

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

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 In re: : Chapter 11
 :
 Alcor Energy, LLC,¹ : Case No. 18-12839 (___)
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 Debtor. :
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**MOTION FOR INTERIM AND FINAL ORDERS
 (A) AUTHORIZING THE DEBTOR TO USE CASH COLLATERAL,
 (B) AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION FINANCING,
 (C) GRANTING SUPERPRIORITY SECURITY INTERESTS AND SUPERPRIORITY
 ADMINISTRATIVE EXPENSE STATUS TO EXISTING LENDER, (D) GRANTING
 ADEQUATE PROTECTION TO FIRST LIEN LENDER, (E) SCHEDULING
A FINAL HEARING, AND (F) GRANTING RELATED RELIEF**

Alcor Energy, LLC (the “Debtor”) hereby moves (this “Motion”) the Court, pursuant to sections 105, 361, 362(d), 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503(b), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for entry of an order, substantially in the form attached hereto as Exhibit A (the “Interim DIP Order”), and a final order (the “Final DIP Order”), (a) authorizing the Debtor to obtain super-priority, debtor-in-possession financing (the “DIP Facility”) pursuant to the terms set forth in that certain *Alcor Energy, LLC Debtor-In-Possession (DIP) Financing Term Sheet* (the “Term Sheet”),² a copy of which is attached as Exhibit 1 to the Interim DIP Order, (b) granting liens and superpriority

¹ The last four digits of the Debtor’s taxpayer identification number are 0924. The Debtor’s address is 7754 East Velocity Way, Mesa, Arizona 85212.

² Capitalized terms used herein, but not otherwise defined, have the meanings given to them in the Term Sheet.

administrative claims; (c) scheduling a final hearing with respect to the relief requested herein; and (d) granting related relief. In support of this Motion, the Debtor relies upon and incorporates by reference the *Declaration of Don Pitts, Chief Financial Officer, in Support of Chapter 11 Petition and First Day Motions* (the “First Day Declaration”) and the *Declaration of David Payne in Support of Motion for Interim and Final Orders (A) Authorizing the Debtor to Use Cash Collateral, (B) Authorizing the Debtor to Obtain Post-Petition Financing, (C) Granting Superpriority Security Interests and Superpriority Administrative Expense Status to Existing Lender, (D) Granting Adequate Protection to First Lien Lender, (E) Scheduling a Final Hearing, and (F) Granting Related Relief* (the “DIP Declaration”), each filed concurrently herewith. In further support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 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. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105, 361, 362(d), 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503(b), and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014, and Local Rule 4001-2.

3. Under Rule 9013-1(f) of the Local Rules, the Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

4. On the date hereof (the "Petition Date"), the Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case") as a "small business debtor" as that term is defined in the Bankruptcy Code.

5. The Debtor continues to operate its business and manage its properties as a debtor and debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

6. To date, no creditors' committee has been appointed in the Chapter 11 Case by the Office of the United States Trustee for the District of Delaware (the "United States Trustee"). No trustee or examiner has been appointed in the Chapter 11 Case.

7. Additional factual background information regarding the Debtor, including its business operations, its corporate and capital structure, and the events leading to the Chapter 11 Case, is set forth in detail in the First Day Declaration, which is incorporated herein by reference.

THE DEBTOR'S SECURED DEBT

8. The Debtor is indebted to the Lender pursuant to certain documents executed and delivered to the Lender or the Lender's predecessor-in-interest by the Debtor, including, without limitation, (a) that certain *Amended and Restated Loan and Security Agreement* dated May 8, 2014 (as heretofore amended and supplemented from time to time, the "Credit Agreement"), and (b) that certain Promissory Note of the Debtor in the original principal amount of \$700,000 dated May 23, 2017 in favor of Maxus Capital Group, LLC, Lender's predecessor-in-interest (the "Maxus Note") and related security agreement.

9. The Credit Agreement, the Maxus Note, and all notes, security agreements, assignments, pledges, mortgages, deeds of trust, guaranties, forbearance agreements, letters of

credit, and other instruments or documents executed in connection therewith or related thereto are referred to herein collectively as the “Pre-Petition Claim Documents.”

10. Pursuant to the Pre-Petition Claim Documents and applicable law, the Lender holds a valid, enforceable, and allowable claim against the Debtor, as of the Petition Date, in an aggregate amount of at least \$3,775,000 of unpaid principal, plus any and all accrued and unpaid interest, fees, costs, expenses, charges, and other claims, debts, or obligations of the Debtor to the Lender that have accrued as of the Petition Date under the Pre-Petition Claim Documents and applicable law. The Lender’s claim, as described in the preceding sentence, together with all post-Petition Date interest, fees, costs, and charges allowed to the Lender on such claim pursuant to section 506(b) of the Bankruptcy Code shall collectively be referred to hereunder as the “Pre-Petition Claim”.

11. The Pre-Petition Claim constitutes an allowed, legal, valid, binding, enforceable, and non-avoidable obligation of and claim against the Debtor, and is not subject to any offset, defense, counterclaim, avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or any other applicable law, and the Debtor does not possess and cannot assert any claim, counterclaim, setoff, or defense of any kind, nature, or description that would in any way affect the validity, enforceability, allowance, and non-avoidability of the Pre-Petition Claim.

12. The Pre-Petition Claim is secured by properly perfected, first priority liens and security interests in, *inter alia*, any and all assets and property of the Debtor, now owned or hereafter acquired, real and personal, and the proceeds and products thereof (collectively, and as defined in the Interim DIP Order, the “Pre-Petition Collateral”).

13. Additionally, all cash of the Debtor’s bankruptcy estate, wherever located, and all cash equivalents, whether in the form of negotiable instruments, documents of title, securities,

deposit accounts, investment accounts, or in any other form, that were on the Petition Date in the Debtor's possession, custody, or control (or the possession, custody, or control of any persons in privity with the Debtor), or in which the Debtor will obtain an interest during the pendency of the Chapter 11 Case whether via advances under the DIP Facility or otherwise, or which represent income, proceeds, products, rents, or profits of any of the Collateral, as defined below, is the cash collateral of Lender (collectively, the "Cash Collateral"). The Lender has a first priority perfected lien and security interest in the Cash Collateral pursuant to the applicable provisions of the Pre-Petition Claim Documents and sections 363(a) and 552(b) of the Bankruptcy Code.

SUMMARY OF PRINCIPAL TERMS OF DIP FACILITY

14. In accordance with the disclosure required by Bankruptcy Rule 4001(b), the principal terms of the DIP Facility are as follows:

Required Disclosure	Material Terms
DIP Facility	A senior secured, multiple draw, superpriority, debtor-in-possession credit facility.
Facility Size	\$695,000 is the maximum commitment to be funded in accordance with the DIP Facility Documents and Budget. Amounts repaid may not be reborrowed. Until the entry of the Final DIP Order, a maximum of \$140,000 will be available under the DIP Facility. The Budget will include a schedule of timing and amount of projected drawings under the DIP Facility (the " <u>DIP Loans</u> ").
Borrower & Debtor	Alcor Energy, LLC
Effective Date of DIP Facility	The date of the entry of Interim DIP Order
Priority	The DIP Lender shall have a super-priority, administrative claim against the Borrower pursuant to section 364(c) of the Bankruptcy Code (the " <u>Super-Priority Claim</u> "). In addition, the DIP Lender shall have a super-priority, senior lien (the " <u>DIP Liens</u> " and, with the Super-Priority Claim, the " <u>DIP Protections</u> ") pursuant to section 364(d) of the Bankruptcy Code against all assets of Borrower, whether real or personal, including postpetition assets (including Avoidance Actions), subject only to (i) the Carve-Out Expenses, and

Required Disclosure	Material Terms
	<p>(ii) budgeted ordinary course post-petition expenses (“<u>Budgeted Expenses</u>”).</p> <p>Subject to entry of a Final DIP Order, the DIP Protections shall not be subject to any rights, claims, charges, or liens arising under section 506(c) of the Bankruptcy Code. The obligations under the DIP Facility (the “<u>DIP Obligations</u>”) shall not be subject to the equitable doctrine of marshaling.</p> <p>All DIP Protections will survive any conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code or the dismissal of the Chapter 11 Case.</p> <p>All DIP Liens granted pursuant to the DIP Facility Documents and all DIP Liens authorized and granted pursuant to the DIP Orders entered by the Court shall be deemed effective and perfected as of the Petition Date, and no further filing, notice, or act under applicable law or otherwise will be required to effect such perfection. The Borrower shall make any filings, deliver any notices, make recordations, perform any searches, enter into control agreements, or take any other acts as may be necessary under state law or other applicable law or otherwise desirable in order to protect, preserve, and/or enforce the security, perfection, or priority of the DIP Liens.</p> <p>The DIP Lender shall have the right to challenge the amount, validity, and perfection of any lien or security interest filed against the Borrower that relates to Collateral that purports to be senior to the DIP Liens and/or any lien arising under the Prepetition Security Agreement.</p>
DIP Lender	Ocho Ventura, LLC or one or more of its affiliates (“ <u>Ocho</u> ”) or any other lender entity designated by Ocho.
DIP Facility Documents	A debtor-in-possession credit agreement, the Term Sheet, and all other documents, agreements, certificates and opinions to be executed or delivered, or relating to the transactions contemplated to be in form and substance acceptable to DIP Lender in their sole discretion (collectively, with the Term Sheet, the “ <u>DIP Facility Documents</u> ”). In the sole discretion of the DIP Lender, funding under the DIP Orders may be made on the basis of a “short form” promissory note, security agreement, guaranty agreement, or the Term Sheet and the parties may choose to treat the Term Sheet as a de facto debtor-in-possession credit agreement.

Required Disclosure	Material Terms
First Lien Lender	Ocho and any assignees from time to time in their capacity as lenders (collectively, the " <u>First Lien Lender</u> ") under that certain <i>Amended and Restated Loan and Security Agreement</i> dated as of May 8, 2014 (as amended) (the " <u>Prepetition Security Agreement</u> ").
First Lien Adequate Protection	<p>As adequate protection for the use and any diminution in the value of the First Lien Lender's prepetition liens in the Collateral, as part of the DIP Orders:</p> <ol style="list-style-type: none"> 1. The liens and obligations of the First Lien Lender shall be acknowledged, affirmed, and validated by the Debtor's estate, subject to any action commenced by a creditor of the Borrower no later than seventy-five calendar days after entry of the Interim DIP Order and, to the extent an official committee of unsecured creditors is appointed, sixty calendar days from the date of the appointment of such committee; 2. The First Lien Lender will receive replacement liens on all assets of the Borrower and superpriority claims under section 507(b) of the Bankruptcy Code to the extent of any diminution in the value of the Collateral, which replacement liens and claims shall be senior to all other liens and claims, subject only to the liens and claims in favor of the DIP Facility, the Carve Out Expenses, and any senior liens of materialmen and mechanics as of the Petition Date; and 3. As described in the Interim DIP Order, the First Lien Lender shall receive from the Borrower all reasonable and documented outstanding fees and expenses (the "<u>Pre-Petition Fee Payments</u>"), including, but not limited to, fees and expenses of legal counsel, incurred by the First Lien Lender to the extent provided for under the Prepetition Security Agreement. Such amounts shall be paid upon Maturity. 4. Upon or at any time after entry of the Final DIP Order, the DIP Lender shall be authorized to fund under the DIP Facility one or more DIP Loans in an amount sufficient to pay up to \$345,000 of the outstanding amounts with respect to the advances made pursuant to the Prepetition Security Agreement (the "<u>2018 Advances</u>") (the proceeds of which were used to fund the Borrower's professional fees and working capital needs necessary to enable the Borrower to prepare for an orderly chapter 11 petition filing) <i>plus</i> accrued and unpaid interest and fees related to the 2018 Advances (the "<u>Roll-up</u>"), and the Borrower shall be authorized to draw on the DIP Facility in order to effectuate the Roll-up.
Budget	The thirteen week budget, attached hereto as <u>Exhibit A</u> (the " <u>Budget</u> "), agreed upon among the Borrower and the DIP Lender (together, the " <u>Parties</u> ") with respect to revenues and the Budgeted Expenses. An updated Budget for each successive four week period

Required Disclosure	Material Terms
	<p>(or longer time agreed among the Parties) shall be provided to DIP Lender not less than two weeks prior to the end of the time period covered by the then effective Budget and shall be effective upon agreement by the Parties. There shall be an event of default if (i) total disbursements for any monthly time period covered by the Budget shall have exceeded the total disbursements allowed in the Budget by more than 10%, (ii) total disbursements for any line item in the Budget for any monthly time period shall be exceed by more than the greater of 25% or \$10,000, (iii) total revenue for any month received after the Petition Date shall fall below \$80,000, or (iv) the Budget amount is exceeded by any amount for certain specific items to be agreed to by the Parties (items (i) to (iv) being the “<u>Permitted Variances</u>”).</p>
Use of Proceeds	<p>The Borrower shall, in accordance with the DIP Facility Documents and the Budget and as required by any DIP Orders and any orders entered by the Court, such orders being in form and substance satisfactory to the DIP Lender, use the proceeds of the DIP Loans for (a) general corporate purposes, (b) interest, premiums, and fees payable hereunder and under the DIP Facility Documents; (c) restructuring costs and professional fees relating to the Chapter 11 Case in accordance with the terms hereof, the DIP Facility Documents, and the Budget; and (d) adequate protection payments, particularly amounts for the Roll-Up, provided to the First Lien Lender.</p> <p>Subject to the entry of the Final DIP Order, no proceeds of the DIP Facility and no cash collateral (including the Carve-Out Expenses) may be used in connection with (a) the modification, stay, or amendment of the DIP Orders without the consent of the DIP Lender or (b) any litigation, proceeding, or adverse action against, or challenge to the rights or liens of, the DIP Lender or the First Lien Lender.</p> <p>For the avoidance of doubt, until such time as the DIP Facility Documents is finalized, the Term Sheet shall control.</p>
Interest Rate	<p>The DIP Loans shall bear interest at a rate of 10% per annum, payable at Maturity. The default rate shall be 2% payable upon and during continuance of event of default. The payment may be deferred for a period up to ninety days if requested by the Borrower due to liquidity constraints and if consented to by the DIP Lender in the DIP Lender’ sole discretion.</p>

