

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	
In re:	)	Chapter 11
)	
PROTERRA INC, <i>et al.</i> , ¹	)	Case No. 23-11120 (___)
)	
Debtors.	)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION FOR ENTRY
OF INTERIM AND FINAL ORDERS (I)
AUTHORIZING THE DEBTORS TO CONTINUE
AND PAY ALL PREPETITION OBLIGATIONS
RELATING TO THEIR (A) PREPETITION INSURANCE
POLICIES AND INSURANCE PREMIUM FINANCE AGREEMENT
AND (B) SURETY BOND PROGRAM; AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion (the “Motion”):²

Relief Requested

1. Through this Motion, the Debtors seek entry of an interim order (the “Interim Order”) and a final order (the “Final Order” and, together with the Interim Order, the “Proposed Orders”), substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) authorizing the Debtors to (i) continue to administer the Insurance Program (as defined herein) and to pay certain prepetition obligations relating thereto, including broker fees arising thereunder or in connection therewith, (ii) make payments pursuant to the Insurance Premium Finance

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Protterra Inc (9565); and Protterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to these chapter 11 cases and supporting this Motion, is set forth in the *Declaration of Gareth T. Joyce in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated herein by reference. Capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.



Agreement (as defined herein), and (iii) revise, extend, supplement, or change insurance coverage as needed, (b) authorizing the Debtors to maintain, renew, and modify their Surety Bond Program (as defined herein) and to pay prepetition obligations relating thereto, including broker fees arising thereunder or in connection therewith, and (c) granting related relief.

2. In addition, the Debtors request that the Court (as defined herein) schedule a final hearing to consider approval of this Motion on a final basis.

Jurisdiction and Venue

3. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “Amended Standing Order”). This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to a final order with respect to this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

5. Venue of these chapter 11 cases and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The bases for the relief requested herein are sections 363, 364(c), 503(b), 1107, 1108, and 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 4001, 6003 and 6004, of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Background

7. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have contemporaneously filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

The Debtors’ Insurance and Surety Bond Program

8. In the ordinary course of the Debtors’ business and as more fully described herein, the Debtors maintain insurance, surety bond, and related programs. These programs provide liability coverage for the Debtors’ operations, including breach of duty by officers or directors, general liabilities, and nonperformance or nonpayment of contractual obligations to certain customers. In many instances, these insurance and surety bond programs are required by federal, state, or municipal statute or regulation.

9. By this Motion, the Debtors seek authority to continue these programs in the ordinary course of business consistent with past practices and to pay prepetition expenses related thereto. Specifically, the Debtors estimate that no more than \$720,000 in prepetition obligations related to the Insurance and Surety Bond Program (as defined herein) will become due and owing between the Petition Date and the date on which a hearing is scheduled to consider approval of this Motion on a final basis (the “Interim Period” and the amount due during the Interim Period, the “Interim Amount”) on account of prepetition obligations. By this Motion, the Debtors seek authority to pay the Interim Amount in connection with prepetition obligations related to the Insurance and Surety Bond Program following entry of the Interim Order. Upon entry of the Final

Order, the Debtors seek authority to pay prepetition obligations in connection with the Insurance and Surety Bond Program (as defined herein) in an amount not to exceed \$1,150,000. The Debtors also seek authority to continue the Insurance and Surety Bond Program in the ordinary course of the Debtors' business and pay any postpetition obligations related thereto.

I. The Debtors Insurance Program

10. In connection with the operation of their business, the Debtors maintain their insurance program (the "Insurance Program") through several different insurance carriers (each, an "Insurance Carrier," and collectively, the "Insurance Carriers"). The insurance policies comprising the Insurance Program (each an "Insurance Policy," and collectively, the "Insurance Policies") and Insurance Carriers are identified in **Exhibit C** to this Motion (the "Insurance Schedule").³

11. The Insurance Policies vary in amounts and types of coverage in accordance with prudent business practices; state and local laws governing the jurisdictions in which the Debtors operate; and various contractual obligations. The Insurance Policies include: (i) general liability, (ii) automotive, (iii) cyber, (iv) cargo, (v) property; (vi) accident; (vii) excess liability; and (viii) director and officer liability.⁴ For each Insurance Policy, the Insurance Schedule includes or

³ The descriptions of the Insurance Policies are intended only as a summary, and the actual terms of the foregoing shall govern in the event of any inconsistency with the descriptions set forth herein. The Debtors have made a good-faith effort to identify all of the Insurance Policies on **Exhibit C** attached hereto. The Debtors request authority to honor obligations and renew all Insurance Policies, as applicable, regardless of whether the Debtors inadvertently fail to include a particular policy on the attached schedule. The Insurance Policies summarized on the Insurance Schedule are representative only and are not intended to restrict the Debtors from changing carriers or programs, or adding different types of insurance, in the reasonable exercise of the Debtors' discretion.

⁴ Contemporaneously herewith, the Debtors have filed the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Payment of Certain Prepetition Employee Wages and Benefits, and (II) Granting Related Relief* (the "Employee Wages Motion"). The Employee Wages Motion seeks, among other things, authority to continue to (i) provide various benefits, including applicable insurance coverage, for employee health and welfare programs, and (ii) administer their workers' compensation program and honor all obligations in connection therewith in the ordinary course of business. The maximum allowances for payment of prepetition insurance obligations listed in this Motion are exclusive of any amounts for which payment authority may be sought in the Employee Wages Motion.

otherwise identifies, among other things: (i) the corresponding Insurance Carrier; (ii) the last four digits of the policy number; (iii) the annual premium; and (iv) whether the Insurance Policy is financed, pursuant to the Insurance Premium Finance Agreement (as defined herein).

12. The Insurance Policies are essential to the preservation of the value of the Debtors' business, property, and assets during these chapter 11 cases. Not only are some of the Insurance Policies required by the various regulations, laws, and contracts that govern the Debtors' commercial activities, but section 1112(b)(4)(C) of the Bankruptcy Code provides that "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). Moreover, the *Operating Guidelines for Chapter 11 Cases* of the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") require debtors to maintain insurance coverage throughout the pendency of these chapter 11 cases.

13. Premiums with respect to the Insurance Policies (the "Insurance Premiums") are determined and paid annually. The aggregate annual premiums under the current Insurance Policies (the "Insurance Premiums") are approximately \$20,000,000.⁵ As discussed below, the Debtors pay approximately \$53,000 of the annual Insurance Premiums directly to the applicable Insurance Carrier. The remainder of Insurance Premiums are paid to the relevant Insurance Carriers as installment payments through the Debtors' Premium Finance Broker (as defined herein). The Debtors estimate that no more than \$600,000 in Insurance Premiums will become due and owing after the Petition Date on account of prepetition obligations. Further, the Debtors

⁵ Calculations for total annual premiums and for the annual premium under each Insurance Policy listed in the Insurance Schedule include additional charges on certain Insurance Policies such as broker commissions, surcharges, policy fees, and charges for surplus lines. The Debtors seek to make payments to these charges as well as on the base premiums due.

estimate that no more than \$250,000 of those Insurance Premiums will become due and owing during the Interim Period.

14. The Debtors seek authority to continue the Insurance Policies in the ordinary course of business and to pay prepetition amounts in respect of the Insurance Premiums on the terms set forth in the Proposed Orders.

A. Insurance Program Broker Fees

15. The Debtors employ Woodruff-Sawyer & Co. ("Woodruff Sawyer") as their insurance broker for their Insurance Policies other than director and officer liability programs (the "Primary Insurance Broker") to assist them with the procurement and negotiation of the applicable Insurance Policies. The Debtors compensate the Primary Insurance Broker by paying negotiated annual fees as a percentage of the insurance coverage procured (the "Primary Insurance Broker Fees"). Some of the Primary Insurance Broker Fees are remitted to the Primary Insurance Broker as a portion of the Insurance Premiums paid to the Insurance Carriers. The Debtors estimate that there are no Primary Insurance Broker Fees outstanding as of the Petition Date.

16. For Insurance Policies related to director and officer liability and employment practices liability, the Debtors employ Marsh & McLennan Companies, Inc. ("Marsh McLennan") as their insurance broker (the "D&O Insurance Broker," and together with the Primary Insurance Broker, the "Insurance Brokers") to assist them with the procurement and negotiation of the applicable Insurance Policies. The Debtors compensate the D&O Insurance Broker by paying negotiated annual fees as a percentage of the insurance coverage procured (the "D&O Insurance Broker Fees," and together with the Primary Insurance Broker Fees, the "Insurance Broker Fees"). Some of the D&O Insurance Broker Fees are remitted to the D&O Insurance Broker as a portion of the Insurance Premiums paid to the Insurance Carriers. The Debtors estimate that there are no D&O Insurance Broker Fees outstanding as of the Petition Date.

17. The Debtors seek authority to pay prepetition amounts in respect of the Insurance Broker Fees and continue paying the Insurance Broker Fees on a postpetition basis on the terms set forth in the Proposed Orders.

B. Insurance Premium Finance Agreement

18. The Debtors maintain an insurance premium finance agreement (the “Insurance Premium Finance Agreement”), a component of the Insurance Program, with First Insurance Funding Corporation (the “PFA Lender”) for certain of the Insurance Policies, a copy of which is attached hereto as **Exhibit D**. Pursuant to the Insurance Premium Finance Agreement, the PFA Lender has agreed to pay the applicable Insurance Premiums due under certain Insurance Policies in exchange for a combination of upfront and monthly payments from the Debtors. The Debtors estimate that there are no amounts outstanding under the Insurance Premium Finance Agreement as of the Petition Date. The Debtors’ obligations under the Insurance Premium Finance Agreement are secured by all sums due under the applicable Insurance Policies, including any unearned premiums or other sums that may become payable under the Policies.

19. In the Debtors’ business judgment, the terms of the Insurance Premium Finance Agreement represent the best possible terms for financing the premiums of the applicable Insurance Policies, and the Debtors’ estates will benefit by maintaining this low-cost financing from the PFA Lender. Moreover, any interruption of payments might adversely affect the Debtors’ ability to obtain financing for future policies on favorable terms, to the extent needed. In some cases, the coverage is required by regulations, laws, or contracts that govern the Debtors’ business obligations. Thus, the Debtors request authority to continue honoring their obligations pursuant to the Insurance Premium Finance Agreement and to continue the grant of security interests to the PFA Lender.

II. The Debtors' Surety Bond Program

A. Overview of the Surety Bond Program

20. In the ordinary course of business, the Debtors are required to obtain, and post to certain customers, various types of surety bonds (each, a "Surety Bond," and collectively, the "Surety Bonds") from surety providers (each, a "Surety," and collectively, the "Sureties"). These Surety Bonds secure obligations of payment and performance owed to various third parties (each an Obligee, and collectively, the "Obligees"), including municipalities, state and federal governmental units, and public agencies (the "Surety Bond Program," and together with the Insurance Program, the "Insurance and Surety Bond Program").

21. The Debtors are required to provide the Surety Bonds to the Obligees, pursuant to applicable federal, state, and municipal laws and regulations. The Surety Bonds include (a) performance bonds; (b) bid bonds; (c) payment bonds; (d) warranty and maintenance bonds; and (e) customs bonds.

22. The Surety Bond Program is essential to the Debtors' operations. For example, the Debtors may be required by public transit agency customers to post performance bonds that protect against the Debtors' non-performance of their contractual obligations. In some instances, the Debtors may be required to obtain bid bonds as a prerequisite to submitting bids on governmental projects. Additionally, Debtors may be required to post customs bonds that ensure the Debtors' compliance with import duties, taxes, and fees. Consequently, as outlined herein and in the First Day Declaration, failing to provide, maintain, or timely replace the Surety Bonds will prevent the Debtors from undertaking functions essential to their operations.

23. As of the Petition Date, the Debtors maintain approximately 21 Surety Bonds, which provide approximately \$39,587,000 in aggregate Surety Bond coverage. A schedule of the

Surety Bonds currently maintained by the Debtors is attached as **Exhibit E**⁶ to this Motion and is incorporated herein by reference. The Debtors request authority to honor obligations and renew all Surety Bonds, as applicable, regardless of whether the Debtors inadvertently fail to include a particular Surety Bond on the attached schedule.

24. The issuance of a surety bond shifts the risk of the Debtors' nonperformance or nonpayment from the Debtors to a surety provider. Unlike an insurance policy, if a surety provider incurs a loss on a surety bond, the surety provider is entitled to recover the full amount of that loss from the principal, whose performance or obligations the surety has guaranteed to the third-party obligee. To that end, the Debtors are party to indemnity agreements with the Sureties (each, a "Surety Indemnity Agreement," and collectively, the "Surety Indemnity Agreements," a component of the Surety Bond Program). Pursuant to the Surety Indemnity Agreements, the Debtors have agreed to indemnify the Sureties from any loss, cost, or expense that the Sureties may incur on account of the issuance of any bonds on behalf of the Debtors. Additionally, the Surety Indemnity Agreements allow the Sureties to request collateral security from the Debtors from time to time.

25. In consideration for the Sureties' issuance of the Surety Bonds, the Debtors pay premiums and post collateral to secure their obligations to the Sureties. The premiums for the Surety Bonds generally are determined on an annual basis and are paid by the Debtors when the bonds are issued and annually upon renewal (the "Surety Premiums"). The annual Surety Premiums for the Debtors' Surety Bonds total approximately \$710,000. Additionally, as of March

⁶ The descriptions of the Surety Bonds set forth herein are intended only as a summary, and the actual terms of the foregoing shall govern in the event of any inconsistency with the descriptions set forth herein. The Debtors have made a good-faith effort to identify all of the Surety Bonds on **Exhibit E** attached hereto. The Surety Bonds summarized on the schedule are representative only and are not intended to restrict the Debtors from maintaining, renewing, or modifying the Surety Bond Program, in the reasonable exercise of the Debtors' discretion.

31, 2023, the Debtors had provided the Sureties with collateral in the form of approximately (i) \$12,600,000 of restricted cash; and (ii) \$5,100,000 of letters of credit related to performance bonds. The Debtors have agreed to maintain such collateral in the ordinary course of business pursuant to the Surety Indemnity Agreements.

26. The Debtors estimate that no more than \$550,000 in Surety Premiums will become due and owing after the Petition Date on account of prepetition obligations. Further, the Debtors estimate that no more than \$470,000 of those Surety Premiums will become due and owing during the Interim Period. To ensure uninterrupted coverage under the Surety Bond Program, the Debtors seek authority to pay prepetition amounts outstanding in connection with the Surety Premiums, to continue paying Surety Premiums as they come due in the ordinary course of the Debtors business, and to honor their obligations under the Surety Indemnity Agreements in the ordinary course of business, all on the terms set forth in the Proposed Orders.

B. Surety Bond Program Broker Fees

27. The Debtors obtain a majority of their Surety Bonds through a broker, Willis Towers Watson (the “Surety Broker” and, together with the Insurance Brokers, the “Insurance and Surety Brokers”). The Surety Broker assists the Debtors in obtaining the Surety Bonds and evaluating bond offerings. The Surety Broker negotiates with the Sureties on behalf of the Debtors to procure surety bonds and enable the Debtors to obtain new or replacement surety bonds on advantageous terms and at competitive rates. The Debtors compensate the Surety Broker by paying negotiated annual fees as a percentage of the face amount of the bonds procured (the “Surety Broker Fees”). The Surety Broker Fees are remitted to the Surety Broker as a portion of the Surety Premiums. Because the Surety Broker takes its fee from the Surety Premiums described above, the Debtors do not believe that there are any additional prepetition obligations due and owing on account of the Surety Brokerage Fees. Nevertheless, to ensure uninterrupted coverage

under the Surety Bond Program, the Debtors seek authority to honor prepetition amounts owed in connection with the Surety Brokerage Fees and to pay any Surety Brokerage Fees that may arise on a postpetition basis in the ordinary course of business.

Basis for Relief

I. The Court Should Authorize the Debtors to Make Payments Related to the Insurance and Surety Bond Programs Pursuant to Section 363(c) of the Bankruptcy Code, as an Ordinary Course Transaction

28. The continuation of the Insurance and Surety Bond Program is an ordinary course transaction and, the Debtors submit, should be authorized on a postpetition basis. Pursuant to section 363(c)(1) of the Bankruptcy Code, a debtor-in-possession may “enter into transactions . . . 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). Neither the Bankruptcy Code nor its legislative history provides a framework for analyzing whether a transaction is in the ordinary course of business. The Third Circuit, however, has developed a two-part inquiry, including a “horizontal dimension” test and a “vertical dimension” test, for determining whether a transaction is in the ordinary course of business under section 363(c)(1). *See In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992); *see, e.g., Braunstein v. McCabe*, 571 F.3d 108, 124–25 (1st Cir. 2009); *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 791 (Bankr. D. Del. 2007). The horizontal dimension test focuses on whether, from an industry-wide perspective, the transaction is “of the sort commonly undertaken by companies in that industry.” *In re Roth Am., Inc.*, 975 F.2d at 953. The vertical dimension test (or creditor’s expectation test) focuses on the vantage point of a hypothetical creditor and asks whether the transaction subjects the creditor to economic risk of a nature different from those the creditor accepted when it decided to extend credit to the debtor. *Id.*

29. Here, the Debtors believe that maintenance of the Insurance and Surety Bond Program is an ordinary course transaction and should be authorized on a postpetition basis. The Insurance and Surety Bond Program is consistent with industry practice. Maintenance of the Debtors' Insurance and Surety Bond Program is, in many cases, required by statute or regulation for the Debtors to operate their business.

30. Further, to the Debtors' knowledge, programs like the Insurance Program and Surety Bond Program are common to the Debtors' industry. Maintenance of corporate insurance programs is often required by statute and regulation for businesses across industries. Maintenance of surety bond programs is often required by statute and regulation for businesses performing under public contracts. Moreover, by maintaining the Insurance Bond and Surety Bond Program creditors will not be subjected to unexpected or different economic risks than existed when the creditors originally extended credit. The Insurance and Surety Bond Program has been a necessary part of the Debtor's business since its outset, and their creditors either should or do know this fact, satisfying the Third Circuit's vertical test.

II. The Court Should Authorize the Debtors to Make Certain Payments Related to the Insurance and Surety Bond Programs Pursuant to Section 363(b) and 105(a) of the Bankruptcy Code, as Necessary and Appropriate

31. To the extent obligations relating to the Insurance and Surety Bond Program were incurred prepetition, payment of such obligations is necessary and appropriate, and may be authorized under sections 363(b) and 105(a) of the Bankruptcy Code. Section 363(b) of the Bankruptcy Code provides that a debtor-in-possession, "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 have authorized payments pursuant to section 363(b) of the Bankruptcy Code in situations where a debtor can demonstrate a sound business justification for the payment of prepetition obligations. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999)

(stating that “the bankruptcy court has considerable discretion” in granting motions pursuant to section 363(b)); *In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (stating that courts have “broad flexibility” under section 363(b) of the Bankruptcy Code to permit a debtor to expend funds outside the ordinary course, including paying prepetition obligations, as long as the debtor articulates some business justification to do so). Moreover, section 105(a) of the Bankruptcy Code 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). A bankruptcy court may use its equitable powers under section 105 of the Bankruptcy Code to permit a debtor-in-possession to pay prepetition claims when payment is necessary to effectuate a debtor’s bankruptcy goals and is essential to the continued operation of the business. *See Miltenberger v. Logansport. C. & S.W.R. Co.*, 106 U.S. 286, 312 (1882); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, under the necessity of payment doctrine, prepetition claims may be paid if essential to the continued operation of the business).

