcy Code authorizes continuation of the Cash Management System as it operated prepetition without this Court's approval.

42. Section 105(a) of the Bankruptcy Code also authorizes this Court to permit the Debtors to continue to use the Cash Management System, including maintenance of their existing Bank Accounts. Specifically, section 105(a) of the Bankruptcy Code vests in this Court the power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The continuation of the Cash Management System, including the continued use of the Bank Accounts, is essential to the efficient administration of the Chapter 11 Cases and to the Debtors' efforts to maximize estate value for all parties in interest. Indeed,

one court, in another context, recognized that a centralized cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993), *cert. denied sub nom. Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp.*, 510 U.S. 1110 (1994). Bankruptcy courts routinely permit chapter 11 debtors to continue using their existing cash management system, generally treating requests for such relief as a relatively "simple matter." *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); *see also Columbia Gas*, 136 B.R. at 934 (recognizing that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash"). Therefore, the relief requested is appropriate under section 105(a).

B. This Court Should Grant the Debtors an Extension of Time to Comply with the UST Requirements to Permit the Debtors to Continue to Use the Cash Management System

43. The continuation of the Cash Management System, as requested in this Motion, is consistent with the Debtors' authority to use property of the estate in the ordinary course of business pursuant to section 363(c)(1) of the Bankruptcy Code. Accordingly, this Court should grant the Debtors an extension of time to comply with the UST Requirements to the extent that such requirements conflict with the Debtors' existing practices under the Cash Management System or any action taken by the Debtors in accordance with any order granting this Motion or any other order entered in the Chapter 11 Cases.

44. Moreover, compelling the Debtors to immediately alter their current cash management practices and to modify the Cash Management System to comply with the UST

Requirements would risk severe disruption to the Debtors' businesses and jeopardize the Debtors' ability to maximize value for all parties in interest. *Cf. In re Gaylord Container Corp.*, 1993 WL 188671, at *3, 13 (E.D. La. 1993) (adopting the bankruptcy court's findings of fact and conclusions of law, which included a finding that the banking requirements of the Office of the United States Trustee for the District of Louisiana "represent a substantial burden on any debtor and, in this case, resulted in the incurrence of extraordinary unquantifiable costs by [the debtor] associated with the confusion engendered by the implementation of new policies and procedures to comply with such rules, and due to the substantial restrictions that such rules placed on the debtor's treasury functions"). This fact alone justifies the relief that the Debtors are seeking. *See* 11 U.S.C. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.").

C. This Court Has the Authority to Permit the Debtors to Continue Their Deposit and Investment Practices

45. Section 345(a) of the Bankruptcy Code authorizes a debtor in possession to make deposits of estate money in a manner as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of the Bankruptcy Code requires debtors to obtain, from the entity with which the money is deposited, a bond in favor of the United States and secured by the undertaking of an adequate corporate surety, or "the deposit of securities of the kind specified in section 9303 of title 31." 11 U.S.C. § 345(b).[9]

[9] Strict compliance with the requirements of section 345(b) of the Bankruptcy Code would, in a case such as this, be inconsistent with section 345(a), which permits a debtor in possession to make such investments of money of the estate "as will yield the maximum reasonable net return on such money." Thus, in 1994, to avoid "needlessly

46. This Court has discretion to waive the requirements of section 345(b) of the Bankruptcy Code "for cause." 11 U.S.C. § 345(b). In *In re Service Merchandise Co., Inc.*, the court indicated that the existence of "cause" should be determined based upon the totality of the circumstances taking account of factors such as: (i) the sophistication of the debtor's business; (ii) the size of the debtor's business; (iii) the amount of investments involved; (iv) the ratings of the financial institutions at which the debtor's funds are held; (v) the complexity of the case; (vi) the safeguards in place within the debtor's own business to ensure the safety of funds; (vii) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions; (viii) the benefit to the debtor; (ix) the harm, if any, to the estate; and (x) the reasonableness of the debtor's request for relief from the section 345(b) requirements in light of the overall circumstances of the case. *See In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

47. The Debtors submit that cause exists to modify the requirements of section 345(b) of the Bankruptcy Code because the Debtors are sophisticated entities with a complex Cash Management System that relies on the Bank Accounts on a daily basis. As noted above, the Debtors' material bank accounts are held at stable financial institutions that are insured by the FDIC and, thus, the Debtors' funds in those accounts are safe (up to applicable FDIC limits). Furthermore, in light of the regular deposits to, and disbursements from, the various Bank Accounts, it would be especially disruptive, unnecessary, and wasteful to require the posting of a bond to the extent that the balance of the Bank Accounts exceed the applicable FDIC insurance limits at a given time.

handcuff[ing] larger, more sophisticated debtors," Congress amended section 345(b) of the Bankruptcy Code to provide that its strict investment requirements may be waived or modified if the Court so orders "for cause." 140 Cong. Rec. H. 10,767 (Oct. 4, 1994), 1994 WL 54773.

48. Furthermore, the Debtors have determined in their business judgment that it is prudent and desirable to continue to utilize the Investment Account in the ordinary course of business. The Debtors believe that "cause" exists to continue to allow the Debtors to invest in the Investment Accounts. *First*, the Investment Policy is structured with the objective to protect the Debtors' cash. The Debtors' surplus cash is only invested in high-credit-quality prime funds and/or government money market funds in a manner consistent with general corporate cash management practices. *Second*, it is likely impossible for the Debtors to bond their Investment Policy without incurring considerable costs to the detriment of the Debtors' estates and creditors. *Third*, the Investment Policy is structured so as to comport with the investment objectives of section 345(a) of the Bankruptcy Code insofar as they are prudent and have a primary goal of protecting principal and a secondary goal of maximizing yield and liquidity. *Fourth*, the Debtors achieve significant risk reduction by maintaining the Investment Account at a large and sophisticated financial institution. *See In re Serv. Merch. Co.*, 240 B.R. at 894 (noting that some of the factors to consider in determining whether cause exists "for relief from the strictures of § 345(b)" are whether benefits to the debtors outweigh the harm, if any, to the estate and the bank ratings of the financial institutions where the debtor in possession funds are held). *Fifth*, the Investment Account is a controlled account that holds a portion of the cash collateral for the Debtors' revolving credit facility. It is intended to be (and, indeed, is) a fundamental part of the collateral package, and any change in circumstances or transition to an alternative arrangement would fundamentally alter the collateral package currently securing the Debtors' funded debt obligations.

49. Nonetheless, the Debtors propose to engage with the U.S. Trustee to determine what modifications, if any, to the Bank Accounts and Cash Management System would be

appropriate under the circumstances. Accordingly, the Debtors request an initial 60-day extension (without prejudice to their rights to request additional extensions) to come into compliance with the requirements of section 345(b) of the Bankruptcy Code or to make other arrangements that would be acceptable to the U.S. Trustee.

50. In light of the above, the Debtors respectfully request that this Court (i) authorize the Debtors to continue to make deposits in accordance with the Deposit and Investment Practices, and (ii) grant an extension of time to comply with the deposit and investment requirements of section 345 of the Bankruptcy Code, to the extent that such requirements are inconsistent with the Deposit or Investment Practices. The Debtors submit that the circumstances of the Chapter 11 Cases warrant such relief.

D. The Bankruptcy Code Permits the Debtors to Continue to Engage in the Intercompany Transactions and Permits this Court to Accord Administrative Expense Status to Certain Postpetition Intercompany Claims

51. As noted above, the Debtors routinely engaged in the Intercompany Transactions prior to the Petition Date in the ordinary course of business. Thus, the Debtors respectfully submit that court approval of these transactions is not required pursuant to section 363(c)(1) of the Bankruptcy Code. Nevertheless, out of an abundance of caution, the Debtors seek court approval of the relief requested herein, in the event this Court finds that the Intercompany Transactions are outside the ordinary course of business.

52. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor-in-possession to use property of the estate other than in the ordinary course of business after notice and a hearing. Courts in the Fifth Circuit have granted a debtor's request to use property of the estate outside of the ordinary course of business pursuant to Section 363(b) of the Bankruptcy Code upon a finding that such use is supported by sound business reasons. *See, e.g., In re BNP Petrol. Corp.*, 642 F.

App'x 429, 434-35 (5th Cir. 2016) (citing *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.")). In the event an order permitting the Debtors to continue to engage in the Intercompany Transactions is necessary, the Debtors believe that their business judgment to continue the Intercompany Transactions is sound because, among other reasons discussed herein, the Intercompany Transactions reduce the administrative costs incurred by the Debtors, facilitate the satisfaction of the Debtors' obligations, and are integral to the uninterrupted continuation of the Debtors' operations. If the Debtors are unable to continue entering into the Intercompany Transactions on a postpetition basis they will lose critical administrative and operational functions, which would significantly and detrimentally affect their ability to operate on an uninterrupted basis going forward. Thus, the Debtors submit that continuation of the Intercompany Transactions is in the best interests of the Debtors' estates and the Debtors' creditors.

53. In order to ensure that each individual Debtor will not, at the expense of its respective creditors, fund the operations of another entity, the Debtors also seek authority, pursuant to sections 503(b) and 507(a) of the Bankruptcy Code, to afford administrative expense status on account of the postpetition Intercompany Claims between and among the Debtors resulting from the operation of the Cash Management System and/or the Intercompany Transactions; provided, that Intercompany Claims shall remain junior to the DIP Superpriority Claims granted in favor of the DIP Agents, on their own behalf and on behalf of the DIP Secured Parties, under the DIP

Facilities (each as defined in the DIP Orders[10]). If postpetition Intercompany Claims between each respective Debtor are accorded administrative expense status, each Debtor will continue to bear the ultimate repayment responsibility for its respective obligations.

E. This Court Has the Authority to Permit the Debtors to Continue the Fuel Card Program and Pay Prepetition Amounts Related Thereto

54. The Debtors submit that the continuation of the Fuel Card Program and the payment of prepetition amounts related thereto should be authorized under section 363(b) of the Bankruptcy Code because the Debtors have a valid business justification for seeking such relief.

55. In addition, under section 1107(a) of the Bankruptcy Code, a debtor in possession has, among other things, the "implied duty of the debtor in possession to 'protect and preserve the estate, including an operating business' going-concern value.'" *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 369 (Bankr. S.D. Tex. 2000) (noting that courts authorize debtors to pay, outside of a plan, prepetition claims from "business transactions which are at once individually minute but collectively immense and critical to the survival of the business of the debtor.").

56. Moreover, under section 105(a) of the Bankruptcy Code, "the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code." 11 U.S.C. § 105(a); *In re CoServ, L.L.C.*, 273 B.R. at 497 (finding that sections 105 and 1107 of the Bankruptcy Code provide the authority for a debtor in possession to pay prepetition claims); *In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2003) (noting that non-payment of prepetition claims may seriously damage a debtor's business). The above-

[10] The "**DIP Orders**" means, collectively, any order approving a postpetition financing facility or any order regarding the use of cash collateral approved by this Court in these Chapter 11 Cases.

referenced sections of the Bankruptcy Code therefore authorize the postpetition payment of prepetition claims when the payments are critical to preserving the going-concern value of the debtor's estate, as is the case here. *See, e.g.*, *In re CoServ, L.L.C.*, 273 B.R. at 497 ("[I]t is only logical that the bankruptcy court be able to use [s]ection 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.").

57. Finally, section 363(c)(1) of the Bankruptcy Code also authorizes the debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." The Debtors' employees use the Fuel Card Program on a regular basis to help operate the Debtors' businesses, such that payment of the credit card fees incurred pursuant to the Fuel Card Program are ordinary course transactions within the meaning of section 363(c)(1) of the Bankruptcy Code. Nonetheless, out of an abundance of caution, the Debtors are seeking express authority to continue the Fuel Card Program and pay any prepetition amounts related thereto, subject to the terms and conditions thereof.

58. If the Fuel Card Program were discontinued, the Debtors would no longer be able to directly fund the purchase of fuel for vehicles used to support their operations. The Debtors would either be unable to purchase the fuel necessary to transport their goods and continue their operations, or would be dependent on employees being willing and able to carry such costs until the Debtors are able to reimburse such employees for those costs. Therefore, the Debtors believe that the Fuel Card Program is necessary to avoid disruption to their daily operations and request that the Court authorize the Debtors to continue the Fuel Card Program in the ordinary course of business, subject to the terms and conditions thereof.

F. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers

59. The Debtors have sufficient funds to pay the Bank Fees and costs related to the Fuel Card Program described herein in the ordinary course of business by virtue of cash on hand, expected cash flows from ongoing business operations, and the proceeds of the DIP Facilities. In addition, under the Debtors' Cash Management System, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of Bank Fees or the Fuel Card Program. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that the Court should authorize the Banks, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein, solely to the extent that the Debtors have sufficient funds on deposit at such Banks to cover such payments, and such Banks may rely on the representations of the Debtors without any duty of further inquiry and without liability for following the Debtors' instructions.

EMERGENCY CONSIDERATION

60. Pursuant to Bankruptcy Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (21) days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." The Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and the success of the Chapter 11 Cases. As discussed in detail above and in the First Day Declaration, immediate and irreparable harm would result if the relief requested herein is not granted. Continuity of the Cash Management System is critical to the Debtors' ongoing business operations. To require the Debtors to adopt a new cash management system at this early and

critical stage would be expensive, impose needless administrative burdens, and cause undue disruption. Any disruption in the collection of funds as currently implemented would adversely (and perhaps irreparably) affect the Debtors' ability to maximize estate value. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 as well as the requirements of Bankruptcy Local Rule 9013-1(i) and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

BANKRUPTCY RULE 6004 SHOULD BE WAIVED

61. To the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors request in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

62. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant

to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the proposed Order once entered. Nothing contained in the Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

NOTICE

63. Notice of this Motion will be given to: (i) the United States Trustee for the Southern District of Texas; (ii) the parties included on the Debtors' consolidated list of the holders of the 30 largest unsecured claims against the Debtors; (iii) Simpson Thacher & Bartlett LLP, as counsel to the agent for the Debtors' prepetition and postpetition secured asset-based revolving credit facility; (iv) U.S. Bank National Association, as indenture trustee for the Debtors' prepetition notes; (v) counsel to that certain ad hoc group of holders of prepetition senior notes (the "**Ad Hoc Group**") (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP and (b) Porter Hedges LLP; (vi) Shipman & Goodwin LLP as counsel to the agent under the Debtors' postpetition term loan facility; (vii) the United States Attorney's Office for the Southern District of Texas; (viii) the Banks; (ix) the Internal Revenue Service; (x) the Securities and Exchange Commission; (xi) the state attorneys general for states in which the Debtors conduct business; and (xii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required or needed under the circumstances.

64. A copy of this Motion is available on (i) the Court's website: www.txs.uscourts.gov, and (ii) the website maintained by the Debtors' proposed Claims and Noticing Agent, Kurtzman Carson Consultants LLC, at www.kccllc.net/hicrush.

WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Signed: July 12, 2020
Houston, Texas

Respectfully Submitted,

/s/ Timothy A. ("Tad") Davidson II

Timothy A. ("Tad") Davidson II (TX Bar No. 24012503)
Ashley L. Harper (TX Bar No. 24065272)
HUNTON ANDREWS KURTH LLP
600 Travis Street, Suite 4200
Houston, Texas 77002
Tel: 713-220-4200
Fax: 713-220-4285
Email: taddavidson@HuntonAK.com
ashleyharper@HuntonAK.com

-and-

George A. Davis (*pro hac vice* admission pending)
Keith A. Simon (*pro hac vice* admission pending)
David A. Hammerman (*pro hac vice* admission pending)
Annemarie V. Reilly (*pro hac vice* admission pending)
Hugh K. Murtagh (*pro hac vice* admission pending)
LATHAM & WATKINS LLP
885 Third Avenue
New York, New York 10022
Tel: 212-906-1200
Fax: 212-751-4864
Email: george.davis@lw.com
keith.simon@lw.com
david.hammerman@lw.com
annemarie.reilly@lw.com
hugh.murtagh@lw.com

Proposed Counsel for the Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

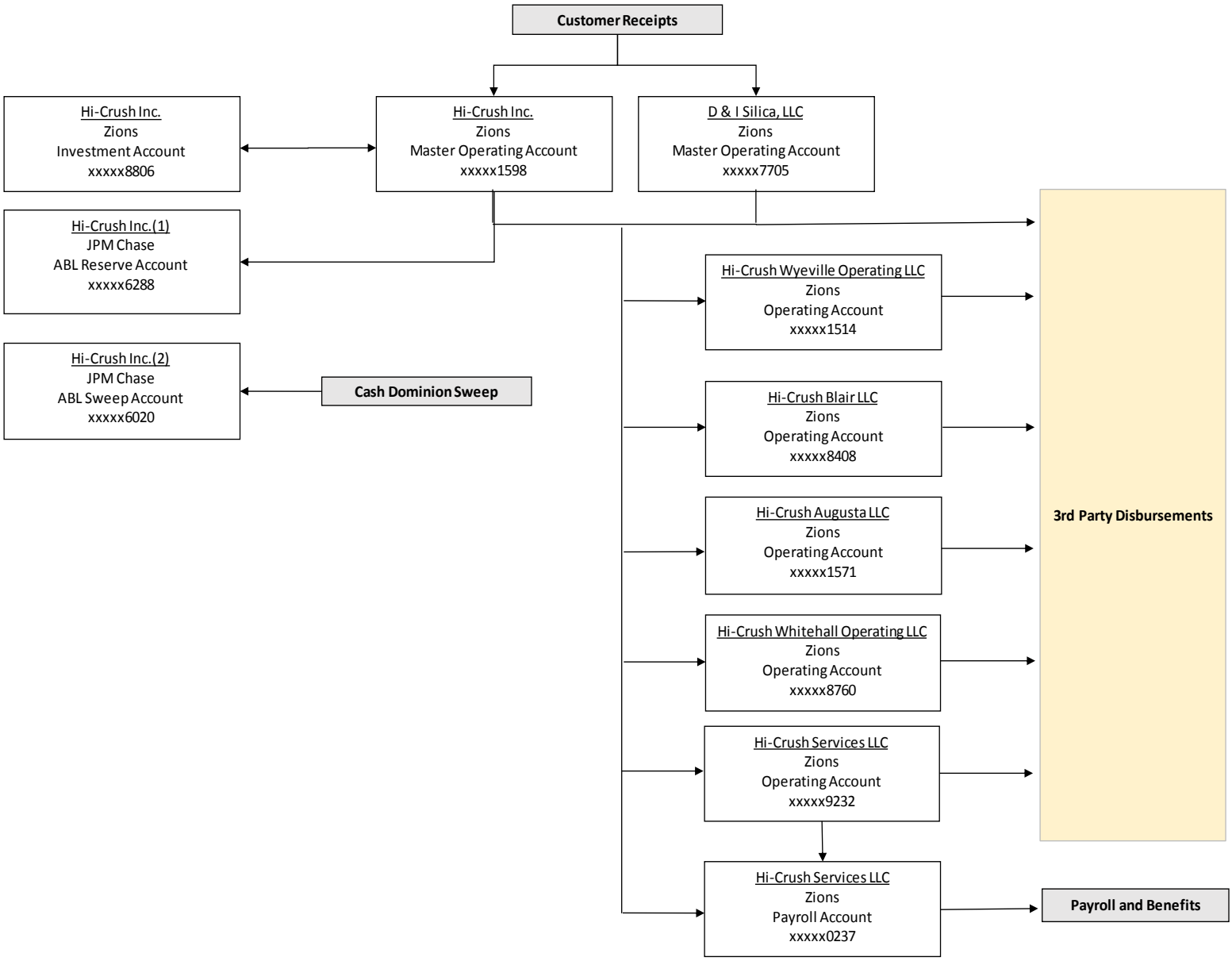
I certify that on July 12, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II
Timothy A. ("Tad") Davidson II

EXHIBIT A

Diagram of Cash Management System

HI-CRUSH – CASH SCHEMATIC



[1] The ABL Reserve Account can be funded by any of the Debtors' bank accounts.

[2] In the event cash dominion is triggered (as defined under the ABL Credit Agreement), certain bank accounts are subject to a cash sweep into account xxxx6020. The bank accounts subject to the sweep are: xxxx1598, xxxx7705, xxxx1514, xxxx8408, xxxxx1571, xxxx8760 and xxxx8806.