Required Disclosure	Material Terms
Facility Fee	1% of all amounts actually funded under the DIP Facility, payable upon Maturity, or at the time of any earlier payments of DIP Facility to the extent of such payments.
Exit Fee	1% of the total amount advanced under the DIP Facility, payable upon Maturity, or at the time of any earlier payments of DIP Facility to the extent of such payments.
Expenses	The Borrower shall pay or reimburse upon Maturity all reasonable and documented costs and expenses associated with the preparation, due diligence, administration and closing of all DIP Facility Documents, including, without limitation, the reasonable and documented legal fees and expenses of counsel to the DIP Lender, and the Borrower shall pay upon Maturity the expenses of the DIP Lender in connection with the enforcement of any DIP Facility Documents, including expenses of counsel.
Collateral	Pursuant to sections 364(c) and (d) of the Bankruptcy Code, all obligations of the Borrower under the DIP Facility (" <u>DIP Obligations</u> ") will be secured by security interests in all of the Borrower's and its bankruptcy estate's assets (the " <u>Collateral</u> "), including, subject to the entry of the Final DIP Order, proceeds and rights in respect of avoidance actions under sections 502(d), 510, 544, 545, 547, 548, 549, 550, 551, or 553(b) of the Bankruptcy Code (" <u>Avoidance Actions</u> "). Collateral shall include all property that is not subject to a security interest or lien as of the Petition Date and property that is covered by a security interest or lien as of the Petition Date. Such liens on the Collateral will be valid, enforceable, and perfected first-priority priming liens and security interests, with priority over any and all prepetition or postpetition liens, security interests, and other interests including any and all mechanics and materialmen's liens (" <u>M&M Liens</u> ") and shall be subject and junior only to (i) the Carve-Out Expenses and (ii) the Budgeted Expenses. The DIP Lender shall also have a superpriority administrative expense under section 364(c)(1) of the Bankruptcy Code against the Borrower for the amount of all obligations under the DIP Facility, subject only to the Carve-Out Expenses and Budgeted Expenses. No person other than the DIP Lender shall have a lien on the collateral, except for (i) the liens of the First Lien Lender (including adequate protection liens provided herein) and (ii) M&M Liens (it being understood that pursuant to the DIP Orders any and all such liens will be junior to the DIP Facility).
Maturity	Unless extended by written agreement of the Parties, the earlier of: (i) April 15, 2019 (" <u>Final Maturity Date</u> "), (ii) the effective date of a

Required Disclosure	Material Terms
	chapter 11 plan with respect to the Chapter 11 Case (the “ <u>Plan</u> ”), (iii) the date on which a sale of all or substantially all of the assets of the Borrower is consummated, (iv) the date the DIP Facility is accelerated upon the occurrence and declaration of an Event of Default, and (v) the date that the DIP Facility shall become due and payable in full hereunder or pursuant to the DIP Orders, whether by acceleration or otherwise (each, the “ <u>Maturity</u> ”).
Amortization	None.
Repayment	Borrower may repay the DIP Obligations in whole or in part at any time without premium or penalty (other than the applicable Exit Fee). At Maturity, advances under the DIP Facility shall be repaid in full, together with accrued interest and Exit Fee on amounts advanced.
Conditions Precedent for effectiveness of DIP Facility and Each Funding	<p>In addition to customary conditions as set forth in the DIP Facility Documents, the obligation of the DIP Lender to make available the DIP Facility shall be subject to satisfaction (or waiver by the DIP Lender) of the following conditions:</p> <p>(a) Completion of due diligence of the DIP Lender prior to the Petition Date with satisfactory results;</p> <p>(b) Court approval of DIP Facility on an interim basis no later than December 28, 2018 (the “<u>Interim DIP Order</u>”) and, on a final basis no later than January 31, 2019 (the “<u>Final DIP Order</u>”) and, collectively with the Interim DIP Order, the “<u>DIP Orders</u>”), provided that the DIP Orders shall be subject to the Budget and acceptable to the DIP Lender and shall include provisions relating to DIP Facility that are customary for facilities of this type and other provisions acceptable to the DIP Lender and to the First Lien Lender (with respect to adequate protection);</p> <p>(c) Each borrowing shall be consistent with the most recently delivered and approved Budget subject to any variances as permitted by the Term Sheet or, once finalized, the DIP Facility Documents;</p> <p>(d) The execution and delivery of the Term Sheet prior to the entry of the Interim DIP Order;</p> <p>(e) All first day motions filed by the Borrower and all first day orders entered on the docket of the Court shall be reasonably satisfactory to the DIP Lender;</p> <p>(f) Absence of any continuing default or Event of Default;</p> <p>(g) the Chapter 11 Case shall not have been dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;</p>

Required Disclosure	Material Terms
	<p>(h) no trustee under Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in the Chapter 11 Case;</p> <p>(i) the DIP Order then in effect shall be in full force and effect, shall not have been reversed, modified, amended, stayed, vacated, or subject to a stay pending appeal;</p> <p>(j) the Borrower shall be in compliance in all respects with the DIP Order then in effect; and</p> <p>(k) No material adverse change shall have occurred with respect to the operations, properties, or financial condition of the Borrower, taken as a whole, since the commencement of the Chapter 11 Case.</p> <p>For the avoidance of doubt, until the DIP Facility Documents is finalized, the conditions precedent to the effectiveness of the DIP Facility and each funding thereunder shall be limited to those conditions set forth herein</p>
Covenants	<p>Customary affirmative and negative covenants for facilities of this type, and this transaction in particular, including:</p> <p>(a) Reasonable access to information relating to the Borrower and close consultation with DIP Lender regarding the reorganization process;</p> <p>(b) Compliance with Budget, subject to permitted variances;</p> <p>(c) Operating covenants regarding revenues in accordance with the Budget;</p> <p>(d) Borrower consulting with the DIP Lender as to the terms of the Plan and the confirmation process; and</p> <p>(e) Borrower not terminating or reassigning its principal executive officer or principal financial officer without the prior written consent of the DIP Lender.</p>
Events of Default	<p>Customary and appropriate events of default for financings of this type (collectively, the “<u>Events of Default</u>”), including the following:</p> <p>(a) Breach of Budget amounts in excess of the Permitted Variances;</p> <p>(b) Customary bankruptcy events of default, including conversion or dismissal of case and appointment of trustee or examiner;</p> <p>(c) Change of venue of the Chapter 11 Case from the District of Delaware;</p>

Required Disclosure	Material Terms
	<p>(d) Reversal or modification of any of the DIP Orders without the consent of the DIP Lender;</p> <p>(e) Granting of relief from the stay to any creditor in respect of any Collateral in excess of \$25,000;</p> <p>(f) Other breaches of covenants, subject to customary grace periods and cure periods if applicable;</p> <p>(g) Borrower proposing a Plan that either (i) does not contemplate the full repayment in cash of the DIP Facility on the effective date of the Plan or (ii) is not otherwise reasonably acceptable to the DIP Lender; and</p> <p>(h) Payment defaults.</p>
Remedies	<p>During the continuance of an Event of Default, any DIP Lender can exercise all remedies under applicable bankruptcy and/or nonbankruptcy law with respect to the Collateral and the automatic stay shall not apply to any such remedies.</p>
Carve-Out Expenses	<p>The DIP Lender' liens and administrative claims shall be subject to the prior payment of the Carve-Out Expenses. "<u>Carve-Out Expenses</u>" shall mean:</p> <p>(a) Allowed, accrued, but unpaid professional fees of the Borrower and, to the extent an official committee of unsecured creditors is appointed in the chapter 11 case, the official committee of unsecured creditors consistent with and not in excess of the amounts included in the Budget that have been incurred prior to the occurrence and declaration of an Event of Default,</p> <p>(b) Allowed, accrued but unpaid professional fees and expenses incurred by the Borrower and, to the extent an official committee of unsecured creditors is appointed in the chapter 11 case, the official committee of unsecured creditors consistent with the Budget that are incurred after the declaration of an Event of Default (that is not cured or waived) in an aggregate amount not to exceed \$50,000 for professionals of the Borrower and \$25,000 for professionals of an official committee of creditors to the extent allowed or otherwise payable at any time, whether by interim order, procedural order, or otherwise,</p> <p>(c) The \$10,000 reserve set aside to satisfy, if necessary, the deductible for the Borrower's directors' and officers' insurance policy; and</p> <p>(d) Fees payable to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 and to the clerk of the Court.</p>

Required Disclosure	Material Terms
	<p>The Carve-Out Expenses shall not include (a) any other claims that are or may be senior to or pari passu with any of the Carve-Out Expenses, (b) any fees or expenses of a Chapter 7 trustee, (c) any fees or disbursements arising after the conversion of any Chapter 11 Case to a Chapter 7 Case, (d) any fees or disbursements related to the investigation of, preparation for, or commencement or prosecution of investigation of prepetition secured claims, or (e) any fees or disbursements related to any challenge or objection to the debt or collateral position of the DIP Lender or hindering or delaying the DIP Lender' enforcement or realization upon the Collateral once an Event of Default has occurred and is continuing; <u>provided, however</u>, that, as to items (d) and (e), to the extent an official committee of unsecured creditors is appointed, such committee may be reimbursed for up to \$ 5,000 for fees and expenses incurred in connection with the investigation of, but not the commencement or pursuit of litigation, objection or any challenge to, any prepetition secured claims of the First Lien Lender the debt or collateral position of the DIP Lender.</p> <p>The Carve-Out shall be senior to any claims arising under or relating to the DIP Liens and to any claims secured by liens junior to the DIP Liens.</p> <p>For the avoidance of doubt, nothing herein is intended to constitute, nor should be construed as consent to, the allowance of any fees, costs, or expenses by any party, and shall not affect the right of the Borrower, the DIP Lender, or any other lender or party-in-interest to object to the allowance and payment of any amounts incurred or requested on reasonableness grounds (other than with regard to unpaid fees required to be paid (i) to the clerk of the Court or (ii) the United States Trustee under section 1930(a) of title 28 of the United States Code).</p>

SUMMARY OF PRINCIPAL TERMS OF DIP FACILITY

15. In accordance with Local Rule 4001-2(a)(i), the Debtor hereby disclose the below provisions:
- a. Local Rule 4001-2(a)(i)(A)—Cross-Collateralization Protection. None.
 - b. Local Rule 4001-2(a)(i)(B)—Challenge Period. Default timeframes provided by Local Rule 4001-2(a)(i)(B) are unaltered. Term Sheet at XI, Interim DIP Order at ¶ 58.
 - c. Local Rule 4001-2(a)(i)(C)—506(c) Waiver. No 506(c) waiver prior to the entry of the Final DIP Order. Term Sheet at VII, Interim DIP Order at ¶ 35.

- d. Local Rule 4001-2(a)(i)(D)—Liens on Avoidance Actions. No immediate grant of liens on the Debtor’s claims and causes of action arising under sections 544, 545, 547, 548 and 549 of the Bankruptcy Code. Term Sheet at XVIII, Interim DIP Order at ¶ 7.
- e. Local Rule 4001-2(a)(i)(E)—Roll-up. The Term Sheet and the Interim DIP Order provide that, after the entry of the Final DIP Order, the DIP Lender would be authorized to fund under the DIP Facility one or more DIP Loans in an amount sufficient to pay up to \$345,000 of the outstanding amounts with respect to the advances made pursuant to the Prepetition Security Agreement (the “2018 Advances”) plus accrued and unpaid interest and fees related to the 2018 Advances (the “Roll-up”), and the Debtor shall be authorized to draw on the DIP Facility to effectuate the Roll-up. Term Sheet at XI, Interim DIP Order at ¶ 18.

The Roll-up was a condition of the DIP Lender’s extension of essential new money debtor-in-possession financing to the Debtor and 2018 Advances were advanced to cover shortfalls during the period the Debtor prepared for and commenced the Chapter 11 Case. As such, the 2018 Advances that will be addressed by the Roll-up provided the Debtor with the ability to commence the Chapter 11 Case, which is to the benefit of all parties in interest when the alternative, given the Debtor’s precarious financial position, may well have been a shuttering of the business and liquidation of the Debtor’s assets.

- f. Local Rule 4001-2(a)(i)(F)—Disparate Carve-Out Treatment. The proposed Budget does not provide amounts for an official committee of unsecured creditors. Term Sheet at Exhibit A.
- g. As indicated in the Debtor’s petition, the Debtor is a small business and qualifies, based on the Debtor’s outstanding prepetition debt, as a “small business debtor” as that term is defined in the Bankruptcy Code. For this reason, the Debtor has, concurrently with the filing of this motion, filed a motion requesting that an official committee of unsecured creditors not be appointed (the “Committee Non-Appointment Motion”). For the reasons set forth in the Committee Non-Appointment Motion, it is in the best interests of the Debtor and its estate that an official committee of unsecured creditors not be appointed in the Chapter 11 Case.
- h. Local Rule 4001-2(a)(i)(G)—Nonconsensual Priming. No secured liens are being primed without the consent of the lienor.
- i. Local Rule 4001-2(a)(i)(H)—Section 552(b)(1) Waiver. No 552(b)(1) waiver.

16. The Roll-up and proposed disparate treatment of an official committee of unsecured creditors are justified under the circumstances of this Chapter 11 Case. The DIP

Lender has indicated to the Debtor that it would not agree to make the DIP Facility available to the Debtor without the inclusion of such terms. Because of the unavailability of financing alternatives and for the reasons set forth more fully below, the Debtor has determined, in the exercise of its sound business judgment, that agreeing to the terms of the DIP Facility is appropriate under the circumstances.

RELIEF REQUESTED

17. By this Motion, the Debtor requests entry of the Interim DIP Order and a Final DIP Order (together with the Interim DIP Order, the “DIP Orders”) granting the following relief:

- a. authorizing the Debtor to obtain post-petition loans and other extensions of credit from Ocho Ventura, LLC or one or more of its affiliates (“Ocho”) or any other lender entity designated by Ocho (in its capacity as lender under the DIP Facility, the “DIP Lender,” in its capacity as lender under both the DIP Facility and the Pre-Petition Claim Documents (as defined below) the “Lender”) in an amount not to exceed \$140,000 on an interim basis (the “Interim Amount”), and \$695,000 on a final basis, cumulative of any amounts advanced on an interim basis, and including, without limitation, principal, other extensions of credit and financial accommodations, interest, and other costs of the Lender in the Chapter 11 Case, in accordance with the terms and conditions set forth in the DIP Orders and the Term Sheet, and the other DIP Facility Documents;
- b. authorizing the Debtor to execute, deliver, and perform under the DIP Facility and DIP Facility Documents, as the DIP Facility now exists or may hereafter be amended, modified, supplemented, ratified, assumed, extended, renewed, restated or replaced, the terms of which are referenced and incorporated herein as if set forth herein;
- c. approving the terms and conditions of the DIP Facility and the DIP Facility Documents;
- d. upon entry of the Final DIP Order, approving the Pre-Petition Claim being deemed obligations and indebtedness to the DIP Lender under the DIP Facility (all obligations and indebtedness to the DIP Lender under the DIP Facility Documents, collectively the “DIP Obligations”) and secured by the Collateral;
- e. authorizing the Debtor to use Cash Collateral of the Lender (both in its capacity as DIP Lender and in its capacity as First Lien Lender) in accordance with the terms and conditions set forth in the DIP Orders and the Term Sheet;

- f. modifying the automatic stay of section 362 of the Bankruptcy Code (the “Automatic Stay”) to the extent provided herein;
- g. granting automatically perfected, first priority liens and security interests to the Lender to secure the DIP Obligations pursuant to sections 364(c)(2) and 364(d) of the Bankruptcy Code, and granting liens, security interests, and other adequate protection to the DIP Lender with respect to its interests in all of the Collateral; and
- h. scheduling a final hearing (the “Final Hearing”) to consider entry of the Final DIP Order.