32. Here, maintaining the Insurance Program and the Surety Bond Program is essential to the preservation of the value of the Debtors’ business, properties, and assets in these Chapter 11 Cases. Authority to pay any prepetition amounts that may be due and owing related to the Insurance Program and the Surety Bond Program—to the extent that the Debtors determine that such payment is necessary to avoid cancellation, default, alteration, assignment, attachment, lapse, or any form of impairment of the coverage, benefits or proceeds provided thereunder—is necessary, as the Insurance Program and the Surety Bond Program are in many cases required by the various contracts and state and federal laws that govern the Debtors. *See, e.g.*, 28 U.S.C. § 959(b) (providing that chapter 11 debtor is obligated under federal law to operate chapter 11

business according to the laws of the states where business and properties are located). Further, under the chapter 11 operating guidelines issued by Office of the United States Trustee for the District of Delaware pursuant to 28 U.S.C. § 586, the Debtors are obligated to maintain certain types of insurance coverage during these chapter 11 cases, which coverage is provided by certain of the Insurance Policies.

33. The nonpayment of any premiums, deductibles, or related fees under any of the Insurance Policies could result in one or more of the Insurance Carriers increasing future insurance premiums, declining to renew the Insurance Policies, or refusing to enter into new insurance agreements with the Debtors. If the Insurance Policies were to lapse without renewal, the Debtors would be exposed to the risk of substantial liability for first party property claims and third party liability claims, to the detriment of all parties-in-interest. Similarly, if the Debtors' Surety Bond Program were not maintained, the Debtors would be unable to maintain many existing customer contracts, hurting all stakeholders. Allowing the Debtors to continue their Surety Bond Program will also obviate the need to implement a new program and find a new surety provider, thereby avoiding disruption related thereto.

34. The services provided by the Insurance and Surety Brokers are also critical to ensuring that the Debtors obtain necessary insurance and surety coverage on advantageous terms at competitive rates, and the Insurance and Surety Brokers have significant institutional knowledge regarding the Debtors' insurance needs. If the Debtors were forced to replace the Insurance and Surety Brokers, the Debtors would be required to spend time, energy, and resources educating a new insurance broker on the Debtors' insurance needs.

III. To the extent the Surety Bond Program, the Insurance Premium Finance Agreement, and the Provision of Collateral Thereunder are Deemed an Extension of Secured Credit, the Court Should Authorize the Debtors to Continue the Programs Pursuant to Section 364 of the Bankruptcy Code, as in the Best Interests of the Estate

A. Continuance of the Programs is in the Best Interests of the Estate

35. To the extent the Surety Bond Program, the Insurance Premium Finance Agreement, and the provision of collateral thereunder are deemed an extension of secured credit, the Debtors also request authority to continue those programs pursuant to section 364 of the Bankruptcy Code, including with respect to posting collateral, as determined in the Debtors' reasonable business judgment.

36. Pursuant to section 364 of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured or unsecured debt if the borrowing is in the best interests of the estate. *See In re Aqua Assocs.*, 123 B.R. 192, 195–96 (Bankr. E.D. Penn. 1991); *In re Ames Dept. Stores*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (stating that with respect to postpetition credit, courts “permit debtors-in-possession to exercise their basic business judgment consistent with their fiduciary duties”); *In re Simasko Prod. Co.*, 47 B.R. 444, 448–49 (Bankr. D. Colo. 1985) (authorizing interim financing agreement where debtor’s best business judgment indicated that financing was necessary and reasonable for benefit of estate). The Debtors respectfully submit that continuation of the Surety Bond Program falls squarely within their ordinary course of business and, but for the constraints of section 364, the Debtors would not need the Court’s prior approval to continue such programs.

37. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate “by a good faith effort that credit was not available” to the debtor on an unsecured or administrative expense basis. *See Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). Given the Debtors’ current financial

circumstances, the Debtors do not believe that they can obtain financial accommodations comparable to those offered pursuant to the Surety Bond Program or Insurance Premium Finance Agreement on an unsecured basis or administrative expense basis.

B. If Debtors are Unable to Continue Making Payments Under the Insurance Premium Finance Agreement, the PFA Lender Could Seek Relief from the Automatic Stay to Cancel the Insurance Policies

38. Additionally, the Insurance Premium Finance Agreement grants the PFA Lender a security interest in the Insurance Policies, including any unearned premiums or other sums that may become payable under the Insurance Policies. Security interests created by premium financing arrangements are generally recognized as secured claims in bankruptcy to the extent of the amount of unearned premiums financed pursuant to such agreements. *See TIFCO, Inc. v. U.S. Repeating Arms Co. (In re U.S. Repeating Arms Co.)*, 67 B.R. 990, 994–95 (Bankr. D. Conn. 1986); *Drabkin v. A.I. Credit Corp. (In re Auto-Train Corp.)*, 9 B.R. 159, 164–66 (Bankr. D.D.C. 1981). Moreover, section 361 of the Bankruptcy Code specifically contemplates providing adequate protection to the extent of the diminution in value of a secured creditor’s collateral, and security interests such as those under the Finance Agreement warrant adequate protection in the form of periodic payments pursuant to the Finance Agreement’s terms. *See, e.g., In re Waverly Textile Processing, Inc.*, 214 B.R. 476, 480 (Bankr. E.D. Va. 1997); *TIFCO, Inc.*, 67 B.R. at 1000.

39. Therefore, if the Debtors are unable to continue making payments under the Finance Agreement, the PFA Lender could seek relief from the automatic stay to cancel the respective Insurance Policies in accordance with the terms of the Finance Agreement or to seek adequate protection of its respective investment. *See Universal Motor Express*, 72 B.R. 208, 211 (Bankr. W.D.N.C. 1987) (recognizing that a default under the financing arrangement and the resulting decline in value of the unearned premiums justified relief from the automatic stay). The Debtors then would be required to obtain replacement insurance on an expedited basis and at

significant cost to the estates. If the Debtors are required to obtain replacement insurance and to pay a lump-sum premium for such insurance in advance, this payment may be the same or greater than what the Debtors currently pay to the PFA Lender under the Finance Agreement. Even if the PFA Lender is not permitted to terminate the Insurance Policies, any interruption of payments would severely and adversely affect the Debtors' ability to finance premiums for future policies, as needed. Accordingly, the Debtors submit that the practical solution is to continue making payments under the Insurance Premium Finance Agreement.

IV. Sections 1107 and 1108 of the Bankruptcy Code Further Support Payment of Obligations Under the Insurance and Surety Bond Program

40. The Debtors are fiduciaries "holding the bankruptcy estate and operating the business for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of a chapter 11 debtor-in-possession is the duty to "protect and preserve the estate, including an operating business's going-concern value." *Id.*

41. Courts have noted that, in certain circumstances, a debtor-in-possession can fulfill its fiduciary duty only "by the preplan satisfaction of a prepetition claim." *Id.* The *CoServ* court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim is a valid exercise of a debtor's fiduciary duty:

First it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

42. The Debtors' payment of prepetition amounts owed under the Finance Agreement, Insurance Program and the Surety Bond Program meets each element of the *CoServ* test. If the Debtors do not maintain the Insurance Program, Insurance Carriers could refuse to renew or seek to terminate the Insurance Policies. If the Surety Bond Program lapses, state governments and regulatory agencies could halt the Debtors' operations. If either event were to occur, the value of the Debtors' estates would suffer significantly more than the amount of any prepetition claim arising from the Insurance and Surety Bond Program. Thus, the Debtors can fulfill their fiduciary duties as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code through the maintenance of the Insurance and Surety Bond Program and the payment of certain prepetition amounts owed thereunder.

Processing of Checks and Electronic Funds Transfers Should Be Authorized

43. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

Immediate Relief Is Necessary and the Requirements of Bankruptcy Rule 6003 are Satisfied

44. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr.

P. 6003. As described above and in the First Day Declaration, any disruption of the Insurance Programs, including the Finance Agreement, and the Surety Bond Program, on the terms proposed, would substantially diminish or impair the Debtors' efforts in these chapter 11 cases to preserve and maximize the value of their estates. For this reason and those set forth above and in the First Day Declaration, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

Waiver of Stay Under Bankruptcy Rule 6004(h)

45. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As provided herein, and to implement the foregoing successfully, the Debtors request that the Proposed Orders include a finding that the Debtors have established cause to exclude such relief from the fourteen (14)-day stay period under Bankruptcy Rule 6004(h).

46. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Orders).

Reservation of Rights

47. Nothing contained herein or any actions taken pursuant to such relief requested is intended to be or should be construed as: (a) an implication or admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order

granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; (h) a waiver of the obligation of any party in interest to file a proof of claim; or (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

Notice

48. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the United States Attorney's Office for the District of Delaware; (d) the Internal Revenue Service; (e) the state attorneys general for states in which the Debtors conduct business; (f) the Securities and Exchange Commission; (g) counsel to the Cowen Parties; (h) counsel to Bank of America; (i) the Insurance Carriers; (j) the Insurance and Surety Brokers; (k) the PFA Lender; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: August 7, 2023
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Andrew L. Magaziner

Pauline K. Morgan (No. 3650)
Andrew L. Magaziner (No. 5426)
Shella Borovinskaya (No. 6758)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: pmorgan@ycst.com
amagaziner@ycst.com
sborovinskaya@ycst.com

- and -

**PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP**

Paul M. Basta (*pro hac vice* admission pending)
Robert A. Britton (*pro hac vice* admission pending)
Michael J. Colarossi (*pro hac vice* admission pending)
1285 Avenue of the Americas
New York, New York 10019
Tel: (212) 373-3000
Fax: (212) 757-3990
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rbritton@paulweiss.com
mcolarossi@paulweiss.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
	)	Chapter 11
)	
PROTERRA INC, <i>et al.</i> , ¹	)	Case No. 23-11120 (___)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Re: Docket No. ___

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO CONTINUE
(A) THEIR PREPETITION INSURANCE POLICIES AND PREMIUM FINANCE
AGREEMENT AND PAY ALL PREPETITION OBLIGATIONS IN RESPECT
THEREOF AND (B) THEIR SURETY BOND PROGRAM AND PAY PREPETITION
OBLIGATIONS RELATING THERETO; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of Debtors for entry of an interim order (this “Interim Order”) (a) authorizing the Debtors to (i) continue to administer the Insurance Program (as defined herein) and to pay prepetition obligations relating thereto, including broker fees arising thereunder or in connection therewith, (ii) make payments pursuant to the Insurance Premium Finance Agreement (as defined herein), and (iii) to revise, extend, supplement, or change insurance coverage as needed, (b) authorizing the Debtors to maintain, renew, and modify their Surety Bond Program (as defined herein) and to pay prepetition obligations relating thereto, including broker fees arising thereunder or in connection therewith, and (c) granting related relief, 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. §§ 157 and 1334 and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Protterra Inc (9565); and Protterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

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 this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized to pay, in an aggregate amount of \$720,000 in prepetition obligations in connection with the Insurance and Surety Bond Program that the Debtors expect to become due and payable prior to the Final Hearing, and pay any postpetition Insurance and Surety Bond obligations.
3. The Debtors are authorized to (i) continue to maintain and perform under the Insurance Program, (ii) revise, extend, renew, supplement, or change the Insurance Policies or enter into new policies (including through obtaining "tail" coverage), if necessary, in the ordinary course of business, and (iii) continue to honor its postpetition obligations related thereto.
4. The Debtors are authorized to (i) continue honoring, in the ordinary course of business consistent with the Debtors' past practice, the Insurance Premium Finance Agreement and to renew or enter into new financing agreements as the terms of the existing arrangement expires, without further order of this Court, and (ii) pay their regular monthly installment payments

under the Insurance Premium Finance Agreement on a postpetition basis as the same become due in the ordinary course of business consistent with the Debtors' past practice.

5. The Debtors are authorized to (i) continue honoring, in the ordinary course of business consistent with the Debtors' past practice, obligations to the Insurance and Surety Bond Brokers and (ii) pay any amounts related thereto on a postpetition basis as the same become due in the ordinary course of business consistent with the Debtors' past practice.

6. The Debtors are authorized to continue the Surety Bond Program and to pay any postpetition obligations related thereto in the ordinary course of the Debtors' business.

7. The Debtors are authorized to renew or, as necessary, acquire additional bonding capacity and pledge cash collateral or letter of credit collateral, as needed in the ordinary course of their business, and execute other agreements, as needed in connection with the Surety Bond Program.

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

9. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

10. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

11. The relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates and, accordingly, Bankruptcy Rule 6003(b) has been satisfied.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

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

15. The final hearing on the Motion shall be held on _____, 2023, at __:__ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion must be filed with the Court on or before 4:00 p.m., prevailing Eastern Time, on _____, 2023, and served on the following parties: (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn. Paul Basta (pbasta@paulweiss.com) and Robert Britton (rbritton@paulweiss.com); (b) Young Conaway Stargatt & Taylor LLP, 1000 North Street, Wilmington, Delaware, 19801 Attn: Pauline Morgan (pmorgan@ycst.com), Andrew Magaziner (amagaziner@ycst.com); and (c) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: ____). If no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the final hearing.