EXHIBIT B

Schedule of Bank Accounts

Account Name	Debtor Account Holder	Bank	Account Number	Account Type
Master Operating Accounts				
D & I Silica Master Operating Account	D & I Silica, LLC	Zions	xxxxx7705	Master Operating Account
Hi-Crush Master Operating Account	Hi-Crush Inc.	Zions	xxxxx1598	Master Operating Account
Ancillary Operating Accounts				
Hi-Crush Services Operating Account	Hi-Crush Services LLC	Zions	xxxxx9232	Operating Account
Hi-Crush Wyeville Operating Account	Hi-Crush Wyeville Operating LLC	Zions	xxxxx1514	Operating Account
Hi-Crush Augusta Operating Account	Hi-Crush Augusta LLC	Zions	xxxxx1571	Operating Account
Hi-Crush Blair Operating Account	Hi-Crush Blair LLC	Zions	xxxxx8408	Operating Account
Hi-Crush Whitehall Operating Account	Hi-Crush Whitehall Operating LLC	Zions	xxxxx8760	Operating Account

Account Name	Debtor Account Holder	Bank	Account Number	Account Type
Payroll Account				
Payroll Account	Hi-Crush Services LLC	Zions	xxxxx0237	Payroll Account
Investment Account				
Investment Account	Hi-Crush Inc.	Zions	xxxxx8806	Investment Account
ABL Sweep Account				
ABL Sweep Account	Hi-Crush Inc.	JPM Chase	xxxxx6020	ABL Sweep Account
ABL Reserve Account				
ABL Reserve Account	Hi-Crush Inc.	JPM Chase	xxxxx6288	ABL Reserve Account

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	:	Chapter 11
HI-CRUSH INC., *et al.*,[1]	:	Case No. 20-33495 (DRJ)
Debtors.	:	(Jointly Administered)

ORDER (I) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (II) AUTHORIZING CONTINUATION OF EXISTING DEPOSIT AND INVESTMENT PRACTICES, (III) APPROVING THE CONTINUATION OF INTERCOMPANY TRANSACTIONS, AND (IV) GRANTING ADMINISTRATIVE EXPENSE STATUS TO CERTAIN POSTPETITION INTERCOMPANY CLAIMS

[Relates to Motion at Docket No. ____]

Upon the motion (the "**Motion**")[2] of the Debtors for entry of an Order (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of their existing bank accounts, checks, and business forms; (ii) granting the Debtors an extension of time to comply with certain bank account and related requirements of the Office of the United States Trustee for the Southern District of Texas (the "**U.S. Trustee**") to the extent that such requirements are inconsistent with the Debtors' practices under their existing

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors' address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

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

cash management system or other actions described in the Motion or herein; (iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit and investment practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code; (iv) approving the continuation of the Intercompany Transactions; (v) authorizing the Debtors to open and close bank accounts; (vi) according administrative expense status to postpetition intercompany claims arising from transactions among the Debtors; and (vi) granting related relief; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and all objections, if any, to entry of this Order having been withdrawn, resolved, or overruled; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in the Order, it is hereby

ORDERED THAT:

1. The Debtors are authorized, but not directed, to continue to use their current existing Cash Management System and shall maintain through the use thereof detailed records reflecting all transfers of funds, all under the terms and conditions provided for by, and in accordance with, the existing cash management agreements, except as modified by this Order. In connection with the ongoing utilization of the Cash Management System, the Debtors shall maintain accurate and detailed records with respect to all transfers, including with respect to

postpetition Intercompany Claims and Intercompany Transactions, so that all transactions can be readily ascertained, traced, properly recorded, and distinguished between prepetition and postpetition transactions. The Debtors shall make such records available upon request by the U.S. Trustee and any statutory committee appointed in these Chapter 11 Cases.

2. The Debtors are authorized, but not directed, to continue to engage in Intercompany Transactions solely between Debtors on a postpetition basis and to make payments to, or set off amounts owed from, the applicable Debtor entity on account of postpetition Intercompany Claims, in a manner consistent with their practices in effect as of the Petition Date in the ordinary course of business or as necessary to execute the Cash Management System.

3. The Debtors are authorized to (i) continue to use the Bank Accounts at the Banks in existence as of the Petition Date in the same manner and with the same account numbers, styles, and document forms as are currently employed and subject to the existing cash management agreements with the Banks, including, without limitation, those Bank Accounts identified on Exhibit B of the Motion, consistent with historical practice, and need not comply with the UST Requirement to open new bank accounts designated as debtor-in-possession accounts; (ii) deposit funds in and withdraw funds from the Bank Accounts in the ordinary course by all usual means, including checks, wire transfers, drafts, and electronic funds transfers or other items presented, issued, or drawn on the Bank Accounts; (iii) pay ordinary course Bank Fees in connection with the Bank Accounts (in accordance with the existing cash management agreements), including any Bank Fees arising prior to the Petition Date; (iv) perform their obligations under the documents and agreements governing the Bank Accounts; and (v) for all purposes, treat the Bank Accounts as accounts of the Debtors in their capacities as debtors in possession. For the avoidance of doubt, any other legal rights afforded to the Banks under applicable law shall be preserved.

4. The Banks and the Debtors' financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, (i) to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic funds transfers drawn on the Bank Accounts relating to payments permitted by an order of this Court, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date; provided that sufficient funds are available in the applicable accounts to make the payments, and (ii) to debit the Debtors' Bank Accounts in the ordinary course of business for all undisputed prepetition Bank Fees outstanding as of the date hereof, if any.

5. The Debtors are authorized to continue the Fuel Card Program, including payment of obligations thereunder, whether arising before, on, or after the Petition Date, in the ordinary course of business and consistent with prepetition practices.

6. In each instance in which the Debtors hold Bank Accounts at banks that are party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen days after entry of this Order the Debtors shall (i) contact the Banks, (ii) provide the Banks with each of the Debtors' employer identification numbers, and (iii) identify their bank accounts held as being held by a debtor in possession in a bankruptcy case and provide the main case number. In each instance in which the Debtors hold Bank Accounts at banks that are not a party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good faith efforts to cause the banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty days of the date of this Order, to the extent such Bank is a domestic bank. The U.S. Trustee's rights to seek further relief from this Court in the event that the aforementioned banks are unwilling

to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

7. The Debtors are authorized to continue to use their existing checks, correspondence, and other business forms without alteration or change and without the designation "Debtor in Possession" or a bankruptcy case number imprinted upon them. Notwithstanding the foregoing, once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor in Possession" and the main bankruptcy case number on all checks; *provided* that, with respect to checks that the Debtors or their agents print themselves, the Debtors shall begin printing the "Debtor in Possession" legend and the main case number on such items within ten days of the date of entry of this Order.

8. The Debtors are authorized to continue to utilize all third-party providers necessary for the administration of their Cash Management System. In addition, the Debtors are authorized, but not directed, to pay all postpetition amounts due to such third party providers.

9. Effective as of the Petition Date, and subject to the terms of this Order, all Banks at which the Bank Accounts are maintained are authorized to continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions and setoffs for Bank Fees, and all other rights and remedies afforded under any applicable cash management agreements) and consistent with and subject to the cash management agreements, and, when requested by the Debtors in their sole discretion, to honor any and all checks, drafts, wires, electronic funds transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date; *provided, however*, that unless otherwise ordered by the Court and directed by the Debtors, no checks, drafts, electronic

funds transfers (excluding any electronic funds transfer that the Banks are obligated to settle), or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising prior to the Petition Date shall be honored. In no event shall the Banks be required to honor overdrafts or to pay any check, wire, electronic funds transfers, or other debit against the Bank Accounts that is drawn against uncollected funds or, subject to the below, that was issued prior to the Petition Date. Notwithstanding the foregoing, the Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request, funds transfer, or other transaction (including foreign currency exchanges, transactions or trades) as being approved by order of the Court and have no duty to inquire as to whether such payments are authorized by an order of this Court.

10. If any Bank honors a prepetition check, wire or item drawn on any account that is the subject of this Order (i) at the direction of the Debtors to honor such prepetition check, wire or item, (ii) in the good faith belief that the Court has authorized such prepetition check, wire or item to be honored, or (iii) as a result of a good faith error, such Bank shall not be deemed liable to any party on account of such prepetition check, wire or item being honored postpetition or otherwise in violation of this Order.