BASIS FOR RELIEF REQUESTED

18. The Debtor does not have sufficient available sources of working capital or cash to continue the operation of its business without access to the DIP Facility and use of Cash Collateral. The ability to obtain sufficient working capital and liquidity through the DIP Facility and use of Cash Collateral is vital to the preservation and maximization of the value of the Debtor’s assets and to successfully reorganize the Debtor.

19. The DIP Facility and use of Cash Collateral are necessary to avoid immediate and irreparable harm to the Debtor and its estate. The proposed DIP Facility and use of Cash Collateral will fund necessary restructuring costs and other essential costs as the Debtor moves toward the confirmation of a chapter 11 plan of reorganization. These costs are set forth in the Budget and include, *inter alia*, the Debtor’s operating expenses, professional fees, fees due under 28 U.S.C. § 1930, insurance, taxes, and other miscellaneous costs. Accordingly, the DIP Facility and use of Cash Collateral pursuant to the DIP Orders is in the best interests of the Debtor’s estate and creditors.

The DIP Facility Satisfies the Requirements of Bankruptcy Code § 364(c)

20. The statutory requirement for obtaining postpetition credit under section 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that the debtor in possession is “unable to obtain unsecured credit allowable under [section 503(b)(1) of the Bankruptcy Code] as

an administrative expense.” 11 U.S.C. § 364(c); *see In re Ames Dep’t Stores*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[A] debtor must show that it has made a reasonable effort to seek other sources of credit available under sections 364(a) and (b) [of the Bankruptcy Code]”); *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (debtor seeking secured credit under section 364(c) of the Bankruptcy Code must establish that it was unable to obtain unsecured credit pursuant to section 364(b) of the Bankruptcy Code), modified on other grounds, 75 B.R. 553 (Bankr. E.D. Pa. 1987).

21. Courts have articulated a three-part test to determine whether a debtor may obtain financing under section 364(c) of the Bankruptcy Code:

- a. the debtor is unable to obtain unsecured credit under section 364(b) (i.e., by granting a lender administrative expense priority);
- b. the credit transaction is necessary to preserve the assets of the estate; and
- c. the terms of the transaction are fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender.

See, e.g., In re L.A. Dodgers LLC, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (applying these factors); *In re Aqua Assocs.*, 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (same); *Ames Dep’t Stores*, 115 B.R. at 39.

22. As a result of, among other things, the Debtor’s financial condition and pre-petition capital structure and the state of credit markets in general, the Debtor has been unable to obtain other sources of cash or credit in the form of unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code, as an administrative expense pursuant to section 364(a) or (b) of the Bankruptcy Code, or on a secured basis pursuant to section 364(c)(2) and (3) by granting liens that are subordinate to existing lien claims or upon assets that are otherwise unencumbered. Financing on a post-petition basis is not otherwise available without the Debtor’s granting, pursuant to section 364(c)(1) of the Bankruptcy Code, claims having priority over any and all

administrative expenses of the kinds specified in sections 503(b) and 507(b) of the Bankruptcy Code, and securing such indebtedness and obligations with the superpriority security interests in and the liens upon the property described above pursuant to sections 364(c) and 364(d) of the Bankruptcy Code.

23. The terms of the DIP Facility and adequate protection arrangements discussed above are fair and reasonable under the circumstances, reflect the exercise of prudent business judgment by the Debtor consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The DIP Facility will give the Debtor the necessary liquidity it needs to operate its business while pursuing the confirmation of a plan of reorganization to maximize the value of its estate. The DIP Facility will minimize disruption of the business and operations of the Debtor and permit the Debtor to meet payroll and other operating expenses, obtain needed supplies and maintain the going concern value of its business by demonstrating an ability to maintain normal operations. The DIP Facility should be approved under section 364 of the Bankruptcy Code because “the credit acquired is of significant benefit to the Debtor’s estate and the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the Debtor to obtain comparable credit elsewhere.” *In re Aqua Associates*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991). Further, bankruptcy courts routinely defer to a debtor’s business judgment on certain business decisions, including the decision to borrow money, unless such decision is arbitrary and capricious. *See In re YL West 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) (“Courts have generally deferred to a debtor’s business judgment in granting section 364 financing”); *Trans World Airlines, Inc. v. Travellers Int’l AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964,974 (Bankr. D. Del. 1994) (noting that the interim loan, receivables facility and asset-based facility were approved because they

“reflect[ed] sound and prudent business judgment on the part of TWA . . . [were] reasonable under the circumstances and in the best interests of TWA and its creditors”); *cf. In re Filene ‘s Basement, LLC*, 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) (“Transactions under § 363 must be based upon the sound business judgment of the debtor or trustee.”). In fact, “[m]ore exacting scrutiny would slow the administration of the debtor’s estate and increase its cost, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially.” *Richmond Leasing Co. v. Capital Bank, NA.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

24. The Debtor is without adequate funds, absent access to the DIP Facility, with which to operate its business. The DIP Facility is vital to avoid immediate and irreparable harm to the Debtor’s estate and business. The Debtor thus requests emergency, interim authorization to use the DIP Facility on the basis as set forth in the Budget, in an amount not to exceed \$140,000, prior to the Final Hearing. The expenses listed on the Budget are reasonable and necessary business expenses that must be paid to continue the Debtor’s business. The Debtor submits that it has met the requirements under section 364 of the Bankruptcy Code to obtain post-petition financing and that the Motion should be granted. Because the Debtor’s request for interim authorization seeks the use of only that amount of the DIP Facility as is necessary to avoid immediate and irreparable harm to its estate pending Final Hearing, this request complies with Bankruptcy Rule 4001.

25. The Debtor proposes and seeks through this Motion that upon entry of the Final DIP Order authorizing use of the DIP Facility, the Debtor may continue to use the DIP Facility as set forth in the Budget for the subsequent time periods reflected in the Budget or any substitute budget, pursuant to the DIP Agreement and the DIP Orders.

The Debtor Has an Immediate Need for the Use of Cash Collateral

26. Section 363(c) of the Bankruptcy Code provides, in relevant part:

(c) (1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless –

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. §§ 363 (c)(1) & (2).

27. As set forth above, the Debtor also has an immediate need to use Cash Collateral to continue the operation of its business. Without the use of Cash Collateral, the Debtor will not have the funds necessary to conduct its business, maintain its assets, pursue a plan of reorganization, provide financial information, and pay employee compensation, payroll taxes, overhead, and other expenses necessary to maximize the value of the Debtor's estate.

28. The Debtor requests interim authorization to use Cash Collateral as set forth in the Budget until the Final DIP Order granting further use of Cash Collateral can be entered. The Budget itemizes the weekly uses of cash and list of business expenses that are reasonable and necessary and that must be paid to continue the Debtor's business until such time as the Final Hearing on the Motion can be held.

29. The Debtor is without sufficient funds, other than Cash Collateral, to operate until the Final Hearing on this Motion can be held. The Debtor's inability to timely pay the costs and

expenses set forth herein will result in immediate and irreparable harm to its assets. Because the Debtor's request for interim authorization seeks the use of only that amount of Cash Collateral as is necessary to avoid immediate and irreparable harm to the value of its assets pending the Final Hearing, this request complies with Bankruptcy Rule 4001(b)(2).

30. The Debtor also requests that the Court authorize it to continue to use Cash Collateral as set forth in the Budget or any substitute budget after the Final Hearing on the Motion.

The Debtor Should Be Authorized to Obtain Priming Liens under Section 364(d) of the Bankruptcy Code

31. Section 364(d)(1) of the Bankruptcy Code provides that a debtor may incur debt "secured by a senior or equal lien on property of the estate that is subject to a lien only if" the court finds, after notice and hearing, that (a) the debtors in possession are "unable to obtain such credit otherwise" and (b) "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." *See Shaw Indus., Inc. v. First Nat'l Bank of PA (In re Shaw Indus., Inc.)*, 300 B.R. 861,863 (Bankr. W.D. Pa. 2003) (where debtor made efforts by "contact[ing] numerous lenders" and was unable to obtain credit without a priming lien, it had met its burden under section 364(d)); *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 630-31 (Bankr. S.D.N.Y. 1992) (holding that debtor must make an effort to obtain credit without the requirement of a priming lien but is not required to seek credit from every possible lender); *In re Dunes Casino Hotel*, 69 B.R. 784, 791 (Bankr. D.N.J. 1986) (holding that the debtor had made required efforts under section 364(d)(1) of the Bankruptcy Code based on evidence that the debtor had attempted unsuccessfully to borrow funds on an unsecured basis or secured by junior liens, but that at least three such lenders were willing to advance funds secured by a superpriority lien).

32. As set explained in the DIP Declaration, the Debtor has been unable to obtain alternative financing. In addition, the DIP Liens prime the liens against the Debtor only of the First Lien Lender, who consents to the priming. Finally, the interests of the First Lien Lender are adequately protected.

33. Section 363(e) of the Bankruptcy Code provides that “on request of an entity that has an interest in property used . . . or proposed to be used . . . , the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). The providing of adequate protection is mandatory. *See, e.g., In re Metromedia Fiber Network, Inc.*, 290 B.R. 487, 491 (Bankr. S.D.N.Y. 2003) (“Section 363(e) is not permissive or discretionary – it states that the court ‘shall’ grant the relief specified”); *In re Heatron, Inc.*, 6 B.R. 493, 494 (Bankr. W.D. Mo. 1980) (“Providing adequate protection is mandatory.”). Section 361 of the Bankruptcy Code sets forth a non-exclusive list of forms of adequate protection, which include periodic cash payments, additional liens, replacement liens, and other forms of relief. *See* 11 U.S.C. § 361. A determination of adequate protection is decided on a case-by-case basis, involving a consideration of the “nature of the creditor’s interest in the property, the potential harm to the creditor as a result of the property’s decline in value and the method of protection.” *In re Braniff Airways, Inc.*, 783 F.2d 1283, 1286 (5th Cir. 1986). The purpose of adequate protection is to ensure that a secured party’s economic position is not worsened because of the filing of a bankruptcy case. *In re DeSardi*, 340 B.R. 790, 804 (Bankr. S.D. Tex. 2006).

34. As adequate protection of the Lender’s interest in the Collateral, the Debtor proposes to grant certain adequate protection liens, superpriority liens, superpriority administrative status, and adequate protection payments, including the Roll-up, which the Lender

required as part of the DIP Facility. The Debtor will also provide the Lender with ample information relating to projected revenues and expenses, actual revenue and expenses, and variances from the Budget. This information will enable the Lender to monitor its interests in the Pre-Petition Collateral and Cash Collateral, and is also a form of adequate protection. *See, e.g., Mutual Benefit Life Ins. Co. v. Stanley Station Assocs., L.P. (In re Stanley Station Assocs., L.P.)*, 140 B.R. 806, 809 (D. Kan. 1992) (“In addition, we believe the request of MBL for ‘timely filing of proper monthly operating reports . . .’ falls within the ambit of adequate protection[.]”); *Sumitomo Trust & Banking Co. v. Holly’s, Inc. (In re Holly’s, Inc.)*, 140 B.R. 643, 706 (Bankr. W.D. Mich. 1992) (reports required as part of adequate protection).

35. Additionally, the Final DIP Order contains numerous findings, terms, and agreements between the Debtor and the Lender to protect the Lender in exchange for the Lender’s consent to the Debtor’s use of Cash Collateral. Such findings, terms, and agreements are important protections of Lender that constitute additional adequate protection of Lender.

Relief Requested Only in the Final DIP Order

36. Debtor requests that the Court order in the Final DIP Order that (i) the Pre-Petition Claim shall become and constitute DIP Obligations in all respects and be secured by the Collateral and afforded all priorities afforded to the DIP Obligations under the Final DIP Order and the DIP Facility Documents, (ii) the DIP Lender be authorized, in its discretion, to fund under the DIP Facility one or more DIP loans in an amount sufficient to cause payment in full of the Roll-up, and in such event, the Debtor be authorized to draw on the DIP Facility to effectuate the Roll-up as requested by the DIP Lender and to cause payment in full of the Roll-up as requested by the DIP Lender, (iii) the DIP Liens shall include Avoidance Actions, and (iv) the Lender shall be granted a waiver of section 506(c). This relief was of paramount importance to

the Lender and key to the Lender agreeing to provide the DIP Facility and thereby providing the liquidity necessary to fund the Chapter 11 Case and pursue a plan of reorganization.

FINAL HEARING

37. The Debtor requests that the Court order that any objection to the entry of the Final DIP Order be required to be filed on or before 4:00 p.m. (ET) on _____ (the “Objection Date”) and that the Court set the Final Hearing on this Motion for _____. The Debtor further request that the Court order that objections, if any, to the Motion must be in writing and filed with the clerk of the Court so that any such objections are received on or before the Objection Date.

NOTICE

38. Notice of this Motion shall be given to (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Lender; (iii) the Internal Revenue Service; (iv) the holders of the twenty (20) largest unsecured claims against the Debtor; (v) any parties that have filed requests for notices under Rule 2002 of the Bankruptcy Rules; and (vi) all parties known by the Debtor to hold or assert a material lien on any assets of the Debtor. As this Motion is seeking “first day” relief, within two business days of the hearing on this Motion, the Debtor will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-l(m). The Debtor submits that no other or further notice need be provided.

CONCLUSION

For all of these reasons, the Debtor respectfully requests that the Court enter the Interim DIP Order, substantially in the form attached hereto as Exhibit A, granting (a) the relief requested herein on an interim basis, (b) scheduling the Final Hearing, and (c) such other and further relief the Court may deem proper.

Dated: December 19, 2018
Wilmington, Delaware

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

/s/ Ian J. Bambrick

M. Blake Cleary (No. 3614)
Joseph M. Barry (No. 4421)
Ian J. Bambrick (No. 5455)
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Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Fax: (302) 571-1253

*Proposed Counsel for Debtor and Debtor in
Possession*

Exhibit A

Interim DIP Order

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

_____)	
)	Chapter 11
In re:)	
)	
ALCOR ENERGY, LLC, ¹)	Case No. 18-12839 (___)
)	
Debtor.)	
_____)	

**INTERIM ORDER (A) AUTHORIZING THE DEBTOR TO
USE CASH COLLATERAL, (B) AUTHORIZING THE DEBTOR TO
OBTAIN POST-PETITION FINANCING, (C) GRANTING SUPERPRIORITY
SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE
STATUS TO EXISTING LENDER, (D) GRANTING ADEQUATE PROTECTION
TO FIRST LIEN LENDER, (E) SCHEDULING A FINAL HEARING,
AND (F) GRANTING RELATED RELIEF**

UPON CONSIDERATION OF the *Motion for Interim and Final Orders (A) Authorizing the Debtor to Use Cash Collateral, (B) Authorizing the Debtor to Obtain Post-Petition Financing, (C) Granting Superpriority Security Interests and Superpriority Administrative Expense Status to Existing Lender, (D) Granting Adequate Protection to First Lien Lender, (E) Scheduling a Final Hearing, and (F) Granting Related Relief* (the “Financing Motion”) filed by the above-captioned debtor, as debtor-in-possession (collectively, the “Debtor”), seeking, *inter alia*, pursuant to sections 105, 361, 362(d), 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503(b), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the following:

¹ The last four digits of the Debtor’s taxpayer identification number are 0924. The Debtor’s address is 7754 East Velocity Way, Mesa, Arizona 85212.

- a. authorizing the Debtor to obtain post-petition loans and other extensions of credit from Ocho Ventura, LLC or one or more of its affiliates (“Ocho”) or any other lender entity designated by Ocho (in its capacity as lender under the DIP Facility (as defined below) the “DIP Lender,” in its capacity as lender under both the DIP Facility and the Pre-Petition Claim Documents (as defined below) the “Lender”) in an amount not to exceed \$140,000 on an interim basis (the “Interim Amount”), and \$695,000 on a final basis, cumulative of any amounts advanced on an interim basis, and including, without limitation, principal, other extensions of credit and financial accommodations, interest, and other costs of the Lender in this chapter 11 case (the “Chapter 11 Case”), in accordance with the terms and conditions set forth herein and in the attached *Alcor Energy, LLC Debtor-In-Possession (DIP) Financing Term Sheet*, dated December 19, 2018 (the “Term Sheet”),² and the other DIP Facility Documents³ (collectively, the “DIP Facility”);
- b. authorizing the Debtor to execute, deliver, and perform under the DIP Facility and DIP Facility Documents, as the DIP Facility now exists or may hereafter be amended, modified, supplemented, ratified, assumed, extended, renewed, restated or replaced, the terms of which are referenced and incorporated herein as if set forth herein;
- c. approving the terms and conditions of the DIP Facility and the DIP Facility Documents;
- d. upon entry of the Final DIP Order, approving the Pre-Petition Claim (as defined herein) being deemed obligations and indebtedness to the DIP Lender under the DIP Facility (all obligations and indebtedness to the DIP Lender under the DIP Facility Documents, collectively the “DIP Obligations”) and secured by the Collateral (as defined below);
- e. authorizing the Debtor to use Cash Collateral (as defined below) of the Lender (both in its capacity as DIP Lender and in its capacity as First Lien Lender (as defined below)) in accordance with the terms and conditions set forth herein;
- f. modifying the automatic stay of section 362 of the Bankruptcy Code (the “Automatic Stay”) to the extent provided herein;
- g. granting automatically perfected, first priority liens and security interests to the Lender to secure the DIP Obligations pursuant to sections 364(c)(2) and 364(d) of the Bankruptcy Code, and granting liens, security interests, and other adequate protection to the DIP Lender with respect to its interests in all of the Collateral; and

² A copy of the Term Sheet is attached hereto as **Exhibit 1**.

³ Capitalized terms used herein, but not otherwise defined, have the meanings given to them in the Term Sheet.

- h. scheduling a final hearing (the “Final Hearing”) to consider entry of the Final DIP Order.

THE COURT HEREBY FINDS AND DETERMINES:⁴

FACTUAL AND PROCEDURAL BACKGROUND

A. On December 19, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor has continued in the management and possession of its business and property as debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee or examiner has been appointed.

THE DEBTOR’S STIPULATIONS

B. The Debtor and the DIP Lender have represented to this Court that they have negotiated at arm’s length and have acted in good faith in the negotiation and preparation of the Term Sheet and this order (the “Interim DIP Order”), have been represented by counsel, and intend to be and are bound by their respective terms. The terms and conditions of this Interim DIP Order and the Term Sheet reflect the Debtor’s exercise of prudent business judgment under exigent circumstances, are consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

C. The Debtor and Lender have stipulated and agreed as follows,

(i) Pursuant to the Pre-Petition Claim Documents (as defined below) and applicable law, Ocho Ventura, LLC (including any assignee, “First Lien Lender” and together with the DIP Lender, “Lender”), in its capacity as holder(s) of certain Promissory Note holds a valid, enforceable, non-avoidable and allowable claim against the Debtor, as of the Petition Date, in an aggregate amount equal to at least \$3,775,000 of unpaid principal, plus any and all accrued and unpaid interest, fees, costs, expenses, charges, and other claims, debts or obligations of the Debtor to the First Lien Lender that have accrued as of the Petition Date under the Pre-Petition Claim Documents and applicable law. The First Lien Lender’s claim as described in the preceding sentence together with all post-Petition Date interest, fees, costs, and charges allowed to the Lender on such claim pursuant to section 506(b) of the Bankruptcy Code shall collectively be referred to hereunder as the “Pre-Petition Claim”.

⁴ To the extent any findings of fact constitute conclusions of law, and vice versa, they are adopted as such.

(ii) The Pre-Petition Claim constitutes an allowed, legal, valid, binding, enforceable, and non-avoidable obligation of and claim against the Debtor, and shall not be subject to any offset, defense, reduction, disallowance, impairment, counterclaim, avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or any other applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), and the Debtor does not possess and shall not assert any claim, counterclaim, setoff, or defense of any kind, nature, or description that would in any way affect the validity, enforceability, allowance, and non-avoidability of the Pre-Petition Claim.

(iii) The Debtor admits, represents, and warrants that it does not have any claim or cause of action against the Lender, or any of its officers, directors, employees, affiliates, agents, attorneys, or equity holders arising under the Pre-Petition Claim Documents or as a result of any action, omission, event, or other set of circumstances occurring prior to, on or after the Petition Date, and to the extent (if any) of any such claim or cause of action, the Debtor hereby fully releases the Lender and any of its officers, directors, employees, affiliates, agents, attorneys, or equity holders therefrom.

(iv) The Pre-Petition Claim is evidenced by certain documents executed and delivered to Lender or the Lender's predecessor in interest by the Debtor, including, without limitation, (a) that certain *Amended and Restated Loan and Security Agreement* dated May 8, 2014, (b) that certain *Promissory Note* of the Debtor in the original principal amount of \$700,000 dated May 23, 2017 in favor of Maxus Capital Group, LLC, Lender's predecessor-in-interest and related security agreement, (c) that certain *Loan Modification and Ratification Agreement*, dated May 23, 2017, (d) that certain *Loan Purchase Agreement* dated as of May 16, 2018, and (e) that certain *Pledge and Security Agreement* dated as of May 13, 2013 (collectively, with all notes, security agreements, assignments, pledges, mortgages, deeds of trust, guaranties, control agreements, forbearance agreements, letters of credit, and other instruments or documents executed in connection therewith or related thereto, the "Pre-Petition Claim Documents"). The Pre-Petition Claim Documents are valid, existing, legally enforceable, and admissible in the Chapter 11 Case for all purposes.

(v) The Pre-Petition Claim evidenced by the Pre-Petition Claim Documents is secured by non-avoidable, valid, perfected first priority liens, and security interests in, *inter alia*, any and all assets and property of the Debtor, now owned or hereafter acquired, real and personal, and the proceeds and products thereof (collectively, the "Pre-Petition Collateral"). The First Lien Lender's liens and security interests in the Pre-Petition Collateral were granted pursuant to, *inter alia*, the Pre-Petition Claim Documents.

(vi) The liens and security interests of the First Lien Lender in the Pre-Petition Collateral have been properly perfected and such liens and security interests are valid and non-avoidable and constitute first priority liens and security interests in the applicable Pre-Petition Collateral (subject to liens and security interests securing the DIP Facility as granted in the DIP Financing Documents and this Interim DIP Order) as evidenced by, among other things, the Pre-Petition Claim Documents, documents and instruments held

in possession of the Lender and documents and instruments filed with the appropriate state, county, and other offices.

(vii) The Debtor is in default of its debts and obligations to the First Lien Lender under the terms and provisions of the Pre-Petition Claim Documents. These defaults exist, have not been timely cured, and are continuing.

(viii) All cash of the Debtor's bankruptcy estate, wherever located, and all cash equivalents, whether in the form of negotiable instruments, documents of title, securities, deposit accounts, investment accounts, or in any other form, that were on the Petition Date in any of the Debtor's possession, custody, or control (or in the possession, custody or control of any persons in privity with the Debtor) or in which the Debtor will obtain an interest during the pendency of this Chapter 11 Case whether via advances under the DIP Facility or otherwise, or which represent income, proceeds, products, rents, or profits of any of the Collateral (as defined below) constitute the cash collateral of First Lien Lender (collectively, the "Cash Collateral"). The First Lien Lender has a first priority perfected lien and security interest in the Cash Collateral pursuant to the applicable provisions of the Pre-Petition Claim Documents, sections 363(a) and 552(b) of the Bankruptcy Code, and this Interim DIP Order.

NOTICE

D. The Debtor has represented that it has served copies of the Financing Motion and notice of the interim hearing with respect thereto by electronic mail, telecopy transmission, hand delivery, overnight courier or first class United States mail upon (i) the Office of the United States Trustee for the District of Delaware (the "United States Trustee"); (ii) counsel to the Lender; (iii) the Internal Revenue Service; (iv) the holders of the twenty (20) largest unsecured claims against the Debtor; (viii) any parties that have filed requests for notices under Rule 2002 of the Bankruptcy Rules; and (ix) all parties known by the Debtor to hold or assert a material lien on any assets of the Debtor, and shall file a certificate of service regarding such service with the Clerk of the Court (collectively, the "Notice Parties"). Under the circumstances, the Court finds that the foregoing notice is appropriate, due, and sufficient for all purposes under the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. Other than the notice provided for herein, no further notice of the interim relief sought in the Financing Motion is necessary.

NECESSITY OF CASH COLLATERAL USE AND DIP FACILITY

E. The Debtor has requested that the Lender provide use of Cash Collateral and the DIP Facility in order to provide funds to be used for the purposes set forth in the Budget (as defined below), and such other purposes as permitted by this Interim DIP Order and to which Lender consents in writing.

F. The record shows that the Debtor has sought to obtain financing from other sources and is unable to obtain credit allowable under Bankruptcy Code § 503(b)(1), or pursuant to Bankruptcy Code §§ 364(a) and (b), on terms more favorable to the Debtor than the terms of the DIP Facility.

G. The terms of the DIP Facility (including the Roll-up, as defined below) and this Interim DIP Order, including, without limitation, the related fees and liens granted in accordance therewith, are fair, just, and reasonable under the circumstances, are ordinary and appropriate for secured financing to a debtor-in-possession, reflect the Debtor's exercise of its prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration. Good cause has, therefore, been shown for the relief sought in the Financing Motion.

H. Any credit extended under the terms of this Interim DIP Order and the DIP Facility shall be deemed to have been extended in good faith by the Lender, as the term "good faith" is used in Bankruptcy Code § 364(e), and the Lender shall be entitled to all protections afforded thereunder, including, without limitation, the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision thereof is vacated, reversed, or modified, on appeal or otherwise.

STATEMENT OF JURISDICTION

I. This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 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. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

IMMEDIATE ENTRY

J. The Debtors have requested immediate entry of this Interim DIP Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent the immediate grant by the Court of the interim relief sought by the Financing Motion, the Debtor's estate will be immediately and irreparably harmed pending a final hearing on the Financing Motion. The Debtor's consummation of the DIP Facility in accordance with the terms of this Interim DIP Order and the Term Sheet is in the best interests of the Debtor's estate and is consistent with the Debtor's exercise of its fiduciary duties.

THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES:

1. Based upon the pleadings and evidence adduced at the interim hearing before this Court, pursuant to sections 105, 361, 362, 363, 364, 503(b), and 507 of the Bankruptcy Code, this Court hereby acknowledges the stipulations set forth above, and grants the relief requested by the Financing Motion as set forth herein, on an interim basis.

CASH COLLATERAL

2. The Debtor is hereby authorized, on a limited basis, to use Cash Collateral in accordance with the terms and conditions provided in this Interim DIP Order.

DIP FACILITY

Authorization to Obtain Credit

3. The Debtor is hereby authorized to obtain credit only in accordance with the Term Sheet, the DIP Facility, this Interim DIP Order and the Budget.

4. The Debtor is hereby authorized to obtain post-petition loans and other extensions of credit from the DIP Lender in an amount not to exceed \$140,000 on an interim basis pursuant to the terms of this Interim DIP Order and the terms of the Term Sheet, for the purposes set forth in the Budget or as otherwise provided in the Term Sheet.

5. The Debtor is authorized to execute, deliver, and perform under the DIP Facility Documents.

Superpriority Liens and Administrative Claims

6. Effective as of the Petition Date, the DIP Lender is entitled to and is hereby granted first priority claims, liens, and security interests, and the protections of good faith credit providers under sections 364(c)(1), (c)(2), and (c)(3), 364(d)(1), and 364(e) of the Bankruptcy Code to secure the DIP Facility, senior to all other liens and security interests, including adequate protection and replacement liens granted pursuant to the terms of this Interim DIP Order, which liens and security interests shall secure the DIP Obligations (and including, without limitation, principal and any other extensions of credit, interest, fees, expenses, and any fees and expenses of the Lender in this Chapter 11 Case, however incurred), but subject only to Prior Liens, defined below.

7. Subject only to the Prior Liens, the first priority liens and security interests securing the DIP Facility granted hereby (the "DIP Liens") are effective as of the Petition Date and are valid and automatically perfected first priority liens and security interests (such that no additional steps need be taken by the Lender to perfect such interests) in and upon, and hereby

are granted in and attach to, any and all assets and properties of the Debtor and the Debtor's bankruptcy estate, now owned or after acquired, real and personal, and the proceeds and products thereof (collectively, the "DIP Collateral") and, together with the Cash Collateral, the "Collateral"; the DIP Collateral shall include, subject to the entry of the Final DIP Order, any proceeds of any causes of action under 502(d), 510, 544, 545, 547, 548, 549, 550, 551, or 553(b) of the Bankruptcy Code ("Avoidance Claims") and the proceeds thereof.

8. Subject only to the Prior Liens, on account of the DIP Facility and use of Cash Collateral, in the amount of the DIP Obligations and use of Cash Collateral, Lender is hereby granted a superpriority administrative claims (the "DIP Superpriority Claim") and all other benefits and protections to the maximum extent provided under sections 507(b) and 503(b)(1) of the Bankruptcy Code, senior in priority and right to any and all unsecured claims and any other administrative or priority claims against the Debtor or its estate, including, without limitation, administrative or priority claims of the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 365, 503(b), 506(c), 506(d), 507, 546(c), 726, 1113, and 1114 of the Bankruptcy Code, and any other provisions of the Bankruptcy Code.

Cash Collateral Accounts

9. The Debtor shall immediately, and shall continue to, segregate, remit, and deposit all Cash Collateral in possession, custody or control of the Debtor and which the Debtor may receive in the future in each of the Debtor's accounts in accordance with any applicable cash management orders entered by this Court and as required by the Term Sheet.

10. To the extent there exists or comes to exist any cash of the Debtor's estate that is not Cash Collateral, wherever located and however held, such cash shall be deemed to have been used first by the Debtor's estate and such cash, to the extent applicable, shall be subject to the liens and security interests granted to Lender hereunder.

ADEQUATE PROTECTION OF LENDER

Budgeted Cash Collateral Usage

11. As adequate protection of the Lender's interest in the Collateral and for the Debtor's use of Cash Collateral and only so long as an Event of Default (as defined below) shall not have occurred, the Debtor is authorized to and shall use the Cash Collateral (including the advances under the DIP Facility) in accordance with the budget attached to the Term Sheet as Exhibit A (the "Budget"). An updated Budget for each successive four week period (or longer time agreed among the parties) shall be provided to the Lender not less than two weeks prior to the end of the time period covered by the then effective Budget and shall be effective upon agreement by the Debtor and the Lender. There shall be an Event of Default if (i) total disbursements for any monthly period of the Budget shall have exceeded the total disbursements allowed in the Budget by more than 10%, (ii) total disbursements for any line item in the Budget for any monthly period shall be exceed by more than the greater of 25% or \$10,000, (iii) total net revenue for any month received post-petition shall fall below \$80,000 attributable to the Debtor's net revenue interest, or (iv) the Budget amount is exceeded by any amount for certain specific items to be agreed to by the parties in each instance exclusive of any budgeted fees and expenses of any professionals retained under sections 327, 328, and 1102 of the Bankruptcy Code (the "Professionals").

12. Prior to the occurrence of an Event of Default, amounts set forth in the Budget for the fees and expenses of the Debtor's Professionals and for the Professionals of any official committee of unsecured creditors (the "Committee") shall be set aside weekly and held by the Debtor in a segregated account for the sole benefit of the Professionals (the "Professional Fee Escrow"). The amount paid by the Debtor in any month for the fees and expenses of the Professionals, whether with Cash Collateral or advances under the DIP Facility, shall only be

paid upon allowance or authorization by this Court from funds on deposit in the Professional Fee Escrow. In addition, until such time as this Court considers the fees and expenses of the Professionals on a final basis, the Debtor's Professionals and Committee's Professionals shall only be entitled to satisfy their fees from the amounts allocated to each. When this Court considers the fees and expenses of the Professionals on a final basis, to the extent there are funds allocated to either the Debtor's Professionals or the Committee's Professionals in excess of what is needed to satisfy the remaining fees and expenses owed to either group of Professionals, those excess funds may be used to satisfy the fees and expenses of any Professional. To the extent a Committee is ultimately not appointed, such amounts shall be available to satisfy the fees and expenses of the Debtor's Professionals.

13. Lender's consent to use of Cash Collateral and agreement to extend credit extends only to (i) amounts provided under the DIP Facility and (ii) amounts actually incurred in accordance with the Budget. Upon the occurrence of an Event of Default and the giving of five (5) business days' prior written notice (the "Notice Period"), the Lender's consent to the use of Cash Collateral or agreement to extend credit shall automatically and immediately terminate and any consent for use of Cash Collateral or agreement to extend credit to satisfy projected, budgeted expenditures shall be, upon the expiration of the Notice Period, immediately terminated and deemed withdrawn unless such Event of Default is waived by Lender in its sole and absolute discretion.

14. Except as may specifically be provided in the Budget including, without limitation, for ordinary course payroll, benefits, and expense reimbursements, the Debtor agrees that no transfer of Cash Collateral shall be made to any of the Debtor's insiders, as that term is defined in Bankruptcy Code § 101.

15. The Budget and any modifications to, or amendment or update of, the Budget shall be in form and substance reasonably acceptable to and approved by the Lender. The Budget may be modified in writing only with the prior written consent of the Lender and may be amended or modified without the need for further approval by this Court only with the written consent of the Lender, which, in all circumstances, such consent shall not be unreasonably withheld.

Replacement and Adequate Protection Liens; Superpriority Administrative Claims

16. Taking into account all factors in this Chapter 11 Case, as adequate protection of the Lender's interest in the Collateral and for the Debtor's use of Cash Collateral, and subject only to the Carve-Out Expenses and the DIP Liens, Lender is hereby granted, effective as of the Petition Date, valid and automatically perfected first priority replacement liens and security interests in and upon the Collateral (the "Replacement Liens").

17. To the extent any adequate protection is insufficient to adequately protect the Lender's interest in the Collateral, Lender is hereby granted superpriority administrative claims and all other benefits and protections to the maximum extent provided under sections 507(b) and 503(b)(1) of the Bankruptcy Code, senior in priority and right to any and all unsecured claims and any other administrative or priority claims against the Debtor or its estate, including, without limitation, administrative or priority claims of the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 365, 503(b), 506(c), 506(d), 507, 546(c), 726, 1113, and 1114 of the Bankruptcy Code, and any other provisions of the Bankruptcy Code, subject only to the Prior Liens and the DIP Superpriority Claim.

Repayment of the 2018 Advances

18. Upon and at any time after entry of the Final DIP Order, the DIP Lender shall be authorized, in its discretion, to fund under the DIP Facility one or more DIP loans in an amount

sufficient to cause payment in full of the \$345,000 of outstanding amounts with respect to the advances made pursuant to the Pre-Petition First Lien Loan Agreement (the “2018 Advances”) *plus* accrued and unpaid interest and fees thereon (the “Roll-up”), and in such event, the Debtor is authorized to draw on the DIP Facility in order to effectuate the Roll-up as requested by the DIP Lender and to cause payment in full of the Roll-up as requested by the DIP Lender. Notwithstanding the Roll-up, the First Lien Lender’s prepetition security interest shall continue in effect and shall continue to encumber the Pre-Petition Collateral to the same extent as existed on the Petition Date.

Automatic Perfection

19. To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of the Lender’s liens and security interests granted and created by this Interim DIP Order or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, applicable federal law, and the judicial power of this Court.

20. If Lender shall, in its sole and absolute discretion, elect for any reason to file any Uniform Commercial Code financing statements, mortgages, deeds of trust, or other recordable documents to further evidence perfection of its interests in property of the estate, Lender on its own or, upon the request of Lender, the Debtor is authorized and directed to execute or file, or cause to be executed or filed, all such financing statements or other documents, and the filing, recording, or service (as the case may be) of such financing statements or similar documents shall be deemed to have been made at the time of and on the Petition Date, and the signature(s) of any person(s) designated by the Debtor, whether by letter to Lender or by appearing on any one or more of the agreements or other documents respecting the security interests and liens of

Lender granted hereunder, shall bind the Debtor and its estate. Lender may, in its sole and absolute discretion, file a certified copy of this Interim DIP Order in any filing or recording office in any county or other jurisdiction in which the Debtor has real or personal property, and, in such event, the subject filing or recording officer is authorized and directed to file or record such documents or certified copy of this Interim DIP Order. By virtue of the terms of this Interim DIP Order, to the extent that the Lender has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the names of the Debtor, such filings shall be deemed to properly perfect its liens and security interests granted under this Interim DIP Order without further action by the Lender.

Prior Liens

21. The security interests and liens of Lender granted pursuant to the terms of this Interim DIP Order are subject and junior only to the funding and payment of the Carve-Out Expenses and budgeted ordinary course post-petition expenses (the “Budgeted Operating Expenses” and, collectively with the Carve-Out Expenses, the “Prior Liens”). The post-petition liens granted to Lender pursuant to this Interim DIP Order shall not at any time be (a) made subject or subordinated to, or made pari passu with, any other lien or security interest existing on the Petition Date, or any claim, lien, or security interest created under sections 363 or 364(d) of the Bankruptcy Code or otherwise (except with respect to any Prior Liens) or (b) subject to any lien or security interest that is avoided and preserved for the benefit of the Debtor’s estate under Bankruptcy Code § 551.

No Additional Liens

22. Until such time as the Pre-Petition Claim and the DIP Obligations shall have been indefeasibly paid and satisfied in full in accordance with the Pre-Petition Claim Documents and the DIP Facility Documents, the Debtor shall not be permitted or authorized to obtain credit

secured by a lien or security interest in the Pre-Petition Collateral, the Cash Collateral, or the DIP Collateral, other than the DIP Facility, without the prior written consent of Lender or order of this Court upon reasonable notice.

No Liability

23. From and after the Petition Date, no act committed or action taken by the Lender under this Interim DIP Order, or the collection of the Pre-Petition Claim, or the DIP Facility, shall be used, construed, or deemed to hold the Lender to be in “control” of or participating in the governance, management, or operations of the Debtor for any purpose, without limitation, or to be acting as a “responsible person(s)” or “owner(s) or operator(s)” or a person(s) in “control” with respect to the governance, management, or operation of the Debtor or its businesses (as such terms, or any similar terms, are used in the Internal Revenue Code, WARN Act, Comprehensive Environmental Response, Compensation and Liability Act, or the Bankruptcy Code, each as may be amended from time to time, or any other federal or state statute, at law, in equity, or otherwise) by virtue of the interests, rights, and remedies granted to or conferred upon the Lender under the Pre-Petition Claim Documents, the DIP Facility Documents, or this Interim DIP Order including, without limitation, such rights and remedies as may be exercisable by the Lender in connection with this Interim DIP Order.

Automatic Stay

24. Subject to paragraphs 36 to 38, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the Lender to exercise, upon not less than five (5) Business Days’ prior written notice (which can be by electronic mail or fax) to the Debtor (and its counsel) following the occurrence and continuance of an Event of Default, all rights and remedies hereunder and under the Pre-Petition Claim Documents, the DIP Facility Documents, and applicable law against the Debtor and/or the

Collateral (including, without limitation, the right to set off monies of the Debtor in accounts maintained or controlled by the Lender).

Collateral Insurance and Deposits

25. The Debtor shall maintain, with financially sound and reputable insurance companies, insurance of the kind generally used to cover the Collateral and in accordance with the Pre-Petition Claim Documents and the DIP Facility Documents.

26. To the extent the Debtor has made or makes any deposits for the benefit of utility companies or any other entity, such deposits shall be, and hereby are, upon any return of same to the Debtor, subject to the first priority perfected liens and security interests of the Lender in respect of the DIP Facility and the Debtor's use of Cash Collateral granted by this Interim DIP Order.

Reporting Requirements

27. The Debtor is authorized and directed to provide to the Lender (and to the Lender's counsel) all of the documentation and reports required under the Term Sheet and any other DIP Facility Documents, unless the Lender waives or modifies such requirements in writing.

28. The Lender and its representatives, agents, consultants, and other professionals shall be permitted, in coordination with Debtor's counsel, to contact and communicate with the Debtor and its financial advisors regarding a chapter 11 plan or the disposition of the assets of the Debtor's estate. The Debtor shall be responsive and employ its best efforts to cooperate in the coordination of all such contacts and communications, including, without limitation, by conducting update telephone conferences with the Debtor, its financial, and legal advisors, and Lender and Lender's advisors upon request regarding a chapter 11 plan or the disposition of the assets of the Debtor's estate.

29. Lender and its agents and advisors shall have access, upon reasonable notice during normal business hours, to the Debtor's business records, business premises, and to the Collateral to enable the Lender or its agents and advisors to (a) review, appraise, and evaluate the physical condition of the Collateral, (b) inspect and review the financial records and all other records of the Debtor concerning the operation of the Debtor's businesses, and (c) evaluate the Debtor's overall financial condition and all other records relating to the operations of the Debtor subject in all respects to reasonable confidentiality restrictions and, where applicable, protected privileges such as attorney-client and work-product privilege. The Debtor shall cooperate with the Lender regarding such reviews, evaluations, and inspections, and shall make its employees and professionals available to the Lender and its agents and advisors to conduct such reviews, evaluations, and inspections.

Interest, Fees, Costs and Expenses of Lender

30. During the Chapter 11 Case, as additional adequate protection, all interest, fees, costs, and expenses, including attorneys' fees and expenses, due at any time to the Lender under the Pre-Petition Claim Documents or the DIP Facility Documents, as applicable, or that are incurred as a result of the Chapter 11 Case (collectively, the "Lender's Costs"), may be added to the dollar amount of the post-petition claims granted to the Lender hereunder. All Lender's Costs owed to Lender, regardless of whether or not such Lender's Costs are set forth in the Budget and including, without limitation, all fees referred to in the DIP Facility Documents (including, without limitation, all attorneys' and other professionals' fees and expenses), shall constitute obligations under the DIP Facility and shall be secured by the Collateral and afforded all priorities and protections afforded to the DIP Facility under this Interim DIP Order and the DIP Facility Documents.

AUTHORIZATION TO ACT

31. The Debtor is hereby authorized and directed to perform all acts, take any action, and execute, and comply with the terms of such other documents, instruments and agreements, as Lender may request or require as evidence of and for the protection of the Collateral, or that may be otherwise deemed necessary or desirable by Lender to effectuate the terms and conditions of this Interim DIP Order and the DIP Facility.

32. Until such time as the Pre-Petition Claim and the DIP Obligations shall have been indefeasibly paid and satisfied in full in accordance with the Pre-Petition Claim Documents and the DIP Facility Documents, and without further order of this Court: (a) the Debtor shall use the DIP Facility proceeds and all Cash Collateral in accordance with the terms of the Budget requirements and the other terms of this Interim DIP Order; (b) the Debtor shall not, without prior order from this Court (after notice to Lender), engage in any transaction that is not in the ordinary course of the Debtor's business; and (c) the Debtor shall timely comply with all of the covenants set forth in the DIP Facility Documents.

PROFESSIONAL FEES OF THE ESTATE

33. Lender consents, subject to the terms and conditions set forth in this Interim DIP Order, to a carve out from its Collateral for the payment of (a) allowed, accrued, but unpaid professional fees of the Borrower and, to the extent an official committee of unsecured creditors is appointed in the chapter 11 case, the official committee of unsecured creditors consistent with and not in excess of the amounts included in the Budget that have been incurred prior to the occurrence and declaration of an Event of Default; (b) allowed, accrued but unpaid professional fees and expenses incurred by the Borrower and, to the extent an official committee of unsecured creditors is appointed in the chapter 11 case, the official committee of unsecured creditors consistent with the Budget that are incurred after the declaration of an Event of Default (that is

not cured or waived) in an aggregate amount not to exceed \$20,000 for professionals of the Borrower and \$10,000 for professionals of an official committee of creditors to the extent allowed or otherwise payable at any time, whether by interim order, procedural order, or otherwise; (c) the \$10,000 reserve set aside to satisfy, if necessary, the deductible for the Borrower's directors' and officers' insurance policy; and (d) fees payable to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 and to the Clerk of the Court (the "Carve-Out Expenses"). So long as no Event of Default shall have occurred and be continuing, the Debtor shall be permitted to pay budgeted compensation and reimbursement of expenses allowed by this Court and payable under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable and from the Professional Fee Escrow. Other than the Carve-Out Expenses, Lender does not consent to any carve-out from its Collateral for payment of any fees and expenses of the Professionals.

34. Notwithstanding anything herein or in any other order by this Court to the contrary, without the prior written consent, as applicable, of the Lender, none of the DIP Obligations, the Cash Collateral, Collateral, or the Carve-Out Expenses may be used for the following purposes: (i) to challenge or investigate the validity, perfection, priority, extent, or enforceability of the DIP Facility Documents or the Pre-Petition Claim Documents or the liens or security interest securing the obligations under any of the foregoing or to pursue any causes of action of any kind against the Lender; (ii) to object to, contest, delay, prevent, or interfere with in any way the exercise of rights and remedies by the Lender, or (iii) to make any payment of professional fees for any other constituent group, including but not limited an official committee of unsecured creditors, other than in accordance with the Budget and as otherwise permitted herein and under the DIP Facility Documents. Notwithstanding the foregoing, Cash Collateral or

DIP Facility advances deposited into the Professional Fee Escrow may be used to pay the fees earned and expenses incurred of counsel to the Committee in an amount not to exceed \$5,000.00 for reviewing the Pre-Petition Claim, the Pre-Petition Claim Documents, and any liens or security interest granted thereby.

NO SURCHARGE

35. Subject to the entry of the Final DIP Order, no costs or expenses of administration that have or may at any time be incurred in this Chapter 11 Case (or in any successor chapter 7 case) shall be charged against the Lender (for the avoidance of doubt, in any capacity), its claims or the Collateral, pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, or otherwise, without the prior written consent of the Lender, and no such consent shall be implied from any other action, inaction, or acquiescence by the Lender. The Lender shall not be subject in any way whatsoever to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

EVENTS OF DEFAULT/REMEDIES

36. The occurrence of any of those events listed in the Term Sheet under the section titled “Events of Default” shall constitute an event of default under this Interim DIP Order upon notice to the Debtor by the Lender (individually as an “Event of Default” and severally as “Events of Default”).

37. Immediately upon the occurrence of any Event of Default, and at all times thereafter, and without further act or action by the Lender, or any further notice, hearing, or order of this Court: (a) the Lender may terminate any and all obligations of the Lender in connection with the DIP Facility or under this Interim DIP Order and the DIP Facility Documents; (b) the Lender may declare all or any part of the DIP Facility to be immediately accelerated and due and payable for all purposes, rights, and remedies; (c) the Debtor’s authority to use Cash Collateral

shall immediately terminate; (d) the Lender shall be under no obligation to make any further advances to the Debtor, (e) the Lender may, upon seven (7) calendar days' written notice to the Debtor, setoff amounts in any account of the Debtor maintained with the Lender, and (f) the Lender may, upon seven (7) calendar days' written notice to the Debtor, without need for further relief from the stay or other relief from this or any other court, exercise the rights and remedies available under this Interim Order and/or applicable law (including the Uniform Commercial Code as in effect in any jurisdiction), including foreclosing upon and selling all or any portion of the Collateral. The actions described in clauses (a) through (f) above may be taken without further order or application to this Court as the Lender shall, in its discretion, elect, and the automatic stay is hereby modified and vacated to the extent necessary to permit such actions, so long as no order prohibiting such action is entered by this Court during the above-referenced seven (7) calendar day period. The sole issue that may be raised by any party during such seven (7) calendar-day period shall be limited to whether an Event of Default has occurred. The Lender shall be entitled to apply the payments or proceeds of the Collateral to the DIP Obligations in any order whatsoever. Notwithstanding the occurrence of an Event of Default or anything herein, all of the rights, remedies, benefits, and protections provided to the Lender under this Interim Order shall survive any Event of Default.

38. Furthermore, upon the occurrence of any Event of Default, and after the giving of seven (7) calendar days' notice by the Lender to the Debtor, any official committee of unsecured creditors, and the United States Trustee, then without further act or action by the Lender, or any further notice, hearing or order of this Court, the Automatic Stay shall be immediately modified and the Lender shall be and hereby is authorized, in its sole and absolute discretion, to take any and all actions and remedies that the Lender may deem appropriate to proceed against, take

possession of, protect, and realize upon the Collateral and any other property of any of the estate of the Debtor, including, without limitation, (i) any right or remedy set forth in the DIP Facility Documents, without limitation, or this Interim DIP Order, (ii) any right or remedy that the Lender may deem appropriate to proceed against, take possession of, foreclose upon, sell (in whole or in part), protect, and realize upon the Collateral and any other property of the Debtor's estate upon which the Lender has been or may hereafter be granted liens and security interests to obtain repayment of the DIP Facility and the Pre-Petition Claim, (iii) the commencement of actions for specific performance and for the foreclosure upon any of the Collateral, (iv) the sale of the Collateral, or any portion thereof, either as a whole or in part, at private or public auction, and the Lender shall have the right to purchase the Collateral at same by credit bidding all or a part of its debts (both or either of the DIP Facility or the Pre-Petition Claim) or otherwise, (v) taking possession of the Collateral and exercising, without interference and, if necessary, as the attorney-in-fact for the Debtor, of any rights of the Debtor in the management, possession, operation, protection, or preservation of the Collateral, (vi) the receipt of proceeds from the sale of any of the Collateral, (vii) the direction of the payment for any purchase of the Collateral directly to the Lender, (viii) the right of setoff and recoupment as to any funds of the Debtor's estate held by Lender, (ix) the right to appoint a chief restructuring officer of the Debtor acceptable to the Lender, and the Debtor hereby consents to same, (x) if appropriate, the right to seek and obtain the appointment of a receiver over the Debtor and/or the Collateral, and (xi) the right to reproduce, copy, download, or otherwise take possession of any records or data, tangible or electronic, constituting the Collateral; provided that the Lender shall not be obligated to take title to any of the Collateral in the pursuit of any of the Lender's rights and remedies and the

Debtor shall cooperate with the Lender in conjunction with the exercise of any right and the pursuit of any remedy by the Lender, without limitation.

39. Upon or after the occurrence of any Event of Default, the Lender may, in its sole and absolute discretion, advance funds to the Debtor, and all such advances (i) shall not constitute a waiver, limitation, or modification of Lender's rights and remedies pursuant to the Pre-Petition Claim Documents, the DIP Facility Documents, this Interim DIP Order, and applicable law and (ii) shall be and hereby are granted all of the protections granted to Lender under this Interim DIP Order in connection with the DIP Facility.

OTHER TERMS

40. The Debtor and the Lender are authorized to implement, in accordance with the terms of the DIP Facility Documents, any modifications or amendments to any DIP Facility Document that are not material and adverse to the Debtor. Any modifications or amendments of any DIP Facility Document that are material and adverse to the Debtor shall be subject to prior approval by this Court upon motion by the Debtor; *provided that* the Lender shall be entitled to request approval of this Court with respect to any amendment.

41. Other than any Prior Liens, no priority claims shall be allowed that are or will be prior to or on parity with the superpriority claims or secured claims of the Lender against the Debtor and its estate arising from the Pre-Petition Claim Documents, the DIP Facility Documents, and this Interim DIP Order.

42. No obligations incurred or payments or other transfers made by or on behalf of the Debtor on account of the DIP Obligations or the DIP Facility shall be avoidable or recoverable from the Lender under any section of the Bankruptcy Code, or any other federal, state, or other applicable law.

43. Except for reasonable and necessary leasing in the ordinary course of the Debtor's business and as may be provided for in the Budget and consistent with the terms of the Term Sheet, the Debtor shall not sell, transfer, lease, encumber, or otherwise dispose of any of the Collateral, without the prior written consent of Lender.

44. All post-petition advances under the Term Sheet are made in reliance on this Interim DIP Order and so long as the DIP Obligations and the Pre-Petition Claim remain unpaid, there shall not at any time be entered in the Chapter 11 Case any other order that, except as consented to by the Lender in writing, (a) authorizes the use of Cash Collateral or the sale, lease, or other disposition of the Collateral unless the cash proceeds will indefeasibly pay the Pre-Petition Claim and the DIP Obligations in full, (b) authorizes the obtaining of credit or the incurring of indebtedness secured by a lien or security interest in property in which the Lender holds or asserts liens or security interests, or (c) grants to any claim priority administrative status that is equal or superior to the superpriority status granted to the Lender herein.

45. The terms hereunder and under the DIP Facility Documents, the security interests and liens granted to the Lender under this Interim DIP Order, and the rights of the Lender pursuant to this Interim DIP Order with respect to the Collateral, and treatment of the Pre-Petition Claim shall not be altered, modified, extended, impaired, or affected by any plan of reorganization of the Debtor without the prior written approval of Lender.

46. The terms and provisions of this Interim DIP Order and any actions taken pursuant hereto shall survive entry of any order that may be entered converting the Chapter 11 Case to chapter 7 or dismissing the Chapter 11 Case, except for the Debtor's authority to use Cash Collateral and any obligations of the Lender under the DIP Facility Documents (all of which shall immediately terminate upon entry of such an order). The terms and provisions of

this Interim DIP Order, as well as the priorities in payment, liens, and security interests granted pursuant to this Interim DIP Order and the DIP Facility Documents, shall continue in this or any superseding case under the Bankruptcy Code of the Debtor, and such priorities in payment, liens, and security interests shall maintain their priority as provided by this Interim DIP Order until such time as the Pre-Petition Claim and the DIP Obligations shall have been indefeasibly paid and satisfied in full in accordance with the Pre-Petition Claim Documents and the DIP Facility Documents and the Lender shall have no further obligation or financial accommodation to the Debtor.

47. The provisions of this Interim DIP Order shall inure to the benefit of the Debtor and Lender, and they shall be binding upon (a) the Debtor and its successors and assigns, including any trustee or other fiduciary hereafter appointed as legal representative of the Debtor or with respect to property of the estate of the Debtor, whether under chapter 11 of the Bankruptcy Code, any confirmed plan, or any subsequent chapter 7 case, and (b) all creditors of the Debtor and other parties-in-interest.

48. If any or all of the provisions of this Interim DIP Order are hereafter modified, vacated, or stayed without the prior written agreement of the Lender, such modification, vacation, or stay shall not affect (a) the validity of any obligation, indebtedness, or liability incurred by the Debtor to the Lender before the effective date of such modification, vacation, or stay or (b) the validity, enforceability or priority of any security interest, lien, priority, or other protection authorized, granted, or created hereby or pursuant to any of the DIP Facility Documents. Notwithstanding any such modification, vacation, or stay, any indebtedness, obligations, or liabilities incurred by the Debtor to the Lender before the effective date of such modification, vacation, or stay shall be governed in all respects by the original provisions of this

Interim DIP Order, and the Lender shall be entitled to all the liens, rights, remedies, privileges, and benefits granted herein and pursuant to the DIP Facility Documents with respect to all such indebtedness, obligations, or liabilities.

49. To the extent the terms and conditions of the DIP Facility Documents are in express conflict (as opposed to being additive, limiting, or more specific than this Interim DIP Order) with the terms and conditions of this Interim DIP Order, the terms and conditions of this Interim DIP Order shall control.

50. No approval, agreement, or consent requested of the Lender by the Debtor pursuant to the terms of this Interim DIP Order or otherwise shall be inferred from any action, inaction, or acquiescence of the Lender other than a writing acceptable to the Lender that is signed by the Lender and expressly shows such approval, agreement, or consent, without limitation. Nothing herein shall in any way affect the rights of the Lender as to any non-Debtor entity, without limitation.

51. Nothing herein shall be deemed or construed to waive, limit, or modify the rights of the Lender to obtain further adequate protection and other statutory protections for the use of the Collateral and Cash Collateral, or to seek other relief in this Chapter 11 Case in accordance with any provision of the Bankruptcy Code or applicable law. Unless expressly and specifically provided otherwise herein, nothing herein shall be deemed or construed to waive, limit, modify or prejudice the claims, rights, protections, privileges, and defenses of Lender afforded pursuant to the Bankruptcy Code.

52. This Court shall retain jurisdiction to enforce the terms of this Interim Order and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Interim Order.

53. All headings in this Interim DIP Order are descriptive and for reference only, and do not have separate meaning or change any terms therein.

54. In the event that any party who holds a lien or security interest in the Collateral that is junior and/or subordinate to the DIP Liens, the Replacement Liens, or the liens of the First Lien Lender in such Collateral receives or is paid the proceeds of such Collateral prior to indefeasible payment in full in cash and the complete satisfaction of all DIP Obligations under the DIP Facility Documents and all obligations under the Pre-Petition Claim Documents, and termination of the commitments in accordance with the DIP Facility Documents and the Pre-Petition Claim Documents, such junior or subordinate lienholder shall be deemed to have received, and shall hold, the proceeds of any such DIP Collateral in trust for the Lender and shall immediately turnover such proceeds for application (a) to the DIP Obligations under the DIP Facility Documents and (b) to the Pre-Petition Claim under the Pre-Petition Claim Documents.

55. This Interim DIP Order shall not be construed in any way as a waiver or relinquishment of any rights that the Lender may have under the Bankruptcy Code or applicable law, or any prior order of this Court, or to bring or be heard on any matter brought before this Court.

56. Except as explicitly set forth herein, no rights are created hereunder for the benefit of any third party, any creditor, or any direct, indirect, or incidental beneficiary.

57. In consideration of (i) the financial accommodations provided by the DIP Lender hereunder and (ii) the consent to the DIP Facility granted by the First Lien Lender, no expenses of administration of the Chapter 11 Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral under section 506(c) of the Bankruptcy Code or

any similar principle of law, or otherwise, without the prior written consent of the DIP Lender and First Lien Lender, and no such consent shall be implied from any action, inaction, acquiescence, or otherwise.

RESERVATION OF RIGHTS OF PARTIES-IN-INTEREST/DEADLINE TO ACT

58. Parties-in-interest (other than the Debtor) that have or have been granted standing shall have seventy-five (75) days from the date of entry of this Interim DIP Order (or, in the case of an official committee of unsecured creditors, if appointed, sixty (60) days from the date of the appointment of the committee) to file a complaint pursuant to Bankruptcy Rule 7001 asserting a claim or cause of action arising out of the Pre-Petition Claim Documents, or otherwise challenging the extent, priority, validity, perfection, amount, or allowability of the First Lien Lender's claims or security interests arising out of the Pre-Petition Claim Documents. Such complaint, if filed, shall be diligently pursued by such party-in-interest or committee, as applicable. For the avoidance of doubt, the Carve-Out Expenses shall not include any fees and expenses incurred by or on behalf of any such party-in-interest or committee in connection with any such complaint or action seeking standing to assert a complaint; provided, however, that, to the extent an official committee of unsecured creditors is appointed, such committee may be reimbursed for up to \$ 5,000 for fees and expenses incurred in connection with the investigation of, but not the commencement or pursuit of litigation, objection or any challenge to, any prepetition secured claims of the First Lien Lender or the collateral position of the DIP Lender.

59. If no action is commenced or pursued in accordance with the deadlines in the immediately preceding paragraph or such deadlines are not extended in writing by the Lender in its discretion, all of the Debtor's stipulations and affirmations of the allowance, priority, extent, and validity of the Lender's claims, liens, and interests—of any nature—set forth in this Interim DIP Order and the Debtor's waivers and releases as contained in the Pre-Petition Claim

Documents or otherwise incorporated or set forth in this Interim DIP Order shall be of full force and effect and forever binding upon the Debtor's bankruptcy estate and all creditors and parties-in-interest of this Chapter 11 Case, including, without limitation, upon any creditors or parties-in-interest that did not have or were not granted standing prior to such deadlines. Notwithstanding the foregoing and regardless of the timely commencement of an action as contemplated in the preceding paragraph, the Debtor's stipulations and affirmations of the allowance, priority, extent, and validity of the Lender's claims, liens, and interests—of any nature—set forth in this Interim DIP Order and the Debtor's waivers and releases as contained in the Pre-Petition Claim Documents or otherwise incorporated or set forth in this Interim DIP Order shall be in full force and effect with respect to any claims or causes of action not timely raised within the deadlines set forth in the preceding paragraph.

60. Notwithstanding any due diligence period granted to other parties-in-interest herein, as a result of the Debtor's review of the Pre-Petition Claim Documents and the facts related thereto, the Debtor shall have no right to file a complaint pursuant to Bankruptcy Rule 7001 or otherwise, or any other pleading asserting a claim or cause of action (whether affirmatively, offensively, or defensively by way of setoff or otherwise) arising out of or related to the Pre-Petition Claim Documents, the DIP Facility Documents, or any transactions or dealings related to same.

NOTICE

61. The Debtor's proposed counsel shall serve this Interim DIP Order on the Notice Parties within two (2) business days of the entry of this Interim DIP Order. With the service previously provided of the Financing Motion, such notice shall be sufficient and adequate, and no other or further notice shall be required.

MATURITY

62. The Lender's consent and the Debtor's authority to use Cash Collateral and the Lender's commitment to provide credit under the Term Sheet and this Interim DIP Order, subject to the funding and Budget limitations above, shall be effective upon entry of this Interim DIP Order to and including the earlier of: (i) April 15, 2019, (ii) the effective date of a chapter 11 plan with respect to the Chapter 11 Case, (iii) the date on which a sale of all or substantially all of the assets of the Debtor is consummated, (iv) the date the DIP Facility is accelerated upon the occurrence and declaration of an Event of Default, and (v) the date that the DIP Facility shall become due and payable in full pursuant to the DIP Order, whether by acceleration or otherwise, unless extended by written agreement of the parties hereto, a copy of which with an updated Budget shall be promptly filed with this Court by the Debtor.

OBJECTIONS OVERRULED

63. Any and all objections to the relief requested in the Financing Motion, to the extent not otherwise withdrawn, waived, or resolved by consent at or before the Interim Hearing, and all reservations of rights included therein, are hereby OVERRULED and DENIED.

OPPORTUNITY TO OBJECT

64. Any objection to the entry of a Final DIP Order on the Financing Motion must be filed on or before 4:00 p.m. (ET) on January ____, 2019 (the "Objection Date"). A final hearing on the Financing Motion shall take place on _____, 2019, at _____m. (the "Final Hearing"). Objections shall be in writing and shall be filed with the Clerk of the Court so that any such objections are received on or before the Objection Date. If an objecting party shall fail to appear at the Final Hearing and assert the basis for such objection before this Court, such objection shall be deemed to have been waived and abandoned by such objecting party.

ENFORCEABILITY

65. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim DIP Order shall be valid, take full effect, and be enforceable immediately upon entry hereof; there shall be no stay of execution or effectiveness of this Interim DIP Order; and any stay of the effectiveness of this Interim DIP Order that might otherwise apply is hereby waived for cause shown.

Dated: _____, 2018
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

TERM SHEET

ALCOR ENERGY, LLC
Debtor-In-Possession (DIP) Financing Term Sheet¹

Set forth below is a summary of certain key terms for a proposed DIP Facility² (the “**Term Sheet**”) of up to \$695,000 with an initial commitment of \$140,000, to be made available to Alcor Energy, LLC, as borrower (the “**Borrower**”), and entered into among the Borrower in its capacity as debtors-in-possession (the “**Debtor**”) in a chapter 11 case (the “**Chapter 11 Case**”) to be commenced in the United States Bankruptcy Court for the District of Delaware. The date of the commencement of the Chapter 11 Case of the Debtor hereunder is referred to as the “**Petition Date**.” In connection with the DIP Facility, Ocho Ventura, LLC, one or more of its affiliates, or any other lender entity designated by Ocho Ventura, LLC (the “**DIP Lender**”) are pleased to advise you of their commitment to provide the principal amount of the DIP Facility upon the terms and subject to the conditions set forth in this Term Sheet. Each of the terms set forth in this term sheet is consideration for the other elements and an integral aspect of the proposed DIP Facility. Prior to the commencement of the Chapter 11 Case, the Borrower may not disclose this Term Sheet to any person other than its affiliates and its professional advisors, who shall agree to maintain its confidentiality.

This Term Sheet is not meant to be, nor shall it be construed as an attempt to describe all of, or the specific phrasing for, the provisions of the definitive documentation. Rather, it is intended only to outline certain key terms to be included in, or otherwise consistent with, and subject to terms of definitive documentation acceptable to the DIP Lender, and it is in no way intended to be a substitute for such terms and definitive loan documentation duly executed by the DIP Lender and the Borrower.

I. DIP Facility	A senior secured, multiple draw, superpriority, debtor-in-possession credit facility (“ DIP Facility ”).
II. Facility Size	\$695,000 is the maximum commitment to be funded in accordance with the DIP Facility Documents and Budget. Amounts repaid may not be reborrowed. Until the entry of the Final DIP Order, a maximum of \$140,000 will be available under the DIP Facility. The Budget will include a schedule of timing and amount of projected drawings under the DIP Facility (the “ DIP Loans ”).
III. Targeted Petition Date	December 19, 2018
IV. Chapter 11 Case	Case to be filed under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “ Bankruptcy Code ”) and maintained in the United States Bankruptcy Court for the District of Delaware (the “ Bankruptcy Court ”).

¹ Final documentation for the financing may contain additional terms and provisions from the terms and provisions of this Term Sheet.

² Capitalized terms used but not yet defined have the meanings given to them below.

V. Borrower & Debtor	Alcor Energy, LLC
VI. Effective Date of DIP Facility	The date of the entry of Interim DIP Order
VII. Priority	<p>The DIP Lender shall have a super-priority, administrative claim against the Borrower pursuant to section 364(c) of the Bankruptcy Code (the “Super-Priority Claim”). In addition, the DIP Lender shall have a super-priority, senior lien (the “DIP Liens” and, with the Super-Priority Claim, the “DIP Protections”) pursuant to section 364(d) of the Bankruptcy Code against all assets of Borrower, whether real or personal, including postpetition assets (including Avoidance Actions), subject only to (i) the Carve-Out Expenses, and (ii) budgeted ordinary course post-petition expenses (“Budgeted Expenses”).</p> <p>Subject to entry of a Final DIP Order, the DIP Protections shall not be subject to any rights, claims, charges, or liens arising under section 506(c) of the Bankruptcy Code. The obligations under the DIP Facility (the “DIP Obligations”) shall not be subject to the equitable doctrine of marshaling.</p> <p>All DIP Protections will survive any conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code or the dismissal of the Chapter 11 Case.</p> <p>All DIP Liens granted pursuant to the DIP Facility Documents and all DIP Liens authorized and granted pursuant to the DIP Orders entered by the Bankruptcy Court shall be deemed effective and perfected as of the Petition Date, and no further filing, notice, or act under applicable law or otherwise will be required to effect such perfection. The Borrower shall make any filings, deliver any notices, make recordations, perform any searches, enter into control agreements, or take any other acts as may be necessary under state law or other applicable law or otherwise desirable in order to protect, preserve, and/or enforce the security, perfection, or priority of the DIP Liens.</p> <p>The DIP Lender shall have the right to challenge the amount, validity, and perfection of any lien or security interest filed against the Borrower that relates to Collateral that purports to be senior to the DIP Liens and/or any lien arising under the Prepetition Security Agreement.</p>
VIII. DIP Lender	Ocho Ventura, LLC or one or more of its affiliates (“ Ocho ”) or any other lender entity designated by Ocho.

IX. DIP Facility Documents	A debtor-in-possession credit agreement, this Term Sheet, and all other documents, agreements, certificates and opinions to be executed or delivered, or relating to the transactions contemplated to be in form and substance acceptable to DIP Lender in their sole discretion (collectively, with this Term Sheet, the “ <u>DIP Facility Documents</u> ”). In the sole discretion of the DIP Lender, funding under the DIP Orders may be made on the basis of a “short form” promissory note, security agreement, guaranty agreement, or this Term Sheet and the parties may choose to treat this Term Sheet as a de facto debtor-in-possession credit agreement.
X. First Lien Lender	Ocho and any assignees from time to time in their capacity as lenders (collectively, the “ <u>First Lien Lender</u> ”) under that certain <i>Amended and Restated Loan and Security Agreement</i> dated as of May 8, 2014 (as amended) (the “ <u>Prepetition Security Agreement</u> ”).
XI. First Lien Adequate Protection	<p>As adequate protection for the use and any diminution in the value of the First Lien Lender’s prepetition liens in the Collateral, as part of the DIP Orders:</p> <p>(a) The liens and obligations of the First Lien Lender shall be acknowledged, affirmed, and validated by the Debtor’s estate, subject to any action commenced by a creditor of the Borrower no later than seventy-five calendar days after entry of the Interim DIP Order and, to the extent an official committee of unsecured creditors is appointed, sixty calendar days from the date of the appointment of such committee;</p> <p>(b) The First Lien Lender will receive replacement liens on all assets of the Borrower and superpriority claims under section 507(b) of the Bankruptcy Code to the extent of any diminution in the value of the Collateral, which replacement liens and claims shall be senior to all other liens and claims, subject only to the liens and claims in favor of the DIP Facility, the Carve Out Expenses, and any senior liens of materialmen and mechanics as of the Petition Date; and</p> <p>(c) As described in the Interim DIP Order, the First Lien Lender shall receive from the Borrower all reasonable and documented outstanding fees and expenses (the “<u>Pre-Petition Fee Payments</u>”), including, but not limited to, fees and expenses of legal counsel, incurred by the First Lien Lender to the extent provided for under the Prepetition Security Agreement. Such amounts shall be paid upon Maturity.</p> <p>(d) Upon or at any time after entry of the Final DIP Order, the DIP Lender shall be authorized to fund under the DIP Facility one or more DIP Loans in an amount sufficient to pay up to \$345,000 of the outstanding amounts with respect to the advances made pursuant to the Prepetition Security Agreement (the “<u>2018 Advances</u>”) (the proceeds of which were used to fund the</p>

	<p>Borrower's professional fees and working capital needs necessary to enable the Borrower to prepare for an orderly chapter 11 petition filing) <i>plus</i> accrued and unpaid interest and fees related to the 2018 Advances (the "Roll-up"), and the Borrower shall be authorized to draw on the DIP Facility in order to effectuate the Roll-up.</p>
<p>XII. Budget</p>	<p>The thirteen week budget, attached hereto as Exhibit A (the "Budget"), agreed upon among the Borrower and the DIP Lender (together, the "Parties") with respect to revenues and the Budgeted Expenses. An updated Budget for each successive four week period (or longer time agreed among the Parties) shall be provided to DIP Lender not less than two weeks prior to the end of the time period covered by the then effective Budget and shall be effective upon agreement by the Parties. There shall be an event of default if (i) total disbursements for any monthly time period covered by the Budget shall have exceeded the total disbursements allowed in the Budget by more than 10%, (ii) total disbursements for any line item in the Budget for any monthly time period shall be exceed by more than the greater of 25% or \$10,000, (iii) total revenue for any month received after the Petition Date shall fall below \$80,000, or (iv) the Budget amount is exceeded by any amount for certain specific items to be agreed to by the Parties (items (i) to (iv) being the "Permitted Variances").</p>
<p>XIII. Use of Proceeds</p>	<p>The Borrower shall, in accordance with the DIP Facility Documents and the Budget and as required by any DIP Orders and any orders entered by the Bankruptcy Court, such orders being in form and substance satisfactory to the DIP Lender, use the proceeds of the DIP Loans for (a) general corporate purposes, (b) interest, premiums, and fees payable hereunder and under the DIP Facility Documents; (c) restructuring costs and professional fees relating to the Chapter 11 Case in accordance with the terms hereof, the DIP Facility Documents, and the Budget; and (d) adequate protection payments, particularly amounts for the Roll-Up, provided to the First Lien Lender.</p> <p>Subject to the entry of the Final DIP Order, no proceeds of the DIP Facility and no cash collateral (including the Carve-Out Expenses) may be used in connection with (a) the modification, stay, or amendment of the DIP Orders without the consent of the DIP Lender or (b) any litigation, proceeding, or adverse action against, or challenge to the rights or liens of, the DIP Lender or the First Lien Lender.</p> <p>For the avoidance of doubt, until such time as the DIP Facility</p>

	Documents is finalized, this Term Sheet shall control.
XIV. Interest Rate	The DIP Loans shall bear interest at a rate of 10% per annum, payable at Maturity. The default rate shall be 2% payable upon and during continuance of event of default. The payment may be deferred for a period up to ninety days if requested by the Borrower due to liquidity constraints and if consented to by the DIP Lender in the DIP Lender' sole discretion.
XV. Facility Fee	1% of all amounts actually funded under the DIP Facility, payable upon Maturity, or at the time of any earlier payments of DIP Facility to the extent of such payments.
XVI. Exit Fee	1% of the total amount advanced under the DIP Facility, payable upon Maturity, or at the time of any earlier payments of DIP Facility to the extent of such payments.
XVII. Expenses	The Borrower shall pay or reimburse upon Maturity all reasonable and documented costs and expenses associated with the preparation, due diligence, administration and closing of all DIP Facility Documents, including, without limitation, the reasonable and documented legal fees and expenses of counsel to the DIP Lender, and the Borrower shall pay upon Maturity the expenses of the DIP Lender in connection with the enforcement of any DIP Facility Documents, including expenses of counsel.
XVIII. Collateral	Pursuant to sections 364(c) and (d) of the Bankruptcy Code, all obligations of the Borrower under the DIP Facility (" <u>DIP Obligations</u> ") will be secured by security interests in all of the Borrower's and its bankruptcy estate's assets (the " <u>Collateral</u> "), including, subject to the entry of the Final DIP Order, proceeds and rights in respect of avoidance actions under sections 502(d), 510, 544, 545, 547, 548, 549, 550, 551, or 553(b) of the Bankruptcy Code (" <u>Avoidance Actions</u> "). Collateral shall include all property that is not subject to a security interest or lien as of the Petition Date and property that is covered by a security interest or lien as of the Petition Date. Such liens on the Collateral will be valid, enforceable, and perfected first-priority priming liens and security interests, with priority over any and all prepetition or postpetition liens, security interests, and other interests including any and all mechanics and materialmen's liens (" <u>M&M Liens</u> ") and shall be subject and junior only to (i) the Carve-Out Expenses and (ii) the Budgeted Expenses. The DIP Lender shall also have a superpriority administrative expense under section 364(c)(1) of the Bankruptcy Code against the Borrower for the amount of all obligations under the DIP Facility, subject only to the Carve-Out Expenses and Budgeted Expenses.

	No person other than the DIP Lender shall have a lien on the collateral, except for (i) the liens of the First Lien Lender (including adequate protection liens provided herein) and (ii) M&M Liens (it being understood that pursuant to the DIP Orders any and all such liens will be junior to the DIP Facility).
XIX. Maturity	Unless extended by written agreement of the Parties, the earlier of: (i) April 15, 2019 (“ Final Maturity Date ”), (ii) the effective date of a chapter 11 plan with respect to the Chapter 11 Case (the “ Plan ”), (iii) the date on which a sale of all or substantially all of the assets of the Borrower is consummated, (iv) the date the DIP Facility is accelerated upon the occurrence and declaration of an Event of Default, and (v) the date that the DIP Facility shall become due and payable in full hereunder or pursuant to the DIP Orders, whether by acceleration or otherwise (each, the “ Maturity ”).
XX. Amortization	None.
XXI. Repayment	Borrower may repay the DIP Obligations in whole or in part at any time without premium or penalty (other than the applicable Exit Fee). At Maturity, advances under the DIP Facility shall be repaid in full, together with accrued interest and Exit Fee on amounts advanced.
XXII. Conditions Precedent for effectiveness of DIP Facility and Each Funding	<p>In addition to customary conditions as set forth in the DIP Facility Documents, the obligation of the DIP Lender to make available the DIP Facility shall be subject to satisfaction (or waiver by the DIP Lender) of the following conditions:</p> <p>(a) Completion of due diligence of the DIP Lender prior to the Petition Date with satisfactory results;</p> <p>(b) Bankruptcy Court approval of DIP Facility on an interim basis no later than December 28, 2018 (the “Interim DIP Order”) and, on a final basis no later than January 31, 2019 (the “Final DIP Order”) and, collectively with the Interim DIP Order, the “DIP Orders”), provided that the DIP Orders shall be subject to the Budget and acceptable to the DIP Lender and shall include provisions relating to DIP Facility that are customary for facilities of this type and other provisions acceptable to the DIP Lender and to the First Lien Lender (with respect to adequate protection);</p> <p>(c) Each borrowing shall be consistent with the most recently delivered and approved Budget subject to any variances as permitted by this Term Sheet or, once finalized, the DIP Facility Documents;</p> <p>(d) The execution and delivery of this Term Sheet prior to the</p>

	<p>entry of the Interim DIP Order;</p> <p>(e) All first day motions filed by the Borrower and all first day orders entered on the docket of the Bankruptcy Court shall be reasonably satisfactory to the DIP Lender;</p> <p>(f) Absence of any continuing default or Event of Default;</p> <p>(g) the Chapter 11 Case shall not have been dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;</p> <p>(h) no trustee under Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in the Chapter 11 Case;</p> <p>(i) the DIP Order then in effect shall be in full force and effect, shall not have been reversed, modified, amended, stayed, vacated, or subject to a stay pending appeal;</p> <p>(j) the Borrower shall be in compliance in all respects with the DIP Order then in effect; and</p> <p>(k) No material adverse change shall have occurred with respect to the operations, properties, or financial condition of the Borrower, taken as a whole, since the commencement of the Chapter 11 Case.</p> <p>For the avoidance of doubt, until the DIP Facility Documents is finalized, the conditions precedent to the effectiveness of the DIP Facility and each funding thereunder shall be limited to those conditions set forth herein</p>
<p>XXIII. Covenants</p>	<p>Customary affirmative and negative covenants for facilities of this type, and this transaction in particular, including:</p> <p>(a) Reasonable access to information relating to the Borrower and close consultation with DIP Lender regarding the reorganization process;</p> <p>(b) Compliance with Budget, subject to permitted variances;</p> <p>(c) Operating covenants regarding revenues in accordance with the Budget;</p> <p>(d) Borrower consulting with the DIP Lender as to the terms of the Plan and the confirmation process; and</p> <p>(e) Borrower not terminating or reassigning its principal executive officer or principal financial officer without the prior written consent of the DIP Lender.</p>

XXIV. Events of Default	<p>Customary and appropriate events of default for financings of this type (collectively, the “Events of Default”), including the following:</p> <p>(a) Breach of Budget amounts in excess of the Permitted Variances;</p> <p>(b) Customary bankruptcy events of default, including conversion or dismissal of case and appointment of trustee or examiner;</p> <p>(c) Change of venue of the Chapter 11 Case from the District of Delaware;</p> <p>(d) Reversal or modification of any of the DIP Orders without the consent of the DIP Lender;</p> <p>(e) Granting of relief from the stay to any creditor in respect of any Collateral in excess of \$25,000;</p> <p>(f) Other breaches of covenants, subject to customary grace periods and cure periods if applicable;</p> <p>(g) Borrower proposing a Plan that either (i) does not contemplate the full repayment in cash of the DIP Facility on the effective date of the Plan or (ii) is not otherwise reasonably acceptable to the DIP Lender; and</p> <p>(h) Payment defaults.</p>
XXV. Remedies	<p>During the continuance of an Event of Default, any DIP Lender can exercise all remedies under applicable bankruptcy and/or nonbankruptcy law with respect to the Collateral and the automatic stay shall not apply to any such remedies.</p>
XXVI. Carve-Out Expenses	<p>The DIP Lender’ liens and administrative claims shall be subject to the prior payment of the Carve-Out Expenses. “Carve-Out Expenses” shall mean:</p> <p>(a) Allowed, accrued, but unpaid professional fees of the Borrower and, to the extent an official committee of unsecured creditors is appointed in the chapter 11 case, the official committee of unsecured creditors consistent with and not in excess of the amounts included in the Budget that have been incurred prior to the occurrence and declaration of an Event of Default,</p> <p>(b) Allowed, accrued but unpaid professional fees and expenses incurred by the Borrower and, to the extent an official committee of unsecured creditors is appointed in the chapter 11 case, the official committee of unsecured creditors consistent with the Budget that are incurred after the declaration of an Event of Default (that is not cured or waived) in an aggregate amount not</p>

	<p>to exceed \$50,000 for professionals of the Borrower and \$25,000 for professionals of an official committee of creditors to the extent allowed or otherwise payable at any time, whether by interim order, procedural order, or otherwise,</p> <p>(c) The \$10,000 reserve set aside to satisfy, if necessary, the deductible for the Borrower's directors' and officers' insurance policy; and</p> <p>(d) Fees payable to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 and to the clerk of the Bankruptcy Court.</p> <p>The Carve-Out Expenses shall not include (a) any other claims that are or may be senior to or pari passu with any of the Carve-Out Expenses, (b) any fees or expenses of a Chapter 7 trustee, (c) any fees or disbursements arising after the conversion of any Chapter 11 Case to a Chapter 7 Case, (d) any fees or disbursements related to the investigation of, preparation for, or commencement or prosecution of investigation of prepetition secured claims, or (e) any fees or disbursements related to any challenge or objection to the debt or collateral position of the DIP Lender or hindering or delaying the DIP Lender' enforcement or realization upon the Collateral once an Event of Default has occurred and is continuing; <u>provided, however</u>, that, as to items (d) and (e), to the extent an official committee of unsecured creditors is appointed, such committee may be reimbursed for up to \$5,000 for fees and expenses incurred in connection with the investigation of, but not the commencement or pursuit of litigation, objection or any challenge to, any prepetition secured claims of the First Lien Lender the debt or collateral position of the DIP Lender.</p> <p>The Carve-Out shall be senior to any claims arising under or relating to the DIP Liens and to any claims secured by liens junior to the DIP Liens.</p> <p>For the avoidance of doubt, nothing herein is intended to constitute, nor should be construed as consent to, the allowance of any fees, costs, or expenses by any party, and shall not affect the right of the Borrower, the DIP Lender, or any other lender or party-in-interest to object to the allowance and payment of any amounts incurred or requested on reasonableness grounds (other than with regard to unpaid fees required to be paid (i) to the clerk of the Bankruptcy Court or (ii) the United States Trustee under section 1930(a) of title 28 of the United States Code).</p>
XXVII. Governing Law	Delaware
XXVIII. Representations & Warranties, Deliverables, Assignment Provisions, Amendment Provisions,	Customary for financings of this type and for this transaction in particular.

Expenses, Indemnities, Jurisdiction, Other Provisions	
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Date: December 19, 2018

Borrower:

Alcor Energy, LLC

By: _____

Name: _____

Title: _____

DIP Lender:

Ocho Ventura, LLC

By: _____

Name: _____

Title: _____

Exhibit A

Budget

13 Week Cash Basis DIP Budget

	Post-Petition				Grand Total
	1	2	3	4	
	December 19-30	December 31 - January 27	January 28 - February 24	February 25 - March 17	
<u>Revenue</u>					
Lease Usage Base	\$ 154,859	\$ 123,938	\$ 76,507	\$ 81,873	\$ 437,177
Lease Billables	2,340	5,460	5,460	11,195	24,455
Compressor Rental	3,200	-	3,200	3,200	9,600
Other	-	-	-	-	-
Total Revenue	160,399	129,398	85,167	96,268	471,232
<u>Direct Expense (COGS)</u>					
Maintenance	6,620	44,400	44,400	42,620	138,040
Field (Billable)	1,580	4,416	4,416	3,556	13,968
Rebuild	930	6,104	6,104	4,090	17,228
Commissioning	-	-	-	24,312	24,312
Manufacturing	1,140	2,640	2,640	1,980	8,400
Shop Supplies & Uniforms	330	800	800	600	2,530
Occupancy ⁽¹⁾	1,600	56,550	41,490	40,530	140,170
Insurance	260	3,875	3,615	3,875	11,625
Total Direct Expense	12,460	118,785	103,465	121,563	356,273
Contribution to Overhead	147,939	10,613	(18,298)	(25,295)	114,959
<u>Overhead</u>					
Overhead Wages	-	14,640	14,640	4,392	33,672
Medical Benefits	5,600	5,600	-	5,600	16,800
Legal Fees - Ordinary Course	1,750	7,000	7,000	5,250	21,000
Professional Fees / Management	8,500	25,000	25,000	20,000	78,500
Travel - Management / Overhead	2,500	7,000	7,000	5,250	21,750
Telephone	650	650	650	-	1,950
Computer / Internet	-	1,400	1,400	1,400	4,200
Payroll Processing Fees	300	600	600	600	2,100
Other Overhead Costs	1,160	2,640	2,640	1,980	8,420
Total Overhead Expenses	20,460	64,530	58,930	44,472	188,392
Net Cash Flow From Operations	127,479	(53,917)	(77,228)	(69,767)	(73,433)
Generator Rework Costs ⁽²⁾	-	15,000	25,000	11,000	51,000
<u>Pre-Petition Claims</u>					
Utility Deposits	-	3,000	-	-	3,000
Total Pre-Petition Claims	-	3,000	-	-	3,000
<u>Reorganization Costs (Carve Out)</u>					
Debtor Counsel	50,000	35,000	35,000	17,500	137,500
Debtor Financial Advisor	15,000	15,000	4,000	6,000	40,000
Director/Manager Fee	-	4,000	4,000	4,000	12,000
D&O Policy Deductible	-	-	-	10,000	10,000
UST	975	-	-	4,875	5,850
Total Reorganization Costs (Carve Out)	65,975	54,000	43,000	42,375	205,350
Net Cash Shortfall / DIP Loan Requirements	61,504	(125,917)	(145,228)	(123,142)	(332,783)
<u>DIP Loan Interest ⁽³⁾</u>					
2018 Advances	-	-	345,000	-	345,000
Net Cash Flow	61,504	(125,917)	(490,228)	(123,142)	(677,783)
Beginning Cash Balance Available	-	131,504	75,587	20,359	-
DIP Draw	70,000	70,000 ⁽⁴⁾	435,000	120,000	695,000
Ending Cash Balance Available	131,504	75,587	20,359	17,217	17,217

(1) Management is undergoing discussions and/or search for reducing rental costs related to shop in Arizona.
 (2) In-Service Unit 10027, Out-of-Service Units 10017, 10018 and 10019. The units are estimated to be in service and accruing revenue as of February and March, respectively. However, collections will not be realized until after week 13.
 (3) DIP Interest accruing at 10% and payable upon confirmation of a plan or other liquidity/change of control event.
 (4) DIP Draw to occur on or before January 8th to maintain sufficient cash balance for remainder of January.