Exhibit B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	
In re:	)	Chapter 11
)	
PROTERRA INC, <i>et al.</i> , ¹	)	Case No. 23-11120 (___)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Re: Docket Nos. __ & __

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO CONTINUE
(A) THEIR PREPETITION INSURANCE POLICIES AND PREMIUM FINANCE
AGREEMENT AND PAY ALL PREPETITION OBLIGATIONS IN RESPECT
THEREOF AND (B) THEIR SURETY BOND PROGRAM AND PAY PREPETITION
OBLIGATIONS RELATING THERETO; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the Debtors for entry of a final order (this “Final Order”) (a) authorizing the Debtors to (i) continue to administer the Insurance Program (as defined herein) and to pay prepetition obligations relating thereto, including broker fees arising thereunder or in connection therewith, (ii) make payments pursuant to the Insurance Premium Finance Agreement (as defined herein), and (iii) to revise, extend, supplement, or change insurance coverage as needed, (b) authorizing the Debtors to maintain, renew, and modify their Surety Bond Program (as defined herein) and to pay prepetition obligations relating thereto, including broker fees arising thereunder or in connection therewith, and (c) granting related relief, 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. §§ 157 and 1334 and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Protterra Inc (9565); and Protterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

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 this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized to pay, in an aggregate amount of \$1,150,000, prepetition obligations in connection with the Insurance and Surety Bond Program, and to pay any postpetition obligations related to the Insurance and Surety Bond Program.
3. The Debtors are authorized to (i) continue to maintain and perform under their Insurance Program, (ii) revise, extend, renew, supplement, or change the Policies or enter into new policies (including through obtaining "tail" coverage), if necessary, in the ordinary course of business, and (iii) continue to honor its postpetition obligations related thereto.
4. The Debtors are authorized to (i) continue honoring, in the ordinary course of business consistent with the Debtors' past practice, the Insurance Premium Finance Agreement and to renew or enter into new financing agreements as the terms of the existing arrangement

expires, without further order of this Court, and (ii) pay their regular monthly installment payments under the Insurance Premium Finance Agreement as the same become due in the ordinary course of business consistent with the Debtors' past practice.

5. The Debtors are authorized in their sole discretion, to continue the Surety Bond Program and to pay any postpetition obligations relating thereto.

16. The Debtors are authorized to (i) continue honoring, in the ordinary course of business consistent with the Debtors' past practice, obligations to the Insurance and Surety Bond Brokers and (ii) pay any amounts related thereto on a postpetition basis as the same become due in the ordinary course of business consistent with the Debtors' past practice.

6. The Debtors are authorized to renew or, as necessary, acquire additional bonding capacity and pledge cash collateral or letter of credit collateral, as needed in the ordinary course of their business, and execute other agreements, as needed, in connection with the Surety Bond Program.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

9. The Debtors are authorized to issue postpetition checks, or to effect postpetition electronic payment requests, in replacement of any checks or electronic payment requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

10. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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

Exhibit C**Insurance Schedule**

Type of Policy	Insurer Carrier	Insurance Policy Number	Term
Package policy, lead property, general liability, mfg E & O	Travelers	Y6300P887359IND22	11/10/2023
Commercial auto	Travelers	BA0P8925912214G	11/10/2023
Excess auto liability \$1,000,000	Travelers	EX4R8866752214	11/10/2023
Foreign Package	Travelers	ZGC21P4787522GC	11/10/2023
Contractors Pollution/Professional	Indian Harbor	PEC005439902	11/10/2023
Property - Excess 35.6% po \$35Mx\$100M	Intact Insurance Co	795020412	11/10/2023
Property - Excess 11.8% po \$85M x\$50M	Landmark	LHD927989	11/10/2023
Lead Umbrella \$5 mm	Westchester	G4683575A006	11/10/2023
Excess liability \$5 X \$5 mm	Lloyds	B0146GLUSA2200175	11/10/2023
Ocean Marine Cargo/Inland Transit	Travelers	ZOC91N46935	11/10/2023
Primary Punitive Damages \$5M	Chubb Bermuda	PD12129001A	11/10/2023
Excess liability \$5 po \$10 mm x \$10 mm	Crum & Forester	SEO121263	11/10/2023
Excess liability \$5 po \$10 mm x \$10 mm	United Specialty	BTM2211016	11/10/2023
Excess Punitive Damages \$5M	Lloyds	MCPD209571	11/10/2023
Errors & Omissions - A&E Primary \$2M	Lloyds	B0621PPROT007122	11/10/2023
Errors & Omissions - A&E Excess (\$3MX \$2M)	Lloyds	B0621PPROT008322	11/10/2023
Errors & Omissions - A&E Excess (\$5MX\$5M)	Lloyds	B0621PPROT008422	11/10/2023
Difference in Condition	Landmark	LHQ429570	11/10/2023
Property-Excess 15.9% \$14.5M po \$85Mx\$50M	Scottsdale	BXS0004088	11/10/2023
Property - Excess 5.9% \$5M po \$85x\$50M	Falls Lake National	PXP000017400	11/10/2023
Property - Excess 31% po \$85Mx\$50M	Starr Surplus Lines	22SLCFM11583401	11/10/2023
Property - Excess 5% po \$50Mx\$50M	Houston Casualty	PR2200118	11/10/2023
Property - Excess 6.6% po \$50Mx\$50M	Lloyds	PR2200120	11/10/2023
Property - Excess 4% po \$50Mx\$50M	Lloyds	PR2200119	11/10/2023
Property - Excess 20% po \$50Mx\$50M	Lloyds	PR2200117	11/10/2023

Type of Policy	Insurer Carrier	Insurance Policy Number	Term
Excess Liability \$5 mm XS \$20 mm	Lloyds	B0146GLUSA2200177	11/10/2023
Cyber Liability \$5M	North American Capacity	C4LPE041519CYBER202105	12/20/2023
Accident Insurance (Michelin test track)	Philadelphia	PHPA117151	11/10/2023
Directors & Officers Liability	Inigo	B0509FINMW2350270	6/14/2024
Excess Directors & Officers Liability	Everest	SC5EX00726-231	6/14/2024
Excess Directors & Officers Liability	AIG	01-146-36-22	6/14/2024
Excess Directors & Officers Liability	AXAXL	ELU190451-23	6/14/2024
Excess Directors & Officers Liability	Hudson	HN-0303-7590-061423	6/14/2024
Excess Directors & Officers Liability	RSUI	NHS705413	6/14/2024
Excess Directors & Officers Liability	AIG	01-146-36-24	6/14/2024
Excess Directors & Officers Liability	Allied World	0312-9239	6/14/2024
Excess Directors & Officers Liability	Ironshore	DO6NACAG8O003	6/14/2024
Excess Directors & Officers Liability	Berkley	BPRO8094795	6/14/2024
Excess Directors & Officers Liability	Inigo	B0509FINMW2351054	6/14/2024
Excess Directors & Officers Liability	AXAXL	ELU190452-23	6/14/2024
Employment Practices Liability	Chubb	8226-1261	11/16/2023
Excess Employment Practices Liability	Axix	P-001-000751694-02	11/16/2023
Fiduciary Liability	Chubb	8226-1261	11/16/2023
Crime	Chubb	8226-1261	11/16/2023
Directors & Officers RunOff Liability - Premium	XL Specialty	ELU19045223	7/26/2029
Directors & Officers RunOff Liability - Premium	Lloyds of London	B0509FINMW2350270	7/26/2029
Directors & Officers RunOff Liability - Stamping Fee	Lloyds of London	B0509FINMW2350270	7/26/2029
Directors & Officers RunOff Liability - Surplus Ln Tax	Lloyds of London	B0509FINMW2350270	7/26/2029
Directors & Officers RunOff Liability - Premium	Everest Natl	SC5EX00726231	7/26/2029
Directors & Officers RunOff Liability - Premium	National Un-Pa	11463622	7/26/2029

Type of Policy	Insurer Carrier	Insurance Policy Number	Term
Directors & Officers RunOff Liability - Premium	XL Specialty	ELU19045123	7/26/2029
Directors & Officers RunOff Liability - Premium	Hudson Insurance	HN03037590061423	7/26/2029
Directors & Officers RunOff Liability - Premium	Rsui Indemnity	NHS705413	7/26/2029
Directors & Officers RunOff Liability - Premium	National Un-Pa	11463624	7/26/2029
Directors & Officers RunOff Liability - Premium	Allied World Spec Ins Co	3129239	7/26/2029
Directors & Officers RunOff Liability - Premium	Ironshore Indemnity, Inc	DO6NACAG80003	7/26/2029
Directors & Officers RunOff Liability - Premium	Berkley	BPRO8094795	7/26/2029
Directors & Officers RunOff Liability - Premium	Lloyds of London	B0509FINMW2351054	7/26/2029
Directors & Officers RunOff Liability - Stamping Fee	Lloyds of London	B0509FINMW2351054	7/26/2029
Directors & Officers RunOff Liability - Surplus Ln Tax	Lloyds of London	B0509FINMW2351054	7/26/2029

Exhibit D

Finance Agreement

LENDER:

PREMIUM FINANCE AGREEMENT

450 Stoke Blvd, Ste 1000

Personal Commercial Additional Premium

Northbrook, IL 60062-7917
P:(800) 837-2511 F:(800) 837-3709
www.firstinsurancefunding.com

FIRST INSURANCE[®]
FUNDING
A WITTRUST COMPANY

Quote #: 43785682

INSURED/BORROWER (Name and Address as shown on Policy) Pretoria Operating Company, Inc. Pretoria Inc. 1815 Rollins Road Burlingame, CA 94010	Customer ID: N/A	AGENT or BROKER (Name and Business Address) WOODRUFF-SAWYER & CO-OREGON 1050 SW 6th Avenue #1000 Portland, OR 97204
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LOAN DISCLOSURE

Total Premiums, Taxes, and Fees	Down Payment	Unpaid 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)
4,214,703.11	1,602,300.18	2,612,402.93	0.00	2,612,402.93	82,859.69	2,694,462.42	6.250 %

YOUR PAYMENT SCHEDULE WILL BE: *Mail Payments to: FIRST Insurance Funding, PO Box 7990, Carol Stream, IL 60117-7900*

Number of Payments	Amount of Each Payment	First Installment Due	2/10/2023
3	\$98,154.14	Installment Due Dates	10th (Quarterly)

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
PEC005439902	C00194-INDIAN HARBOR INSURANCE CO [ME:25.000 %, CX:0] [PR]	PLL	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	18,155.00 0.00 590.84
799020412	C00192-HOMELAND INS CO OF NY G02866-INTACT INSURANCE [ME:25.000 %, CX:0] [PR]	EXLB	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	28,027.00 0.00 910.88
TOTAL					4,214,703.11

[Policies continued on next page.]

SCHEDULE OF POLICIES

Insured: Pretoria Operating Company
Quote #: 43785682

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
LHD927989	C00025-LANDMARK AMERICAN INS CO G00718-AMWINS BROKERAGE NJ [ME:35.000 %, CX:0] [PR]	EXLB	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	35,000.00 0.00 1,137.50
G4683575A006	C00105-WESTCHESTER SURPLUS LINES INC G00210-CRC GROUP [ME:25.000 %, CX:0] [PR]	EXLB	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	1,174,849.00 0.00 38,182.59
B0146GLUSA220075	C00005-LLOYDS OF LONDON G00226-CRC GROUP [ME:25.000 %, CX:0] [PR]	EXLB	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	775,000.00 0.00 25,187.50
ZDC91N46935	C00005-LLOYDS OF LONDON G00210-CRC GROUP [ME:25.000 %, CX:0] [PR]	EXLB	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	290,000.00 0.00 9,425.00
PD12129001A	C02931-CHUBB BERMUDA INSURANCE LTD G03785-GAW'S OF LONDON LIMITED [ME:35.000 %, CX:0] [PR]	EXLB	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	58,742.00 0.00 1,909.12
SEO121263	C00468-CRUM & FORSTER SPECIALTY INS G00162-CRC INSURANCE SERVICES [ME:25.000 %, CX:0] [PR]	EXLB	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	495,000.00 150.00 16,062.38
BTM2211016	C00593-UNITED SPECIALTY INSURANCE CO G00162-CRC INSURANCE SERVICES [ME:25.000 %, CX:0] [PR]	EXLB	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	495,000.00 0.00 16,087.50
MCPD029571	C00005-LLOYDS OF LONDON G01841-PARAGON INTERNATIONAL INS BROKERS [CX:0] [PR]	EXLB	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	58,125.00 0.00 1,889.06
B0621PPRO100712	C00005-LLOYDS OF LONDON G00162-CRC INSURANCE SERVICES [CX:0] [PR]	E&O	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	22,125.00 0.00 719.06
LHQ429370	C00025-LANDMARK AMERICAN INS CO G00162-CRC INSURANCE SERVICES [ME:35.000 %, CX:0] [PR]	DIS	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	260,000.00 0.00 8,450.00
BXS9004088	C00089-SCOTTSDALE INSURANCE COMPANY G00173-AMWINS BROKERAGE OF NJ [ME:35.000 %, CX:0] [PR]	PROP EX	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	54,000.00 729.73 1,738.71
FXP000017400	C02292-FALLS LAKE NATIONAL INS CO G00718-AMWINS BROKERAGE NJ [ME:35.000 %, CX:0] [PR]	PROP EX	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	20,000.00 270.27 658.79
22MLCPM1158340	C00173-STARR SURPLUS LINES INS CO G00173-AMWINS BROKERAGE OF NJ [ME:30.000 %, CX:0] [PR]	PROP EX	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	151,387.00 0.00 4,920.08
PR2200118	C00005-HOUSTON CASUALTY COMPANY G03785-GAW'S OF LONDON LIMITED [CX:0] [PR]	PROP EX	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	17,772.75 0.00 577.78
PR2200120	C00005-LLOYDS OF LONDON G03785-GAW'S OF LONDON LIMITED [CX:0] [PR]	PROP EX	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	29,286.24 0.00 951.80
PR2200119	C00005-LLOYDS OF LONDON G03785-GAW'S OF LONDON LIMITED [CX:0] [PR]	PROP EX	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	16,355.52 0.00 531.55
PR2200117	C00005-LLOYDS OF LONDON G03785-GAW'S OF LONDON LIMITED [CX:0] [PR]	PROP EX	12	11/10/2022 ERN TXS/FEES FIN TXS/FEES	44,444.40 0.00 1,444.44

Agent (Name and Address) Marsh Risk & Insurance Services Attn: Kimberley Bates Four Embarcadero Center Suite 1100 San Francisco, CA 94111 4155480903	10052879	Insured (Name and Address as shown on the policy) Proterra Operating Company, Inc. Proterra, Inc Attn: Kerri Howard 1815 Rollins Rd Burlingame, CA 94010 630-408-0364
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A) Total Premiums	B) Down Payment	C) Amount Financed	D) Finance Charge	E) Total Payments
\$4,134,542.00	\$1,537,104.00	\$2,597,438.00	\$93,316.63	\$2,690,754.63
F) Annual Percentage Rate	No. of Payments	Amount of Payments	First Installment Due	Installment Due Dates
8.586%	3 (Quarterly)	\$896,918.21	08/14/2023	14th

SCHEDULE OF POLICIES

Policy Prefix and Numbers	Effective Date of Policy/Inst.	Name of Insurance Company and Name and Address of General or Policy Issuing Agent or Intermediary	Type of Coverage	Months Covered	Premium \$
B0509FINMW225 0511	06/14/2023	Lloyds of London	DO	12	850,000.00
		Marsh Risk & Insurance Services 1735 Technology Drive Suite 790 San Jose, CA 95110 USA Tax Policy Detail Continued...	TAX	Ref	27,030.00

SCHEDULE OF POLICIES

Policy Prefix and Numbers	Effective Date of Policy/Inst.	Name of Insurance Company and Name and Address of General or Policy Issuing Agent or Intermediary	Type of Coverage	Months Covered	Premium \$
B0509FINMW225 0511	06/14/2023	Lloyds of London	DO	12	70,000.00
		Marsh Risk & Insurance Services 1735 Technology Drive Suite 790 San Jose, CA 95110 USA Tax	TAX	Ref	2,226.00
	06/14/2023	Lloyds of London Marsh Risk & Insurance Services 1735 Technology Drive Suite 790 San Jose, CA 95110 USA	DO	12	60,000.00
SCSEX00726221	06/14/2023	Everest National Insurance Company	XSDO	12	799,000.00
013013165	06/14/2023	National Union Fire Insurance Co Pittsburgh PA	XSDO	12	623,220.00
11.1/18339122	06/14/2023	XI. Specialty Insurance Company	XSDO	12	486,000.00
1FN030375900614 22	06/14/2023	Hudson Insurance Company	XSDO	12	388,800.00
NHS700048	06/14/2023	RSUI Indemnity Company R-T Specialty, LLC 10150 York Road 5th Floor Hunt Valley, MD 21030 USA	XSDO	12	302,086.00
013013166	06/14/2023	National Union Fire Insurance Co Pittsburgh PA	XSSDA	12	194,000.00
03129239	06/14/2023	Allied World Specialty Insurance Company	XSSDA	12	139,680.00
DO6NACAG8000 2	06/14/2023	Ironshore Indemnity Inc.	XSSDA	12	110,000.00
BPRO8080284	06/14/2023	Berkley Insurance Company	XSSDA	12	82,500.00

Exhibit E**Surety Bonds Schedule**

Bond Number	Issuing Carrier	Principal	Obligee	Bond Amount	Term
PB02182000037	Philadelphia Indemnity Insurance Company	Proterra, Inc.	Chicago Transit Authority	\$15,619,205	6/29/2023
PB01989700046	Philadelphia Indemnity Insurance Company	Proterra, Inc.	Spokane Transit Authority	\$5,653,416	9/21/2022
800018814	Atlantic Specialty Insurance Company	Proterra Operating Company, Inc.	Capital Metropolitan Transportation Authority	\$4,579,000	1/31/2024
PB00438200005	Philadelphia Indemnity Insurance Company	Proterra, Inc.	Board of County Commissions of Miami-Dade County	\$4,254,513	8/20/2023
800018815	Atlantic Specialty Insurance Company	Proterra Operating Company, Inc.	City and County of San Francisco	\$2,465,696	1/16/2024
PB02182000050	Philadelphia Indemnity Insurance Company	Proterra, Inc.	Delaware Transit Authority	\$1,885,988	8/12/2023
PB02182000051	Philadelphia Indemnity Insurance Company	Proterra, Inc.	Southeastern Pennsylvania Transportation Authority	\$1,127,997	9/6/2023
PB02182000052	Philadelphia Indemnity Insurance Company	Proterra, Inc.	Sacramento Regional Transit District	\$890,403	10/18/2023
PB00438200024	Philadelphia Indemnity Insurance Company	Proterra Operating Company, Inc.	Metropolitan Washington Airports Authority	\$780,755	12/31/2023
22C0023NM	Lexon Insurance Company	Proterra Operating Company, Inc.	Department of HomeLand Security	\$600,000	12/19/2023
PB01989700045	Philadelphia Indemnity Insurance Company	Proterra, Inc.	Transportation District Commission of Hampton Roads	\$506,638	7/2/2023
PB00438200020	Philadelphia Indemnity Insurance Company	Proterra, Inc.	Santa Clara Valley Transportation Authority	\$440,393	8/23/2023
962-019-625	Intact Insurance Company	Proterra, Inc.	Canada Border Services Agency	\$270,307	3/1/2023
PB00438200023	Philadelphia Indemnity Insurance Company	Proterra Operating Company, Inc.	Biddeford Saco Old Orchard Beach Transit	\$238,909	6/11/2023
PB00438200013	Philadelphia Indemnity Insurance Company	Proterra, Inc.	City of Visalia	\$115,878	2/16/2024
PB01989700035	Philadelphia Indemnity Insurance Company	Proterra Inc.	State of California	\$50,000	5/31/2024
PB00438200017	Philadelphia Indemnity Insurance Company	Proterra, Inc.	State of Oregon	\$30,000	6/23/2024
PB02182000047	Philadelphia Indemnity Insurance Company	Proterra, Inc.	State of California, Contractors License Board	\$25,000	4/25/2024
PB00438200019	Philadelphia Indemnity Insurance Company	Manasaveena Chennuri	State of California, Contractors License Board	\$25,000	8/11/2024
PB02182000042	Philadelphia Indemnity Insurance Company	Proterra, Inc.	Contractor's License Board	\$15,000	10/12/2023
PB004382000008	Philadelphia Indemnity Insurance Company	Proterra, Inc.	State of Washington/Contractors Board	\$12,000	6/28/2024