11. The Debtors and the Banks are authorized, without further order of this Court and consistent with the existing cash management agreements, to agree to and implement such non-material, reasonable changes consistent with this Order to the Cash Management System as the Debtors and the Banks may deem necessary or appropriate, including, without limitation, the opening and closing of Bank Accounts. Any of the Banks are authorized to (a) honor the Debtors' directions with respect to the opening and closing of any Bank Account and (b) accept and hold,

or invest, the Debtors' funds in accordance with the Debtors' instructions, provided that the Banks shall not have any liability to any party for relying on such representations.

12. Subject to the terms and conditions of any DIP Orders, and in consultation with the lenders of and administrative agents for any postpetition financing facilities approved thereunder, the Debtors may close any of the Bank Accounts (subject to the terms of the existing cash management agreement) or open any additional bank accounts following the Petition Date (the "**New Accounts**") wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, the Debtors shall open such New Account(s) only at banks that have executed a Uniform Depository Agreement with the U.S. Trustee for the Southern District of Texas, or at such banks that are willing to immediately execute such an agreement, and any New Account that the Debtors open shall be (i) at a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC or the Federal Savings and Loan Insurance Corporation, (ii) designated a "Debtor in Possession" account by the relevant bank, and (iii) at a bank that agrees to be bound by the terms of this Order. The New Accounts are deemed to be Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Order. The Banks are authorized (but not required, except as set forth in the cash management agreements between the Bank and the Debtors) to honor the Debtors' requests to open or close (as the case may be) such Bank Account(s) or New Account(s). In the event that the Debtors open or close any Bank Account(s) or New Account(s), such opening or closing shall be timely indicated on the Debtors' monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee, counsel to the Ad Hoc Group, and counsel to any statutory committee appointed in the Chapter 11 Cases within ten business days after the opening or closing of any such account.

13. The Debtors are authorized to deposit and invest funds in accordance with existing practices under the Cash Management System as in effect as of the Petition Date, subject to any reasonable non-material changes, consistent with this Order, to the Cash Management System that the Debtors may implement. To the extent such practices or Bank Accounts do not comply with the requirements of section 345(b) of the Bankruptcy Code, the Debtors are hereby granted an extension of time for a period of 60 days from the Petition Date (*i.e.* until September 10, 2020) (the "**Extension Period**") within which to either come into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed with the U.S. Trustee. Such extension is without prejudice to the Debtors' right to obtain a further extension of the Extension Period by entering into a written stipulation with the U.S. Trustee and filing such stipulation on the Court's docket without the need for further Court order.

14. Despite the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate any quarterly fees due under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of who makes the disbursements.

15. The Debtors shall not be required to establish separate accounts for cash collateral and/or tax payments except as otherwise required by any applicable agreements between the Debtors and the Banks.

16. All Intercompany Claims arising after the Petition Date owed by a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under sections 503(b) and 507(a) of the Bankruptcy Code; provided, that Intercompany Claims shall remain junior to the Superpriority Claims granted in favor of the DIP Agents, on their own behalf and on behalf of the DIP Secured Parties, under the DIP Facilities (each as defined in the DIP Orders).

17. Nothing contained in the Motion or this Order shall be construed to (i) create, alter, or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date, or (ii) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

18. Nothing in the Motion or this Order, or the Debtors' payment of any claims pursuant to this Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Order. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

19. Notwithstanding anything to the contrary contained herein, (i) any payment made or to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any order approving a postpetition financing facility or any order regarding the use of cash collateral approved by this Court in these Chapter 11 Cases (collectively, the "**DIP Orders**"), and (ii) to the extent there is any inconsistency between the terms of the DIP Orders and any action taken or proposed to be taken hereunder, the terms of the DIP Orders shall control. For the avoidance of doubt, the Debtors are not authorized to make any payments pursuant to this Order except as permitted by the Budget (as defined in the DIP Orders).

20. The contents of the Motion satisfy the requirements of Bankruptcy Rules 6003(b) and 6004(a).

21. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

22. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

23. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed _____, 2020

_____
DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE