

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

----- X  
In re: : Chapter 11  
: :  
HI-CRUSH INC., *et al.*,<sup>1</sup> : Case No. 20-33495 (DRJ)  
: :  
Debtors. : (Jointly Administered)  
: :  
----- X

**DEBTORS' EMERGENCY MOTION  
FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS  
TO (I) PAY THEIR PREPETITION INSURANCE OBLIGATIONS, (II) PAY THEIR  
PREPETITION BONDING OBLIGATIONS, (III) MAINTAIN THEIR POSTPETITION  
INSURANCE COVERAGE, (IV) MAINTAIN THEIR BONDING PROGRAM,  
AND (V) MAINTAIN POSTPETITION FINANCING OF INSURANCE PREMIUMS**

**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.**

<sup>1</sup> 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.



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](http://www.join.me). Persons connecting by mobile device will need to download the free [join.me](http://www.join.me) application.

Once connected to [www.join.me](http://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 (this "**Motion**"):

### **RELIEF REQUESTED**

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

- (i) continue to (a) administer insurance coverage currently in effect, as set forth below, and pay all amounts on account of prepetition premiums, premium financing payments, taxes, charges, fees, and other obligations owed under or with respect

thereto (including any fees (such fees, the “**Insurance Brokers’ Fees**”) due to the Debtors’ insurance brokers, Lockton Companies, LLC (“**Lockton**”), and Alliant Insurance Services, Inc. (“**Alliant**” and, together with Lockton, and their affiliates, in such capacities, the “**Insurance Brokers**”) (collectively, the “**Prepetition Insurance Obligations**”), and (b) pay amounts on account of any obligations owed to issuers of surety bonds on the Debtors’ behalf that accrued but remain unpaid as of the Petition Date (as defined below), and any fees and other obligations associated therewith (including any fees (such fees, the “**Surety Broker’s Fees**” and, together with the Insurance Brokers’ Fees, the “**Brokers’ Fees**”) due to Alliant, the Debtors’ surety bond broker (in such capacity, the “**Surety Broker**” and, together with the Insurance Brokers, the “**Brokers**”) (collectively, the “**Prepetition Bonding Obligations**”), to the extent the Debtors determine in their discretion that such payments are necessary or appropriate;

- (ii) in the ordinary course of business, pay all postpetition premiums, administrative fees, deductibles, and other obligations (including the Brokers’ Fees) relating to (a) the insurance coverage and related programs, and any other additional, revised, or supplemental insurance policies or programs obtained by the Debtors (the “**Postpetition Insurance Obligations**” and, together with the Prepetition Insurance Obligations, the “**Insurance Obligations**”) and (b) the Debtors’ surety bond program (the “**Postpetition Bonding Obligations**” and, together with the Prepetition Bonding Obligations, the “**Bonding Obligations**”), as such payments become due;
- (iii) revise, extend, supplement, change, terminate and/or replace the Debtors’ insurance coverage, or purchase new, supplemental, or replacement surety bonds (such bonds, together with the surety bonds outstanding as of the Petition Date, the “**Bonding Program**”) as needed in the ordinary course of business; and
- (iv) maintain or renew current, or enter into new, postpetition financing arrangements with respect to insurance premiums.

2. The Debtors seek authority under this Motion to make payments on account of the Insurance Obligations and the Bonding Obligations, whether prepetition or postpetition, as they come due in the ordinary course of business.

3. Although the Debtors do not believe Court approval is required to maintain their existing Insurance Policies and Bonding Program or to amend, extend, or renew the Insurance Policies or the Bonding Program in the ordinary course of business, or to terminate and subsequently initiate new Insurance Policies or Bonding Programs, out of an abundance of caution, the Debtors request entry of the proposed Order authorizing them to take such actions and to pay

their Insurance Obligations and their Bonding Obligations where necessary to maintain their Insurance Policies and Bonding Program.

### **JURISDICTION AND VENUE**

4. 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.

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

6. The bases for the relief requested herein are sections 105(a), 362(d), 363(b), 363(c), and 364(c) 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**”), Rules 4002-1 and 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**

7. 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**”),<sup>2</sup> filed contemporaneously herewith and which is fully incorporated herein by reference.

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

9. 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’ Insurance Obligations**

10. In the ordinary course of business, the Debtors maintain certain insurance policies that are administered by multiple third-party insurance carriers (the “**Insurance Carriers**”), which provide coverage for, among other things, general liability, commercial automobile liability, commercial property liability, employment practices liability and fiduciary liability, umbrella liability, excess liability, contractors risk, directors’ and officers’ liability, workers compensation,<sup>3</sup> inland marine, cyber liability and professional liability (collectively, the “**Insurance Policies**”).

A detailed list of the Insurance Policies under which the Debtors are currently covered is attached

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The Debtors have separately sought authorization to honor their obligations under their workers’ compensation programs (including making prepetition payments associated with insurance premiums) as part of the contemporaneously filed *Debtors’ Emergency Motion for Entry of an Order (I) Authorizing (A) Payment of Certain Prepetition Workforce Obligations, and (B) Continuation of Workforce Programs on Postpetition Basis, (II) Authorizing Payment of Payroll-Related 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*. The Debtors, however, have additionally included hereunder reference to workers’ compensation insurance and the attendant premiums associated with such coverage out of an abundance of caution.

hereto as Exhibit A. The Insurance Policies are essential to the preservation of the Debtors' businesses, property, and assets, and, in some cases, such coverage is required by various federal and state laws and regulations, as well as the terms of the Debtors' various commercial contracts. The Insurance Policies provide coverage that is typical in scope and amount for businesses within the Debtors' industry.<sup>4</sup>

11. The total amount paid in annual premiums and payments associated with all of the Insurance Policies is approximately \$6.14 million.<sup>5</sup> The Debtors' Insurance Policies are annual policies that renew at various times throughout each year. The Debtors' commercial automobile, general liability, workers compensation, umbrella liability, excess liability, commercial property, inland marine, cyber liability and professional liability policies expire on July 1, 2021. The Debtors' directors' and officers', employment practices liability, fiduciary liability, and contractors' risk liability policies expire on August 15, 2020.

12. Because it is often not economically advantageous for the Debtors to pay their insurance premiums on a lump-sum basis, and in an effort to manage cash flows most efficiently, the Debtors have financed the premiums for the Debtors' primary general, commercial automobile liability, inland marine, commercial property, umbrella liability, workers compensation, cyber liability, professional liability and excess liability (the "**First Insurance Financed Policies**") pursuant to a premium financing agreement (the "**First Insurance PFA**") between the Debtors and First Insurance Funding, A Division of Lake Forest Bank & Trust Company, N.A. ("**First**

---

<sup>4</sup> On April 20, 2020, the Debtors entered into six directors and officers runoff policies (the "**Runoff Policies**"). All of the premiums related to the Runoff Policies were paid in advance of the Petition Date.

<sup>5</sup> Debtors Hi-Crush Inc. ("**Hi-Crush**") and Hi-Crush Services LLC pay the premiums and other payments on behalf of all of the Debtors, which payments are recorded in the books and records of the Debtors.

**Insurance**)<sup>6</sup>. Under the First Insurance PFA, the Debtors will make an initial down payment of \$1.4 million on or before August 1, 2020, and will pay the remaining premium balance of approximately \$2.1 million in nine monthly payments of approximately \$240,000, the first of which is due together with the down payment on August 1, 2020. Each of the monthly payments includes interest at a rate of 6.540 % per annum. Accordingly, as of the Petition Date, there is approximately \$3.5 million outstanding under the First Insurance PFA.

13. The Debtors have also financed the premiums for the Debtors' directors' and officer's, employment practices liability and fiduciary liability, and contractors' risk liability (the "**TPF Financed Policies**") and together with the First Insurance Financed Policies, the "**Financed Policies**") pursuant to a premium financing agreement (the "**TPF PFA**" and together with the First Insurance PFA, the "**PFA**s") between the Debtors and Talbot Premium Financing, LLC ("**TPF**" and together with First Insurance, the "**Premium Financiers**" and each a "**Premium Financier**").<sup>7</sup> Under the TPF PFA, the Debtors make eleven monthly payments of approximately \$47,000, each of which includes interest at a rate of 6.29% per annum. There is one more scheduled payment to be made under the TPF PFA on July 15, 2020, in the amount of approximately \$47,000.

14. Alliant and Lockton serve as the Debtors' insurance brokers and manage the Debtors' relationships with the Insurance Carriers. Among other things, the Insurance Brokers assist the Debtors in selecting the appropriate carriers (subject to the Debtors' approval) and represent the Debtors in negotiations with the Insurance Carriers. The Insurance Brokers have allowed the Debtors to obtain the insurance coverage necessary to operate their businesses in a reasonable and prudent manner, and to realize savings in the procurement of such policies. The

---

<sup>6</sup> The First Insurance PFA is attached hereto as Exhibit C.

<sup>7</sup> The TPF PFA is attached hereto as Exhibit D.

Insurance Brokers' Fees are included in the premium payments the Debtors make under the Insurance Policies. In 2019, the Debtors paid approximately \$740,000 in the aggregate to the Insurance Brokers and Surety Brokers on account of Broker's Fees in connection with the Insurance Policies and the Bonding Program, described below.

15. Maintenance of insurance coverage under the various Insurance Policies on an uninterrupted basis is essential to the continued operation of the Debtors' businesses and is required under the United States Trustee's Operating Guidelines for Chapter 11 Cases (the "**Operating Guidelines**"), the federal laws and regulations applicable to the Debtors' businesses, the laws of the various states in which the Debtors operate, and the Debtors' various contractual commitments. Thus, the Debtors submit that they should be authorized to continue to pay premiums, taxes, charges, fees, and other obligations owed under or with respect to the Insurance Policies or the financing of the same under the PFAs as such obligations come due in the ordinary course of the Debtors' businesses.

16. The Debtors' maintenance of their relationships with the Insurance Carriers, the Insurance Brokers, and the Premium Financiers is critical to ensuring the continued availability of insurance coverage and reasonable pricing of such coverage for future policy periods. Accordingly the Debtors request authorization to pay any Prepetition Insurance Obligations to the Insurance Carriers, the Insurance Brokers, or the Premium Financiers, as applicable, to the extent that the Debtors determine, in their sole discretion, that such payment is necessary to avoid cancellation, default, alteration, assignment, attachment, lapse, or any form of impairment to the coverage, benefits, or proceeds provided under the Insurance Policies, and to maintain good relationships with the various Insurance Carriers, the Insurance Brokers, and the Premium Financiers. The



Debtors additionally request, out of an abundance of caution, authority to renew or replace the Insurance Policies as necessary in the ordinary course.

**B. The Debtors' Bonding Program**

17. In the ordinary course of business, the Debtors are required by certain applicable statutes, rules, and regulations to participate in the Bonding Program, pursuant to which the Debtors provide surety bonds to certain third parties to secure the Debtors' payment or performance of certain obligations, often to governmental units or other public agencies.<sup>8</sup> The Bonding Program generally covers reclamation, permits and taxes, conservation and environmental obligations, and other miscellaneous items (collectively, the "**Covered Obligations**"). A detailed list of the surety bonds that are currently maintained for the benefit of the Debtors is attached hereto as Exhibit B.<sup>9</sup> The Bonding Program provides coverage that is typical in scope and amount for businesses within the Debtors' industry.

18. The issuance of a surety bond shifts the risk of the Debtors' nonperformance or nonpayment of their obligations covered by the surety bond from the beneficiary of the surety to the surety. If the Debtors fail to pay the Covered Obligations, the applicable surety will pay the Debtors' obligations, up to a specified amount. Unlike an insurance policy, if a surety incurs a loss on a surety bond, the surety is entitled to recover the full amount of that loss from the Debtors.

19. As of the Petition Date, the Debtors' outstanding surety bonds were issued by six separate sureties: (i) Travelers Casualty and Surety Company of America (two surety bonds totaling approximately \$77,500), (ii) The Hanover Insurance Company (two surety bonds totaling approximately \$2.2 million), (iii) Westchester Fire Insurance Company (one surety bond totaling

---

<sup>8</sup> Certain of the Debtors' Surety Bonds are backed by letters of credit.

<sup>9</sup> The Debtors request authority to honor obligations and renew all surety bonds, as applicable, notwithstanding any failure of the Debtors to include a particular surety bond on Exhibit B.

approximately \$10,000), (iv) Endurance American Insurance Company (three surety bonds totaling approximately \$3.0 million), (v) Lexon Insurance Company (two surety bonds totaling approximately \$3.4 million), and (vi) The Ohio Casualty Insurance Company (one surety bond totaling approximately \$150,000) (collectively, the “**Sureties**”).

20. The premiums for the surety bonds are generally determined on an annual basis and are paid when the bonds are issued and annually upon renewal. Such premiums are approximately 1.8% of the total amount of the surety bond, which are paid to the Surety Broker, who in turn pays the Sureties. The total amount paid in annual premiums and payments associated with all of the surety bonds is approximately \$161,000. The Debtors do not believe that any amounts are currently due on account of the Prepetition Bonding Obligations.

21. Alliant serves as the Debtors’ Surety Broker and manages the Debtors’ relationships with the Sureties. Among other things, the Surety Broker assists the Debtors in selecting the appropriate Sureties (subject to the Debtors’ approval) and represents the Debtors in negotiations with the Sureties. The Surety Broker has allowed the Debtors to obtain the bonding coverage necessary to operate their businesses in a reasonable and prudent manner, and to realize savings in the procurement of such policies. The Surety Broker’s Fees are included in the premium payments the Debtors make under the Bonding Program. As noted above, in 2019, the Debtors paid approximately \$740,000 in the aggregate to the Surety Broker and Insurance Brokers on account of Broker’s Fees in connection with the Bonding Program and Insurance Policies.

22. To continue their business operations, the Debtors must be able to provide financial assurances to federal and state governments, regulatory agencies, and other third parties. This, in turn, requires the Debtors to maintain access to the existing Bonding Program, including by paying the Bonding Obligations as they come due, maintaining required letters of credit, and paying any

indemnity obligations that may arise in connection with the Bonding Program in the ordinary course of business, as well as renewing or potentially acquiring additional bonding capacity as needed in the ordinary course of their businesses, requesting releases from obsolete bonding obligations, and executing other agreements in connection with the Bonding Program.

23. The Debtors, therefore, request that they be authorized to participate in the Bonding Program in the same manner as they did prepetition and to: (i) pay any Prepetition Bonding Obligations;<sup>10</sup> (ii) continue to make all payments for Postpetition Bonding Obligations; and (iii) revise, extend, supplement, or change the Bonding Program as needed, including through the issuance of new surety bonds.

#### **APPLICABLE AUTHORITY**

**A. Payment of the Insurance Obligations and Renewal of the Insurance Policies Is Necessary to Comply with United States Trustee Requirements, the Bankruptcy Code, and the Bankruptcy Local Rules**

24. Maintenance of insurance coverage under the various Insurance Policies is essential to the continued operation of the Debtors' businesses and is required under the Operating Guidelines, the federal laws and regulations applicable to the Debtors' businesses, the laws of the various states in which the Debtors operate, and the Debtors' various contractual commitments. See Operating Guidelines Sec. 6 (requiring maintenance of appropriate insurance coverage). In addition, section 1112(b)(4)(C) of the Bankruptcy Code, a "failure to maintain appropriate insurance that poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). Further, Bankruptcy Local Rule 4002-

---

<sup>10</sup> The Debtors believe there are no outstanding Prepetition Bonding Obligations and request the instant relief out of an abundance of caution.

1 requires a debtor “to prevent the depletion of assets of the business during the proceedings.”  
BLR 4002-1.

25. The Debtors believe that the ordinary course maintenance of their necessary insurance coverage, including paying all Insurance Obligations, satisfying all postpetition commitments to the Insurance Carriers, renewing the Insurance Policies, or entering into new insurance or premium financing arrangements, without further order of the Court, is necessary and essential to the Debtors’ achievement of their chapter 11 objectives, especially where, as here, the Debtors’ failure to take all actions necessary to honor their obligations to and preserve their relationships with the Insurance Carriers could have disastrous consequences for the Debtors’ estates.

26. The employment of the Insurance Brokers is necessary for the ordinary course maintenance of the Insurance Policies in the most efficient, cost-effective manner (and has the additional benefit of positioning the Debtors to obtain the most competitive rates and high quality service from the Insurance Brokers in connection with any renewals of the Insurance Policies). Accordingly, to the extent that any amounts accrue on account of the Insurance Brokers’ Fees or other amounts owed to the Insurance Brokers, the Debtors believe that they should be authorized to continue to pay such amounts as they come due.

**B. Section 363 of the Bankruptcy Code Supports Payment of the Insurance Obligations and the Bonding Obligations**

27. To the extent that payment of any of the Insurance Obligations and the Bonding Obligations sought to be paid under this Motion would be deemed to constitute a use of property outside the ordinary course of business, a basis for authorizing payment of the amounts associated with such obligations is found under section 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may

use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). 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.”)); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) (“Section 363 of the Bankruptcy Code addresses the debtor’s use of property of the estate and incorporates a business judgment standard. . . . The business judgment standard in section 363 is flexible and encourages discretion.”). Once the debtor articulates a reasonable basis for its business decisions, “courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985).

28. The Debtors have routinely paid premiums, taxes, charges, fees, and other obligations in connection with their Insurance Policies, premium financing arrangements, and the Bonding Program, and, thus, view the payments of such obligations as ordinary course payments. To the extent the Court (or any party in interest) believes that this Court’s express authorization under section 363(b) of the Bankruptcy Code is necessary to honor the Insurance Obligations or

the Bonding Obligations, however, the Debtors' assert that sound business judgment supports the relief requested herein because the failure to pay such obligations could result in the cancellation of their Insurance Policies or their surety bonds, the Debtors' inability to obtain renewal of their Insurance Policies or their surety bonds on terms that are as competitive, and the violation of the Operating Guidelines, the various applicable federal and state laws and regulations, various contractual commitments, and the fiduciary duties of the debtors in possession. Each of these outcomes would be detrimental to the Debtors, their creditors, and their estates. Accordingly, the Debtors submit that they have satisfied the requisite standard applied to requests under section 363(b) of the Bankruptcy Code and, to the extent necessary, this Court should authorize the payment of all the Insurance Obligations and the Bonding Obligations on such basis.

**C. Section 105 of the Bankruptcy Code and the Doctrine of Necessity Support Payment of the Prepetition Insurance Obligations and the Prepetition Bonding Obligations**

29. To the extent any payments are made on account of the Prepetition Insurance Obligations and the Prepetition Bonding Obligations, such payments should be authorized pursuant to section 105(a) of the Bankruptcy Code and under the "doctrine of necessity." Section 105(a) of the Bankruptcy Code authorizes this Court "to issue any order . . . necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize the payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (recognizing the "doctrine of necessity")<sup>11</sup>; *see also In re CEI Roofing*,

---

<sup>11</sup> The Court's power to utilize the doctrine of necessity in chapter 11 cases derives from the Court's inherent equity powers and its statutory authority 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 United States Supreme Court first articulated the doctrine of necessity over a century ago, in *Miltenberger v. Loqansport, C. & Sw. Ry. Co.*, 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors and suppliers, among others, when such payments were necessary to preserve the receivership

*Inc.*, 315 B.R. 50, 56, 60–61 (Bankr. N.D. Tex. 2004) (holding that payment of certain prepetition claims under the doctrine of necessity is “based on both common sense and the express provisions of the Bankruptcy Code”); *In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2004) (authorizing the debtors to pay certain prepetition claims because “the court d[id] not wish Debtors’ businesses seriously damaged.”); *In re Equalnet Commc’ns Corp.*, 258 B.R. 368, 369 (Bankr. S.D. Tex. 2000).

30. For the reasons stated herein, and in light of the risks applicable to the Debtors’ operations and the critical need for the Debtors to protect their assets and recoverable value from such risks through, among other things, maintenance of legally-mandated insurance coverage, good relationships with the Insurance Carriers and the Brokers, as well as maintenance of the Bonding Program, payment of the Prepetition Insurance Obligations and the Prepetition Bonding Obligations is proper and in accordance with section 105(a) of the Bankruptcy Code, and necessary to the Debtors’ achievement of their chapter 11 objectives.

**D. Sections 363 and 364 of the Bankruptcy Code Support the Debtors’ Request to Maintain Postpetition Insurance Coverage, the Bonding Program, and the Premium Financing Arrangements, and Enter into New Coverage as Needed**

31. The Debtors submit that section 363(c) of the Bankruptcy Code provides statutory authority for the Debtors’ request for authorization to satisfy all of the Debtors’ postpetition commitments with respect to the Insurance Carriers, the Brokers, and the Sureties, renew the Insurance Policies, the PFAs, and surety bonds, or enter into new insurance policies, premium financing arrangements, and surety bonds in the Debtors’ reasonable and sole discretion. In pertinent part, section 363(c)(1) of the Bankruptcy Code provides that “unless the court orders

---

property and the integrity of the business in receivership. *See id.* at 309-14. The modern application of the doctrine of necessity is largely unchanged from the Court’s reasoning in *Miltenberger*. *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581-82 (3d Cir. 1981) (“[I]n order to justify payment under the ‘necessity of payment’ rule, a real and immediate threat must exist that failure to pay will place the [debtor’s] continued operation . . . in serious jeopardy.”).

otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The maintenance of the Insurance Policies, the PFAs, and the Bonding Program, and honoring of postpetition obligations arising thereunder, including undertaking renewals of the Insurance Policies and surety bonds as they expire or entering into new insurance arrangements, premium financing arrangements, or surety contracts, are each the type of ordinary course transactions contemplated by the foregoing provision. To the extent, however, that this Court (or any party in interest) believes that any such actions are not properly characterized as transactions in the ordinary course of the Debtors’ businesses, the Debtors respectfully request that this Court authorize the Debtors to take such actions pursuant to section 363(b) of the Bankruptcy Code as a reasonable exercise of their business judgment.

32. The Court may also authorize the Debtors to enter into new premium finance agreements pursuant to section 364(c)(2) of the Bankruptcy Code. Section 364(c)(2) authorizes, after notice and a hearing, a debtor in possession to obtain debt secured by a lien on property of the estate. *See* 11 U.S.C. § 364(c)(2). Under any new premium finance agreement, the counterparty would likely require that the Debtors grant a security interest in the unearned premiums under the policies being financed.

33. Section 364(c) authorizes a debtor, in the exercise of its business judgment, to incur secured debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estate. Courts grant considerable deference to a debtor’s business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re N.*



*Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving postpetition financing on an interim basis as exercise of debtors' business judgment); *see also In re General Growth Props, Inc.*, 412 B.R. 122, 125-26 (Bankr. S.D.N.Y. May 14, 2009) (granting motion for post-petition financing upon finding that (i) "no comparable credit [was] available on more favorable terms"; (ii) that the debtors needed post-petition financing "to preserve [their] assets and continue their operations"; and that the terms and conditions of the applicable financing documents had been negotiated in good faith). The Debtors believe that borrowing to maintain essential insurance coverage is in the best interests of the Debtors' estates, and, as referenced above, premium financing companies would likely require a security interest in the unearned premiums under the policies being financed. Accordingly, the Court should authorize the Debtors to renew the PFAs and/or execute new premium finance agreements post-petition under substantially similar terms.

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

34. The Debtors have sufficient funds to pay any amounts related to the Insurance Obligations and Bonding Obligations in the ordinary course of business. Under the Debtors' existing cash management system, the Debtors have made arrangements to readily identify checks or wire transfer requests relating to the Insurance Obligations and Bonding Obligations, as applicable. The Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Accordingly, the Debtors request that the Court authorize and direct all banks and financial institutions to receive, process, honor, pay, and, if necessary, reissue all prepetition and postpetition checks and fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the bank accounts used by the Debtors to satisfy their obligations

in connection with the Insurance Obligations and Bonding Obligations, upon receipt by each bank or financial institution of notice of such authorization, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Debtors additionally request that the Court authorize them to issue new postpetition checks to replace any checks that may nevertheless be dishonored and to reimburse any expenses that the Insurance Carriers, the Insurance Brokers, the Premium Financiers, the Surety Broker, or the Sureties may incur as a result of any bank's failure to honor a prepetition check.

### **EMERGENCY CONSIDERATION**

35. 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. Among other things, certain of the Insurance Carriers or Sureties may seek to terminate the Insurance Policies or Surety Bonds, respectively, which would jeopardize the Debtors' operations and endanger the Debtors' efforts to reorganize and maximize the value of their assets through the Chapter 11 Cases. 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**

36. 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**

37. 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**

38. 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 Insurance Carriers; (ix) the Sureties; (x) the Brokers; (xi) the Premium Financiers; (xii) the Internal Revenue Service; (xiii) the Securities and Exchange Commission; (xiv) the state attorneys general for states in which the Debtors conduct business; and (xv) 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.

39. A copy of this Motion is available on (i) the Court's website: [www.txs.uscourts.gov](http://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](http://www.kccllc.net/hicrush).

*[Remainder of page intentionally left blank]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the proposed 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****Policy Schedule**

<b>POLICY TYPE</b>	<b>EFFECTIVE PERIOD</b>	<b>POLICY NUMBER</b>	<b>CARRIER</b>	<b>ANNUAL PREMIUM</b>
Commercial Auto	07/01/2020 – 07/01/2021	SISIPCA08237718	Starr Indemnity & Liability	\$282,820.00
General Liability	07/01/2020 – 07/01/2021	003205403	Ironshore Specialty Insurance Company	\$392,808.00
Workers Compensation	07/01/2020 – 07/01/2021	1000001923 06	Starr Indemnity	\$398,914.00
Umbrella Liability	07/01/2020 – 07/01/2021	003205503	Ironshore Specialty Insurance Company	\$497,777.00
1 <sup>st</sup> Layer Excess Liability	07/01/2020 – 07/01/2021	EXC2276723	Great American Assurance Company	\$67,500.00
2 <sup>nd</sup> Layer Excess Liability	07/01/2020 – 07/01/2021	B0180ME2020799	Underwriters at Lloyd's	\$65,625.00
2 <sup>nd</sup> Layer Excess Liability	07/01/2020 – 07/01/2021	B0180ME2018869	Underwriters at Lloyd's	\$59,063.00
Commercial Property	07/01/2020 – 07/01/2021	NY8213047	ACE American Insurance Company (STARR Tech)	\$932,775.00
Inland Marine	07/01/2020 – 07/01/2021	ITN100065015420	Starr Indemnity & Liability	\$624,723.00
Cyber Liability	07/01/2020 – 07/01/2021	B0180PH2002736	Various Lloyd's Syndicates, London	\$61,975.00
Cyber Liability	07/01/2020 – 07/01/2021	ASJ20H009072	Various Lloyd's Syndicates	\$102,900.00
Professional Liability (Software)	07/01/2020 - 07/01/2021	EO000048283-02	Admiral Insurance Company	\$6,171.00
Directors & Officers	08/15/2019 - 08/15/2020	01-660-45-62	Illinois National Insurance Co.	\$229,800.00
D&O - \$10 xs \$10	08/15/2019 - 08/15/2020	0307-7708	Allied World Assurance Co (US)	\$121,000.00
D&O - \$10 xs \$20	08/15/2019 - 08/15/2020	ELU 163238-19	XL Specialty Insurance Company	\$78,650.00
D&O - \$10 xs \$30	08/15/2019 - 08/15/2020	DOC 0177767-05	Zurich American Insurance Co	\$53,800.00
D&O - Side A - \$10 xs \$40	08/15/2019 - 08/15/2020	01-686-21-64	National Union Fire Insurance Co	\$42,500.00
Employment Practices Liability and Fiduciary Liability	08/15/2019 - 08/15/2020	8242-2422	Federal Insurance Company	\$20,100.00
Contractors Risk	08/15/2019 - 08/15/2020	01-693-61-86	National Union Fire Insurance Co	\$3,906.00

<b>POLICY TYPE</b>	<b>EFFECTIVE PERIOD</b>	<b>POLICY NUMBER</b>	<b>CARRIER</b>	<b>ANNUAL PREMIUM</b>
D&O Runoff	08/15/2019 - 08/15/2020	01-660-45-62	Illinois National Insurance Co.	\$913,200.00
Excess D&O Runoff	08/15/2019 - 08/15/2020	0307-7708	Allied World Assurance Co (US)	\$484,000.00
Excess D&O Runoff	08/15/2019 - 08/15/2020	ELU163238-19	XL Specialty Insurance Company	\$314,600.00
Excess D&O Runoff	08/15/2019 - 08/15/2020	DOC 0177767-05	Zurich American In/surance Co	\$215,200.00
D&O - Side A Runoff	08/15/2019 - 08/15/2020	01-686-21-64	National Union Fire Insurance Co	\$170,000.00



**EXHIBIT B****Bonding Obligations**

<b>Obligee</b>	<b>Principal</b>	<b>Surety</b>	<b>Nature of Bond</b>	<b>Surety Bond Number</b>	<b>Surety Bond Amount</b>
North Dakota Office of the State Tax Commissioner	Pronghorn Logistics, LLC	Travelers Casualty & Surety Company of America	Income Tax Withholding Surety Bond	106819292	\$2,500
Carroll County, Ohio	D&I Silica, LLC	The Hanover Insurance Company	Road Improvement Bond	1940171	\$50,000
City of Blair, Wisconsin	Hi-Crush Blair LLC	The Hanover Insurance Company	Permit for non-metallic reclamation permit for reclamation plan dated 12/9/2014, Sand Mine, Site #4703769.	1940181	\$2,125,000
Texas Department of Agriculture	D&I Silica, LLC	Westchester Fire Insurance Company	Bond of Public Weigher	K09363312	\$10,000
Federal Motor Carrier Safety Administration	Pronghorn Logistics, LLC	Travelers Casualty & Surety Company of America	ICC Broker Bond (USDOT No. 3048616, Docket No. MC048739, FEIN 82-2154547) (Form BMC-84)	106833049	\$75,000
City of Blair, Wisconsin	Hi-Crush Blair LLC	Lexon Insurance Company	Permit Bond for Non-metallic Reclamation Permit plan dated 12/9/14, Sand Mine, Site #4703759.	1149869 (fka SUR20000718)	\$2,745,000
City of Blair, Wisconsin	Hi-Crush Blair LLC	Endurance American Insurance Company	Permit Bond for Non-metallic Mining Reclamation Permit for plan dated 12/9/14, Sand Mine, Site #4703759	EAIC137000002	\$1,951,000
County of Eau Claire, Wisconsin	Hi-Crush Augusta LLC	Endurance American Insurance Company	Permit Bond for Non-metallic mining reclamation permit dated 11/15/11 (permit # NMMR2012-1), Sand Mine, Site #47-03642	EAIC137000003	\$881,150.16
County of Eau Claire, Wisconsin	Hi-Crush Augusta LLC	Endurance American Insurance Company	Permit Bond for Non-metallic mining reclamation permit dated 11/15/11 (permit # NMMR2012-1), Sand Mine, Site #47-03642	EAIC137000004	\$185,000
County of Eau Claire, Wisconsin	Hi-Crush Augusta LLC	Lexon Insurance Company	Permit Bond for Non-metallic mining reclamation permit (permit # NMMR2012-1(AP)) subject to amended plan dated 4/12/16, Sand Mine Site #47003642	LICX1164531 (fka SUR20000759)	\$609,960

<b>Obligee</b>	<b>Principal</b>	<b>Surety</b>	<b>Nature of Bond</b>	<b>Surety Bond Number</b>	<b>Surety Bond Amount</b>
Wyoming Department of Workforce Services – Division of Workers Compensation	Hi-Crush Services LLC	The Ohio Casualty Insurance Company	Non-Resident Employers' Surety Bond	022054612	\$150,000

**EXHIBIT C**

**First Insurance PFA**

*[Attached]*

COMMERCIAL  
PREMIUM FINANCE AGREEMENT

Northbrook, IL 60062-7917  
P:(800) 837-2511 F:(800) 837-3709

**FIRST INSURANCE**<sup>®</sup>  
FUNDING  
A WINTRUST COMPANY

www.firstinsurancefunding.com

Quote #: 23204381

<b>INSURED/BORROWER</b> (Name and Address as shown on Policy) Hi Crush, Inc 1330 Post Oak STE 600 Houston, TX 77056	Customer ID: N/A	<b>AGENT or BROKER</b> (Name and Business Address) ALLIANT INSURANCE SRVCS-MARINE & ENERGY 5444 WESTHEIMER SUITE 900 HOUSTON, TX 77056
--	------------------	--

**LOAN DISCLOSURE**

Total Premiums, Taxes, and Fees	Down Payment	Unpaid Premium Balance	Documentary Stamp Tax (only applicable in Florida)	Amount Financed (amount of credit provided on your behalf)	FINANCE CHARGE (dollar amount the credit will cost you)	Total of Payments (amount paid after making all scheduled payments)	ANNUAL PERCENTAGE RATE (cost of credit as a yearly rate)
3,493,049.93	1,400,000.00	2,093,049.93	0.00	2,093,049.93	57,448.95	2,150,498.88	6.540 %

**YOUR PAYMENT SCHEDULE WILL BE:** Mail Payments to: **FIRST Insurance Funding, PO Box 7000, Carol Stream, IL 60197-7000**

Number of Payments	Amount of Each Payment	First Installment Due	08/01/2020
9	238,944.32	Installment Due Dates	1st (Monthly)

**SECURITY INTEREST.** INSURED/BORROWER ("Insured") grants and assigns FIRST Insurance Funding, A Division of Lake Forest Bank & Trust Company, N.A. ("LENDER") a security interest in the financed policies and any additional premiums required under the financed policies, including (but only to the extent permitted by applicable law) all return premiums, dividend payments, and loss payments which reduce unearned premium, subject to any mortgagee or loss payee interest. If any circumstances exist in which premiums related to any financed policy could become fully earned in the event of loss, LENDER shall be named a loss-payee with respect to such policy.

**FINANCE CHARGE.** The finance charge begins accruing on the earliest effective date of the policies listed in the Schedule of Policies. The finance charge may include a nonrefundable service charge equal to the maximum amount permitted by law. The finance charge is computed using a 365-day calendar year.

**LATE PAYMENT.** A late charge will be assessed on any installment at least 5 days in default (7 days in VA; 10 days in MA & TX; or later date as required by law.). This late charge will equal 5% of the delinquent installment or the maximum late charge permitted by law, whichever is less (greater of \$10 or 5% in FL; greater of \$25 or 1.5% in NJ; \$5 maximum in DE, MT and ND; \$100 maximum in MD; 5% in VA).

**PREPAYMENT.** Insured is entitled to a refund of the unearned finance charge if the loan is prepaid in full. The refund shall be computed according to applicable law.

**SCHEDULE OF POLICIES**

Policy Number	Full Name of Insurance Company and Name of General Agent or Company Office to Which Premium is Paid	Coverage	Policy Term	Effective Date	Premiums, Taxes and Fees
SISIPCA08237718	C00172-STARR INDEMNITY & LIABILITY CO G00159-CRC INSURANCE SERVICES [CX:0] [90%PR]	CAL	12	07/01/2020 ERN TXS/FEES FIN TXS/FEES	282,118.00 701.62 0.00
3205403	C00531-IRONSHORE SPECIALTY INS CO G00601-SYNAPSE SERVICES LLC [ME:25.000 %, CX:0] [90%PR]	GL	12	07/01/2020 ERN TXS/FEES FIN TXS/FEES	374,103.00 0.00 18,705.15
(Policies continued on next page.)				TOTAL	3,493,049.93

Q# 23204381, PRN: 070220, CFG: ALLIANT-MARINE & ENERGY, RT: 0Internal - Base, DD: 30, BM: ACH, Qtd For: A14909 Original, Memo 0

**INSURED'S AGREEMENT:**

1. In consideration of the premium payment by LENDER to the insurance companies listed in the Schedule of Policies, their representative or the Agent or Broker listed above, Insured promises to pay, to the order of LENDER, the Total of Payments\* subject to all of the provisions of this Agreement. \* If the Insured chooses to make the Down Payment directly to LENDER, then the Total of Payments shall be deemed amended to include the amount of the Down Payment.

2. **POWER OF ATTORNEY.** INSURED IRREVOCABLY APPOINTS LENDER AS ITS "ATTORNEY-IN-FACT" with full power of substitution and full authority, in the event of default under this Agreement, to (i) cancel the financed policies in accordance with the provisions contained herein, (ii) receive all sums assigned to LENDER, and (iii) execute and deliver on behalf of Insured all documents relating to the insurance policies listed on the Schedule of Policies ("Financed Policies") in furtherance of this Agreement (clauses (ii) and (iii) are not applicable in Florida). This right to cancel will terminate only after Insured's indebtedness under this Agreement is paid in full.

3. **SIGNATURE & ACKNOWLEDGEMENT.** Insured has signed and received a copy of this Agreement. If Insured is not an individual, the undersigned is authorized to sign this Agreement on behalf of Insured. All named Insured(s), jointly and severally if more than one, agree to all provisions set forth in this Agreement. Insured acknowledges and understands that entry into this financing arrangement is not required as a condition for obtaining insurance coverage.

**NOTICE TO INSURED:** (1) Do not sign this Agreement before you read both pages of it, or if it contains any blank space. (2) You are entitled to a completely filled-in copy of this Agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to receive a partial refund of the finance charge. (4) Keep a copy of this Agreement to protect your legal rights. (5) See last page of Agreement for your consent to electronic statement and notice delivery.

Signature of Insured or Authorized Agent

Date

Signature of Agent

Date

The undersigned hereby warrants and agrees to the Agent or Broker Representations and Warranties set forth herein.

## ADDITIONAL PROVISIONS OF PREMIUM FINANCE AGREEMENT

4. **EFFECTIVE DATE.** This Agreement will not become effective until it is accepted in writing by LENDER.
5. **DEFAULT/CANCELLATION.** Insured is in default under this Agreement if (a) a payment or the Down Payment is not received by LENDER when it is due, (b) a proceeding in bankruptcy, receivership, insolvency or similar proceeding is instituted by or against Insured, or (c) Insured fails to comply with any of the terms of this Agreement; provided, however, when required by law, Insured may be deemed in default only under clause (a) above. Clauses (b) and (c) are not applicable in FL, MD, NV, NC or VA. At any time after default, LENDER can demand and has the right to receive immediate payment of the total unpaid amount due under this Agreement even if LENDER has not received any refund of unearned premium. If Insured is in default, LENDER has no further obligation under this Agreement to pay premiums on Insured's behalf, and LENDER may pursue any of the remedies provided in this Agreement or by law. If a default by Insured results in cancellation of the Financed Policies, Insured agrees to pay a cancellation charge where allowed by law (not permitted in AK, FL, KS, KY, NV, NY, NC, PA, SC, TX or VA). If cancellation or default occurs, Insured agrees to pay LENDER interest on the balance due at the contract rate or at the maximum lawful rate, whichever is less, until the balance is paid in full or until such other date as provided by law.
6. **LIMITATION OF LIABILITY.** Insured understands and agrees that LENDER or its assignee is not liable for any losses or damages to Insured or any person or entity upon the exercise of LENDER's right of cancellation, except in the event of willful or intentional misconduct by LENDER, except in KY.
7. **RETURNED CHECK CHARGE.** If Insured's check is dishonored for any reason and if permitted by law, Insured will pay LENDER a returned check charge equal to the maximum fee permitted by law (\$0 in KY; \$15 in FL & NV; \$20 in VA; maximum of \$25 in MD).
8. **REINSTATEMENT.** Once a Notice of Cancellation has been sent to any insurance company, LENDER has no duty to ask that the Financed Policy be reinstated, even if LENDER later receives a payment from Insured. If LENDER requests reinstatement, such request does not guarantee coverage will be reinstated by the insurance company. Payments that LENDER receives after sending a Notice of Cancellation may be applied to Insured's account without changing any of LENDER's rights under this Agreement.
9. **LENDER'S RIGHTS AFTER THE POLICIES ARE CANCELLED.** After any Financed Policy is cancelled by any party or if a credit is otherwise generated, LENDER has the right to receive all unearned premiums and other funds assigned to LENDER as security herein and to apply them to Insured's unpaid balance under this Agreement or any other agreement between Insured and LENDER (in VA, only to this Agreement). Receipt of unearned premiums does not constitute payment of installments to LENDER, in full or in part. Any amounts received by LENDER after cancellation will be credited to the balance due with any excess paid to Insured; the minimum refund is the greater of \$1.00 or the minimum amount allowed by law (no minimum in VA). Any deficiency shall be immediately paid by Insured to LENDER. Insured agrees that insurance companies may rely exclusively on LENDER's representations about the financed policies.
10. **ASSIGNMENT.** Insured may not assign any Financed Policy or this Agreement without LENDER's prior written consent. LENDER may transfer its rights under this Agreement without the consent of Insured.
11. **AGENT OR BROKER.** Insured agrees that the Agent or Broker issuing the policies or through whom the policies were issued is not the agent of LENDER, except for any action taken on behalf of LENDER with the express authority of LENDER, and LENDER is not bound by anything the Agent or Broker represents to Insured, orally or in writing, that is not contained in this Agreement. Where permissible by law, LENDER will pay some portion of the finance charge or other form of compensation to the Agent or Broker executing this Agreement for aiding in the administration of this Agreement. In NY, the Agent or Broker may assess a fee to Insured for obtaining and servicing the Financed Policies pursuant to NY CLS Ins § 2119. Any questions regarding this payment should be directed to the Agent or Broker.
12. **COLLECTION COSTS.** Insured agrees to pay reasonable attorney fees, court costs, and other collection costs to LENDER to the extent permitted by law if this Agreement is referred to an attorney or collection agent who is not a salaried employee of LENDER to collect money that Insured owes.
13. **GOVERNING LAW.** This Agreement is governed by and interpreted under the laws of the state where Insured resides, except for conflict of laws principles thereof. If any court finds any part of this Agreement to be invalid, such finding shall not affect the remaining provisions of this Agreement.
14. **WARRANTY OF ACCURACY.** Insured represents and warrants that to the best of its knowledge (i) the Financed Policies are in full force and effect and that Insured has not and will not assign any interest in the policies except for the interest of mortgagees and loss payees, (ii) that none of the Financed Policies are for personal, family or household purposes, (iii) the Down Payment and any past due payments have been paid in full to the Agent or Broker or to LENDER in cash or other immediately available funds, (iv) all information provided herein or in connection with this Agreement is true, correct, complete and not misleading, (v) Insured is not insolvent nor presently involved in any insolvency proceeding, (vi) Insured has no indebtedness to the insurers issuing the Financed Policies, and (vii) there is no provision in the Financed Policies that would require LENDER to notify or obtain consent from any other party to effect cancellation of such policies.
15. **ADDITIONAL PREMIUMS.** Insured agrees to fully and timely comply with all audits and pay to the insurance company any additional amount due in connection with the Financed Policies. The Amount Financed shall be applied to the Financed Policies' premium amounts and Insured shall be responsible for any additional premiums or other sums. Insured, or Agent/Broker, may request that LENDER finance additional policies and/or additional premium during the term of this Agreement, and if LENDER agrees, this Agreement shall be deemed amended accordingly. Should LENDER assign an account number to further extensions of credit, then a) this Agreement and loan documents identified by the assigned account number(s) shall be deemed to comprise a single and indivisible loan transaction, b) Insured shall irrevocably appoint LENDER as its attorney in fact in connection with additional amount financed, c) default under any component of the transaction shall constitute a default under the entire transaction, and d) unearned premium relating to any component of the transaction may be collected and applied to the entire loan transaction balance.
16. **CORRECTIONS.** LENDER may insert the names of the insurance companies and policy numbers, if this information is not known at the time Insured signs this Agreement. LENDER is authorized to correct patent errors or omissions in this Agreement (not applicable in KY or VA).
17. **NON-WAIVER.** Not Applicable.
18. **ELECTRONIC STATEMENT AND NOTICE DELIVERY.** By executing this Agreement, Insured agrees to receive all billing statements, notices, and other communications via electronic delivery in PDF format as permitted by applicable law. It is Insured's responsibility to provide LENDER with true, accurate, and complete e-mail and contact information related to this Agreement and to maintain and update promptly any changes to this information. If Insured wishes to (i) opt out of electronic statement and notice delivery, or (ii) update contact information, Insured can log into Insured's account on [www.firstinsurancefunding.com](http://www.firstinsurancefunding.com) or call (800) 837-2511.

## AGENT OR BROKER REPRESENTATIONS AND WARRANTIES

Unless previously disclosed in writing to LENDER or specified in the Schedule of Policies, the Agent or Broker executing this Agreement expressly represents, warrants, and agrees as follows: (1) Insured has received a copy of this Agreement and has authorized this transaction, Insured's signature is genuine, and the Down Payment has been received from Insured (unless the Down Payment was made to Lender), (2) the information contained in the Schedule of Policies including the premium amount is correct and accurately reflects the necessary coverage, (3) the policies listed in the Schedule of Policies (a) are in full force and effect, (b) are cancellable by Insured or LENDER (or its successors or assigns), (c) will generate unearned premiums which will be computed on the standard short rate or pro rata basis, and (d) do not contain any provisions which affect the standard short rate or pro rata premium computation, including but not limited to direct company bill, audit, reporting form, retrospective rating, or minimum or fully earned premium, (4) the Agent or Broker is either the insurer's authorized policy issuing agent or the broker placing the coverage directly with the insurer, except where the name of the Issuing Agent or General Agent is listed in the Schedule of Policies, (5) to the best of the Agent or Broker's knowledge, there are no bankruptcy, receivership, or insolvency proceedings affecting Insured, (6) Agent or Broker will hold harmless and indemnify LENDER and its successors and assigns against any loss or expense (including attorney's fees, court costs, and other costs) incurred by LENDER and resulting from Agent or Broker's violations of these Representations and Warranties or from Agent or Broker's errors, omissions, or inaccuracies in preparing this Agreement, (7) Agent or Broker will (a) hold in trust for LENDER any payments made or credited to Insured through or to Agent or Broker by the insurance companies or LENDER, and (b) pay these monies and the unearned commissions to LENDER upon demand to satisfy the outstanding indebtedness under this Agreement, and (8) to fully and timely assist with all payroll audits.

California Borrowers: **FOR INFORMATION CONTACT THE DEPARTMENT OF FINANCIAL INSTITUTIONS, STATE OF CALIFORNIA**

## SCHEDULE OF POLICIES

Insured: Hi Crush, Inc

Quote #: 23204381

Policy Number	Full Name of Insurance Company and Name of General Agent or Company Office to Which Premium is Paid	Coverage	Policy Term	Effective Date	Premiums, Taxes and Fees
ITN100065015420	C00172-STARR INDEMNITY & LIABILITY CO G01448-RT SPECIALTY [CX:0] [90%PR]	IM	12	07/01/2020	574,723.00
				ERN TXS/FEES	50,000.00
				FIN TXS/FEES	0.00
NY8213047	C00092-ACE AMERICAN INSURANCE CO G01267-RT SPECIALTY, LLC [CX:0] [90%PR]	PROP	12	07/01/2020	847,900.00
				ERN TXS/FEES	84,875.16
				FIN TXS/FEES	0.00
3205503	C00531-IRONSHORE SPECIALTY INS CO G03374-Synapse Services, LLC [ME:25.000 %, CX:0] [SR]	CUMBX	12	07/01/2020	474,073.00
				ERN TXS/FEES	0.00
				FIN TXS/FEES	23,703.65
EXC3275556	C00009-GREAT AMERICAN INSURANCE CO G00159-CRC INSURANCE SERVICES [CX:0] [90%PR]	CUMBX	12	07/01/2020	67,500.00
				ERN TXS/FEES	0.00
				FIN TXS/FEES	0.00
100000192306	C00172-STARR INDEMNITY & LIABILITY CO G00159-CRC INSURANCE SERVICES [CX:0] [AU, 90%PR]	WC	12	07/01/2020	397,170.00
				ERN TXS/FEES	0.00
				FIN TXS/FEES	1,744.00
TBD	C00005-LLOYDS OF LONDON G00498-R K HARRISON INSURANCE BROKERS [CX:0] [90%PR]	CY LIAB	12	07/01/2020	97,500.00
				ERN TXS/FEES	500.00
				FIN TXS/FEES	4,900.00
B0180ME2018869	C00005-LLOYDS OF LONDON G00498-R K HARRISON INSURANCE BROKERS [CX:0] [90%PR]	EXLB	12	07/01/2020	56,250.00
				ERN TXS/FEES	0.00
				FIN TXS/FEES	2,812.50
B0180ME2020799	C00005-LLOYDS OF LONDON G00498-R K HARRISON INSURANCE BROKERS [CX:0] [90%PR]	EXLB	12	07/01/2020	62,500.00
				ERN TXS/FEES	0.00
				FIN TXS/FEES	3,125.00
EO000048283-02	C00491-ADMIRAL INSURANCE COMPANY G03368-JH BLADES [CX:0] [90%PR]	PROF	12	07/01/2020	5,502.00
				ERN TXS/FEES	375.00
				FIN TXS/FEES	293.85
B0180PH2002736	C00005-LLOYDS OF LONDON G00498-R K HARRISON INSURANCE BROKERS [CX:0] [90%PR]	CY LIAB	12	07/01/2020	59,000.00
				ERN TXS/FEES	0.00
				FIN TXS/FEES	2,975.00

**EXHIBIT D**

**TPF PFA**

*[Attached]*

TALBOT PREMIUM FINANCING, LLC

3657 BRIARPARK DR, STE 700, HOUSTON, TX 77042

**COMMERCIAL INSURANCE PREMIUM FINANCE AND SECURITY AGREEMENT**

8/15/2019 502,614.25

	<b>Contract Number</b>	
	<b>Agent Number</b> TPF00	<b>Quote Number</b> 1696399A-1
Name and address of Insured(s) (as shown in the policy) and co-obligor if any HI-CRUSH PROPPANTS, LLC HI-CRUSH INC 1330 POST OAK BLVD SUITE 600 HOUSTON, TX 77056  Telephone Number: (713) 980-6221		Name and Address of Insured's Agent ("Agent") LOCKTON COMPANIES, LLC  LOCKTON PLACE 3657 BRIARPARK DR, STE 700 HOUSTON, TX 77042  Telephone Number: (713) 458-5200
Policyholder Designation (Check One): [ ] Proprietorship [ ] Partnership [ X ] Corporation	Type of Agreement (Check One): [ X ] New [ ] Additional Premium	Indicate contract number of current policy being financed. <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px;"></span>

**SCHEDULE OF POLICIES COVERED BY THIS AGREEMENT**

FOR COMPANY USE ONLY	POLICY NUMBER Prefix Number	FULL NAME OF INSURANCE COMPANY AND ADDRESS OF BRANCH REPORTING OFFICE AND FULL NAME AND ADDRESS OF GENERAL AGENT	TYPE OF INSURANCE	TERM IN MONTHS	POLICY EFFECTIVE DATE Mo. Day Year	POLICY PREMIUM
00278	01-660-45-62	ILLINOIS NATIONAL INSURANCE CO	DO	12	8/15/2019	228,300.00
					Taxes	0.00
					Fees	1,500.00
09068	0307-7708	ALLIED WORLD ASSURANCE CO (US)	DO	12	8/15/2019	121,000.00
					Taxes	0.00
					Fees	0.00
Total taxes :	0.00					
Total fees :	1500.00	Addtl Policies on Attached Addendum				

FLORIDA DOCUMENTARY STAMP TAX

**TPF**

**DISCLOSURE STATEMENT – PAYMENT SCHEDULE**

**CASH PRICE (Total Premiums)** \$ 549,756.00

Payment Plan: [ x ] Monthly [ ] Quarterly [ ] Annually  
Number of Payments 11  
Subsequent payments are due on the same day of each succeeding period.

First Payment Due 9/15/2019

CASH PRICE	-	CASH DOWN PAYMENT	=	AMOUNT FINANCED <small>The amount of credit provided on your behalf.</small>	+	FINANCE CHARGE <small>The dollar amount the credit will cost you.</small>	=	TOTAL OF PAYMENTS <small>The amount you will have paid when you have made all scheduled payments.</small>	AMOUNT OF EACH PAYMENT	ANNUAL PERCENTAGE RATE <small>The cost of your credit as a yearly rate.</small>
\$ 549,756.00		\$ 47,141.75		\$ 502,614.25		\$ 15,945.00		\$ 518,559.25	\$ 47,141.75	6.29%

**TALBOT PREMIUM FINANCING, LLC** (HEREINAFTER CALLED LENDER) **3657 BRIARPARK DR, STE 700, HOUSTON, TX 77042**

Prepayment: The Insured may prepay in full at any time and receive a refund of the unearned finance charge, calculated according to the Rule of 78's (actuarial method in AR, AZ, CA, MA, MO, NJ, OR, PA, VT; short rate method in SC), and subject to a nonrefundable charge stated on page two. Minimum refund is \$1.00 (except AK, where there is no minimum refund).

Security Interest: The Insured assigns to Lender as security for payment of this agreement all sums payable to the Insured with reference to the policies listed above, including, among other things, any gross return premiums and any payment on account of loss which results in reduction of unearned premium in accordance with the term of said policies.

Delinquency charge: The Insured agrees that upon default in payment of any installment five days or more (more than 5 days in IL, MS, OH) to pay a Delinquency Charge of 5% of

the delinquent installment. In AK, CA, DE, MI, MN, ND, NJ, OR, TN, TX, the Delinquency Charge is not due until installment is in default for ten days or more, more than 10 days in MA, NM 7 days in VA. Maximum delinquency charge is \$5 in DE, MT, ND; \$100 in MD; \$500 in NM; 1 1/2% of the installment in NJ with a minimum of \$25. In AK, OR: for delinquent payments of less than \$250, the delinquency charge is the lesser of 5% of the payment or \$5, otherwise the delinquency charge is 2% of the payment. KS: Delinquency charge is \$5 plus 2% of the installment in default.

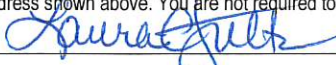
Cancellation Charge: The Insured agrees that if a default results in cancellation of the policy(ies) to pay a Cancellation Charge in the amount stated on page two. (Not applicable in AK, KY, TX, NC.)

See the provisions on page two for additional information about nonpayment, default, and any repayment in full before the scheduled date and any prepayment refunds or penalties.

QIV# 1696399A-1 PRN:8/15/2019 3:19 PM BY:chmielewskit CFG:CustomConfig RT:LocktonHSTNKC PF:5,989.39 T:3.94 B1:3.94 B2:3.94

**NOTICE TO INSURED:** 1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT, INCLUDING THE WRITING ON PAGE TWO, OR IF IT CONTAINS ANY BLANKS. 2. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS AGREEMENT AT THE TIME YOU SIGN IT. 3. YOU UNDERSTAND AND HAVE RECEIVED A COPY OF THIS AGREEMENT. KEEP IT TO PROTECT YOUR LEGAL RIGHTS. 4. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS TO OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. 5. SEE PAGE TWO FOR IMPORTANT INFORMATION.

When used in this Agreement, "Insured" means the insured and any co-obligor named above and all insureds covered by the Policies listed in the Schedule of Policies. Each Insured jointly and severally agrees to make all payments required by this Agreement and to be bound by all of its provisions including those on page two. The person signing represents and warrants that he or she is authorized to enter into this Agreement on behalf of each Insured and to bind each Insured to this Agreement. Each Insured agrees that Lender may send all notices under this Agreement to the Insured's address shown above. You are not required to enter into an insurance premium financing arrangement as a condition to the purchase of any insurance policy.

By  Date 08-28-2019  
(Signature of Insured)  
Laura C. Fulton, CFO  
(Typed Name and Title)

**AGENT'S REPRESENTATIONS AND WARRANTIES**

The undersigned Agent has read the Insurance Agent's Representations and Warranties on page two and makes all such representations and warranties recited therein and agrees to be bound by the terms of this Agreement.

By \_\_\_\_\_ Date \_\_\_\_\_  
(Signature of Agent)



**The Insured (jointly and severally if more than one) agrees as follows:**

1. In consideration of the payment by LENDER of the Amount Financed, Insured agrees to pay the Cash Down Payment to the insurance company(ies) listed in the Schedule of Policies, and to pay LENDER the Total of Payments in accordance with the terms of this Agreement. Interest is computed on an annual basis of 12 months of 30 days each.
2. Insured assigns to LENDER as security for the total amount payable hereunder all sums payable to the Insured under the listed Policies, including, among other things, any gross unearned premiums and any payment on account of loss which results in a reduction of unearned premium in accordance with the terms of said policies.
3. Insured hereby irrevocably appoints LENDER as its Attorney-in-Fact upon the occurrence of an Event of Default (defined below) and, after proper notice has been mailed as required by law, grants to LENDER authority to effect cancellation of policy(ies) listed in the Schedule of Policies ("Policies"), and to receive any unearned premium or other amounts with respect to the Policies assigned as security herein, and to sign any check or draft issued therefor in Insured's name and to direct the insurance companies to make said check or draft payable to LENDER. Insured agrees that proof of mailing any notice hereunder constitutes proof of receipt of such notice.
4. Insured agrees that any payments made and accepted after Policy cancellation shall not constitute reinstatement or obligate LENDER to request reinstatement of such insurance Policy(ies), and Insured acknowledges that LENDER has no authority to reinstate coverage, and that such payments may be applied to Insured's indebtedness hereunder.
5. Insured agrees not to assign the Policy(ies) except for the interest of mortgagees or loss payees, without the written consent of LENDER. LENDER may assign this Agreement without Insured's consent, and all rights conferred upon LENDER shall inure to LENDER's successors and assigns.
6. Except in KY and VT, Insured agrees to pay a fee of \$15.00 in the event of a dishonored check. (\$5.00 in CA; \$10 in AZ, MA, MD, OH, VI; \$7.50 in NV, not to exceed LENDER's cost in NJ).
7. An Event of Default occurs when the Insured does not pay any installment according to the terms of this Agreement or (except in MD) fails to comply with any of the terms of the Agreement or (except in MD) if any of the Policies are cancelled for any reason. If an Event of Default occurs and after giving notice as required by law, all amounts due under this Agreement become immediately due and payable and the Insured is liable for all amounts described herein, including any unpaid balance remaining after application of the unearned premiums. If an Event of Default occurs, LENDER may at its option pursue the following remedies:
  - After proper notice has been given as required by law, LENDER may immediately cancel the Policy(ies) and collect any unearned premiums or other amounts payable under said Policies. Unearned premiums shall be payable to LENDER only.
  - LENDER may take all necessary actions to enforce payment of this debt. To the extent not prohibited or limited by applicable law, LENDER is entitled to collection costs and expenses incurred while enforcing its rights under this Agreement and to reasonable attorney's fees if this Agreement is referred to an attorney who is not a salaried employee of LENDER for collection or enforcement (not permitted in KY, NC; total of collection costs and attorney's fees is limited to 20% of the unpaid balance in AZ, FL, MO, MS, NH, NV, NY, VI; 15% of unpaid balance in TN; 25% of unpaid balance in VT).
  - Except in AK, KY, MI, NC, VT and the other states listed herein, after cancellation, Insured agrees to pay interest on the unpaid balance (calculated according to the Rule of 78's (actuarial method in AR, AZ, CA, NJ, OR, PA; short rate method in SC) as of the scheduled due date of the first delinquent payment leading to cancellation of the Policies) at the rate of 1% per month (in AR, NM, TX, at the Annual Percentage Rate stated on page one), or at the highest rate permitted by law, whichever is less, until the entire balance of this loan is paid in full. In MA, Insured agrees to pay interest at the rate of 1% per month on the difference between the unpaid balance on the date of cancellation (computed according to the actuarial method) and the unearned premiums received by LENDER on the cancelled Policies, for the period from the date of cancellation until the balance is paid in full.
  - In AL, DC, DE, IL, KS, NY and WA, after cancellation, Insured agrees that LENDER may recompute the total finance charge due under this Agreement on the original amount financed, at the rate and in the manner described in this paragraph from the first effective date of the Policies through the last originally scheduled installment date, and Insured agrees to pay this amount, subject to the provisions on prepayment in full. That rate, stated as a dollar amount per year for each \$100 of amount financed is as follows: \$9 in AL, DE; \$10 in DC, IL, WA; \$12 in KS; \$14 in NY.
  - LENDER may offset and deduct from any amounts LENDER owes to Insured with respect to any Policies financed hereunder, any amounts which Insured owes to LENDER under this or (except in KY, MD, NC and TX) any other agreement.
8. Insured agrees to pay a non-refundable service fee of \$10 in AK, AZ, CT, DE, KS, LA, MO, NY, PA, WA, WI; \$12 in NJ; \$12.50 in MT; \$15 in AL, KY, NC, RI, SC, TN, VA; \$16 in MA; \$18 in MI; \$20 in DC, FL, GA, MD, MN, OH; \$25 in CO, HI, IA, ID, IN, ME, NE, ND, NV, OK, SD, UT, VI, WV, WY; the lesser of \$50 or 10% of the amount financed in OR. In CA, the minimum finance charge is \$25. In IL, the non-refundable service charge is \$20 if the amount financed is less than \$500, \$30 if the amount financed is \$500 or more but less than \$1,000, or \$40 if the amount financed is over \$1,000. In NJ, if this loan is prepaid in full, Insured agrees to pay an additional charge of \$20 for any loan of \$2,000 or less, 1% of the loan for loans over \$2,000 up to and including \$5,000 and \$100 on loans over \$5,000.
9. Insured agrees to pay a cancellation charge of \$5 in TN, VI; \$10 in MN, ND, OH; \$15 in AL, AZ, GA, MO, MS, RI, WI; \$25 in CO, HI, IA, ID, IN, LA, ME, NE, OK, SD, UT, WV, WY; the greater of 2% of the unpaid balance or \$5 in MA; the difference between the delinquency charge assessed and; \$5 in DE, MI, MT, NJ, NY, OR, WA; \$10 in DC; \$15 in NH; \$100 in MD.
10. Insured agrees to pay promptly to the insurer any additional premiums due on the Policies.
11. The Agent is not the agent of LENDER and the Agent cannot bind LENDER. LENDER is not the Agent of any insurer and is not liable for any acts or omissions of any insurer. Insured acknowledges that it has chosen to do business with the Agent and the insurance companies issuing the Policies, and that the insolvency, fraud, defalcation or other action or failure to act by any of them shall not relieve or diminish Insured's obligations to LENDER hereunder.
12. Except in MD, and if not prohibited by applicable law, LENDER may insert the name of the insurer, policy numbers and first installment due date if omitted and if policy has not been issued at the time of signature.
13. This Agreement shall have no force or effect until accepted by LENDER. All rights and remedies in this Agreement are cumulative and not exclusive. If any part of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be in full force and effect. Neither LENDER nor its assignee shall be liable for any loss or damage to the Insured by reason of failure of any insurance company to issue or maintain in force any of the Policies or by reason of the exercise by LENDER or its assignee of the rights conferred herein. This Agreement constitutes the entire Agreement between LENDER and Insured and may not be modified except as agreed upon in writing. LENDER's acceptance of late or partial payments shall not be deemed a waiver by LENDER of any provisions of this Agreement, and LENDER is entitled to require Insured to strictly comply with the terms hereof. Except in AR, this Agreement is governed by the law of the state of the Insured's address shown on page one of this Agreement. In AR, this Agreement is governed by the law of the state where this Agreement is accepted by LENDER. If any amount contracted for or received by LENDER is determined to violate any law or regulation, LENDER may return such prohibited amount to Insured without any further liability therefor (waiver of liability not applicable in KY).
14. Insured represents and warrants that the proceeds of this loan are to be used to purchase insurance for other than personal, family or household purposes and that all information provided herein or in connection with this agreement is true, correct, complete and not misleading.

**15. CALIFORNIA RESIDENTS ONLY:****FOR INFORMATION CONTACT THE DEPARTMENT OF FINANCIAL INSTITUTIONS, STATE OF CALIFORNIA.**

Insured agrees that, in accordance with Section 18608 of the California Financial Code, LENDER's liability to Insured upon the exercise of LENDER's authority to cancel the Policies shall be limited to the amount of the principal balance of this loan, except in the event of LENDER's willful failure to mail the notice of cancellation required under California law.

**In connection with the Policies scheduled on page one, the Agent represents and warrants to LENDER, its successors and assigns that:**

1. Deposit premiums are not less than the anticipated premiums to be earned for the full terms of the Policies.
  2. All of the scheduled Policies or bonds in this Agreement are cancellable by standard short rate or pro-rata tables.
  3. When cancellation is requested by Insured or by LENDER, none of the Policies require advance notice of cancellation to any party, other than any notice required to be given by LENDER, and there are no audit or reporting form policies, Policies subject to retrospective rating or to minimum earned premiums except as indicated in the Schedule of Policies.
  4. We are the authorized policy issuing Agent of the insurance companies or the broker placing the coverage directly with the insurance company on all Policies except as indicated in the Schedule of Policies.
  5. The Insured(s) signature(s) on both pages one and two hereof are genuine, the Insured has not paid for the scheduled Policies other than as described herein, the Insured(s) have received a copy of this Agreement, this Agreement is valid and enforceable and there are no defenses to it, the scheduled Policies are in full force and effect and the premiums indicated are correct for the term of the Policies, and all other information relating to the Policies and the Insured is complete and correct. None of the Policies have been financed on an installment payment plan provided by the insurance company(ies), or are noncancellable policy(ies), or policies written for a term of less than one year. The Agent recognizes the Insured's assignment of the unearned premiums and upon cancellation of any of the scheduled Policies agrees to pay promptly any unearned commissions to LENDER and to pay to LENDER the unearned premiums immediately upon receipt Agent shall not deduct any amounts which Insured owes to Agent from any amounts owing to LENDER hereunder. The Policies are not for personal, family or household purposes.
  6. A proceeding in bankruptcy, receivership or insolvency has not been instituted by or against the Insured or if the Insured is the subject of such a proceeding, it is noted on the Agreement in the space in which the Insured's name and address is placed.
  7. If the Agreement has been signed by the Agent on behalf of the Insured, the Agent has the authority to act in this capacity and the Agent has provided the Insured with a complete copy of this Agreement.
  8. There are no exceptions to the Policies financed other than those indicated, and the Policy(ies) comply with LENDER's eligibility requirements.
  9. The Cash Down Payment, and any installments due from the Insured which Agent has agreed to collect, have been collected from the Insured.
  10. Agent is not an agent of LENDER and is not authorized to bind LENDER and has not made any representation to the contrary.
- The Agent agrees to promptly remit all funds received from LENDER and the Insured for the financed Policies and due to the insurance company(ies) issuing such Policies. Agent shall be liable to LENDER for any losses, costs, damages or other expenses (including attorney's fees) incurred by LENDER or its assignee as a result of or in connection with any untrue or misleading representation or warranty made by Agent hereunder, or otherwise arising out of the breach by Agent of this Agreement. Agent shall promptly notify LENDER of any unpaid increased premiums for the Policies.

Agent Number TPF00  
 Quote Number 1696399A-1

ADDENDUM TO COMMERCIAL INSURANCE PREMIUM FINANCE AGREEMENT ("PFA")

SCHEDULE OF POLICIES COVERED BY THE PFA INCLUDES THE FOLLOWING:

FOR COMPANY USE ONLY	POLICY NUMBER		FULL NAME OF INSURANCE COMPANY AND ADDRESS OF BRANCH REPORTING OFFICE AND FULL NAME AND ADDRESS OF GENERAL AGENT	TYPE OF INSURANCE	TERM IN MONTHS	POLICY EFFECTIVE DATE			POLICY PREMIUM
	Prefix	Number				Mo.	Day	Year	
10299	ELU163238-19		XL SPECIALTY INSURANCE COMPANY	DO	12	8/15/2019			78,650.00
						Taxes			0.00
						Fees			0.00
76201	DOC 0177767-05		ZURICH AMERICAN INSURANCE CO	DO	12	8/15/2019			53,800.00
						Taxes			0.00
						Fees			0.00
00232	01-686-21-64		NATIONAL UNION FIRE INS CO	DIC	12	8/15/2019			42,500.00
						Taxes			0.00
						Fees			0.00
73768	8242-2422		FEDERAL INSURANCE COMPANY	ERPK	12	8/15/2019			20,100.00
						Taxes			0.00
						Fees			0.00
00232	01-693-61-86		NATIONAL UNION FIRE INS CO	CR	12	8/15/2019			3,906.00
						Taxes			0.00
						Fees			0.00

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

	X	
In re:	:	Chapter 11
	:	
HI-CRUSH INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 20-33495 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**ORDER**  
**AUTHORIZING DEBTORS TO (I) PAY THEIR PREPETITION**  
**INSURANCE OBLIGATIONS, (II) PAY THEIR PREPETITION**  
**BONDING OBLIGATIONS, (III) MAINTAIN THEIR POSTPETITION**  
**INSURANCE COVERAGE, (IV) MAINTAIN THEIR BONDING PROGRAM**  
**AND (V) MAINTAIN POSTPETITION FINANCING OF INSURANCE PREMIUMS**

**[Relates to Motion at Docket No. \_\_\_\_\_]**

Upon the emergency motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”), authorizing the Debtors to (i) continue to (a) administer the Insurance Policies and pay the Prepetition Insurance Obligations and (b) pay the Prepetition Bonding Obligations, to the extent the Debtors determine in their discretion that such payments are necessary or appropriate; (ii) in the ordinary course of business, pay all postpetition premiums, administrative fees, deductibles, and other obligations (including the Brokers’ Fees) relating to (a) the Postpetition Insurance Obligations, or (b) the

---

<sup>1</sup> 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.

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

Postpetition Bonding Obligations, as such payments become due; (iii) revise, extend, supplement, change, terminate, and/or replace the Debtors' insurance coverage or the Bonding Program as needed in the ordinary course of business; and (iv) maintain or renew current, or enter into new, postpetition financing arrangements with respect to insurance premiums, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this 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 the 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 their Insurance Policies, the PFAs, and the Bonding Program.
2. The Debtors are authorized, but not directed, to pay to the Insurance Carriers, the Brokers, the Premium Financiers and the Sureties any amounts owed on account of the Insurance Obligations, the PFAs, and the Bonding Obligations, whether incurred prepetition or postpetition, in the ordinary course of business.
3. The Debtors are authorized, but not directed, to revise, extend, supplement, change, terminate, and/or replace insurance coverage, premium financing arrangements, and their Bonding

Program as needed and to enter into new insurance policies, premium financing arrangements, and surety bonds through renewal or purchase of new insurance policies, premium financing arrangements, and surety bonds, in each case without further notice to, hearing before, or order from this Court; *provided, however*, that absent further order of this Court upon notice, during the course of the Chapter 11 Cases, the Debtors shall not renew or enter into any new premium financing agreement upon any terms less favorable than those in the existing PFAs.

4. The Debtors are authorized to pay any prepetition or postpetition fees of the Brokers in connection with the Insurance Policies and the Bonding Program in the ordinary course of business.

5. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any person to whom any obligations under the Insurance Policies, the PFAs, or the Bonding Program are owed.

6. The Debtors will notify the U.S. Trustee, counsel to the Ad Hoc Group, and any statutory committee appointed in these chapter 11 cases if the Debtors renew, amend, supplement, extend, terminate, replace, increase, or decrease existing insurance coverage, surety bond coverage, or letters of credit or change insurance or surety carriers, enter into any new premium financing agreements, obtain additional insurance coverage or surety bonds or obtain additional letters of credit.

7. The Debtors' banks and financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic fund transfers drawn on the Debtors' bank accounts relating to those Insurance

Obligations and the Bonding Obligations whose payment is approved by this Order, 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.

8. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Order.

9. The Debtors are hereby authorized, but not directed, to issue postpetition checks or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests with respect to the Prepetition Insurance Obligations and the Prepetition Bonding Obligations dishonored or denied as a consequence of the commencement of the Chapter 11 Cases, and to reimburse any expenses that holders of claims in connection with the Prepetition Insurance Obligations and the Prepetition Bonding Obligations may incur as a result of any bank's failure to honor a prepetition check.

10. The Debtors are not authorized by this Order to take any action with respect to a Surety Bond that would have the effect of transforming a prepetition undersecured or unsecured Surety Bond to a postpetition or secured obligation. Such relief may be sought by separate motion.

11. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Order, including the following information: (a) the names of the payee; (b) the date and amount of the payment; (c) the category or type of payment and (d) the , as further described and classified in the Motion. Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, the Ad

Hoc Group, and any statutory committee appointed in these chapter 11 cases every 30 days beginning upon entry of this Order.

12. 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 held by, any person to whom any of the Insurance Obligations or the Bonding Obligations may be owed.

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

14. 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 orders 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).

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

16. 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.

17. 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