

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

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In re: : Chapter 11  
: :  
HI-CRUSH INC., *et al.*,<sup>1</sup> : Case No. 20-33495 (DRJ)  
: :  
Debtors. : (Jointly Administered)  
: :  
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**DEBTORS’ MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
THE DEBTORS TO FILE THE LETTER AGREEMENTS UNDER SEAL**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

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

<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.



## RELIEF REQUESTED

1. By this Motion, the Debtors request entry of an order (the “**Order**”), substantially in the form attached hereto, authorizing the Debtors to file under seal the new railcar lease letter agreements (collectively, the “**Letter Agreements**”) attached as Exhibit 2 to the *Debtors’ Motion for Entry of an Order Authorizing the Debtors to (I) Reject Certain Railcar Lease Agreements Effective as of the Petition Date, and (II) Enter Into Proposed New Railcar Lease Agreements Effective as of the Petition Date* (the “**Railcar Lease Motion**”),<sup>2</sup> which set forth the terms and conditions of the proposed, new railcar lease agreements.

## JURISDICTION AND VENUE

2. 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, and this Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), rules 9037-1 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**”).

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<sup>2</sup> Capitalized terms used but not defined in this Motion shall have the meanings set forth in the Railcar Lease Motion or in the First Day Declaration (defined below).

## BACKGROUND

4. 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**”), which is filed with the Court concurrently herewith, and is fully incorporated herein by reference.

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

6. 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.

## THE LETTER AGREEMENTS

7. The Railcar Lease Motion, filed contemporaneously with the filing of this Motion, requests authority to enter into new railcar lease agreements with certain counterparties (defined as the Go-Forward Lessors in the Railcar Lease Motion) on the terms and conditions set forth in the Letter Agreements, effective as of the Petition Date.

8. The Letter Agreements contain terms that are confidential and constitute commercial, financial, and/or business information that, if revealed publicly, could harm the Debtors and the contract counterparties and provide an unfair advantage to competitors. In order

to maintain the confidentiality of financial terms and commercial terms of the Letter Agreements, the Debtors request authority to file the Letter Agreements under seal.

### **BASIS FOR RELIEF**

9. The relief requested herein is supported by sections 105(a) and 107(b) of the Bankruptcy Code. Specifically, section 105(a) empowers the Court 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). Additionally, section 107(b) of the Bankruptcy Code provides that “[o]n request of a party in interest, the bankruptcy court shall . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information.” 11 U.S.C. § 107(b)(1). Section 107(b) allows bankruptcy courts to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. *See In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995) (“The court has authority to seal court records, in order to protect trade secrets or confidential research, development, or confidential information . . .”).

10. Bankruptcy Rule 9018 sets forth procedures by which a party may move for relief under Section 107(b) of the Bankruptcy Code. Specifically, Bankruptcy Rule 9018 provides that “[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . .” Fed. R. Bankr. P. 9018. In addition, Bankruptcy Local Rule 9037-1 provides that “[a] motion, reply or other document may initially be filed under seal if the filing party simultaneously files a motion requesting that the document be maintained under seal.”

11. Unlike its counterpart in Federal Rule of Civil Procedure 26(c), section 107(b) of the Bankruptcy Code does not require an entity seeking protection thereunder to demonstrate

“good cause.” See, e.g., *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994). Instead, the movant need only demonstrate that the material to be protected satisfies a category identified in section 107(b) of the Bankruptcy Code. Once a court determines that a party in interest is seeking to protect information that fits any of the specified categories identified in section 107(b) of the Bankruptcy Code, the court “is required to protect a requesting interested party and has no discretion to deny the application.” *Id.* at 27 (emphasis in original); see *In re 50-Off Stores, Inc.*, 213 B.R. 646, 655–56 (Bankr. W.D. Tex. 1997) (“The statute [i.e., section 107(b) of the Bankruptcy Code], on its face, states that the bankruptcy court is required to protect such an entity on request of a party in interest.”) (emphasis in original).

12. Here, the Letter Agreements contain commercial information that falls within the plain language of the statute’s protection. “Commercial information has been defined as information which would cause an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *Orion Pictures*, 21 F.3d at 27. Commercial information does not need to rise to the level of a “trade secret” to be protected under section 107(b) of the Bankruptcy Code. *Id.* at 28. Rather, section 107(b)’s protections extend to commercial information that, if disclosed to the public, could be used by various parties for an unfair advantage. *Id.* at 27–28.

13. Here, the Letter Agreements are non-public, confidential agreements with terms and conditions about the proposed, new railcar lease agreements negotiated by the Debtors and the counterparties to those agreements. Railcar lease agreements are integral to the Debtors’ operations in this industry, and the public disclosure of the Letter Agreements for the new, proposed agreements which were heavily negotiated as part of this restructuring would cause an

unfair advantage to competitors by providing them information as to the commercial operations of the Debtors. Therefore, the Letter Agreements are statutorily-protected commercial information that should be sealed.

**BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

14. 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**

15. 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 (other than the Rejected Railcar Leases); 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

16. 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 Thatcher & Bartlett LLP, as counsel to the agent for the Debtors' prepetition 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, counsel to the agent under the Debtors' postpetition term loan facility; (vii) the Go-Forward Lessors; (viii) the United States Attorney's Office for the Southern District of Texas; (ix) the Internal Revenue Service; (x) the Securities and Exchange Commission; (xi) the state attorneys general for states in which the Debtors conduct business; and (xii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required or needed under the circumstances.

17. 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  
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*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

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

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In re:	:	Chapter 11
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HI-CRUSH INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 20-33495 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**ORDER AUTHORIZING THE DEBTORS TO  
FILE THE LETTER AGREEMENTS UNDER SEAL**

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

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for authority to file under seal the Letter Agreements attached as Exhibit 2 to the *Debtors’ Motion for Entry of an Order Authorizing the Debtors to (I) Reject Certain Railcar Lease Agreements Effective as of the Petition Date, and (II) Enter Into Proposed New Railcar Lease Agreements Effective as of the Petition Date*, all as more fully described in the Motion; and the Court having reviewed the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this

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<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.

district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and all objections, if any, to entry of this Order having been withdrawn, resolved, or overruled; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in the Order, it is hereby

**ORDERED THAT:**

1. The Debtors are authorized to file the Letter Agreements under seal.
2. The Letter Agreements shall remain confidential, and shall not be made available to anyone without the consent of the Debtors or further order of the Court.
3. Any party receiving the Letter Agreements in accordance with this Order shall not disclose or otherwise disseminate the Letter Agreements, or the information contained therein, to any person or entity without the prior written consent of the Debtors.
4. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6004(a).
5. Notwithstanding Bankruptcy Rule 6004(h) to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.
6. 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.
7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: \_\_\_\_\_, 2020

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DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE