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Attorneys for Debtor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In Re:)	
	)	Chapter 11
MOUNTAIN DIVIDE, LLC,)	
	)	Case No. 16-61015
Debtor.)	
	)	NOTICE OF HEARING
)	
	)	Date: October 24, 2016
	)	Time: 9:00 a.m.
	)	Location:
	)	James F. Battin Federal Courthouse
	)	Bighorn Courtroom
	)	2601 2 nd Avenue North
	)	Billings, MT 59101
)	

DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS PURSUANT TO
11 U.S.C. §§ 105, 361, 362, 363, 364 AND 507 (I) APPROVING POSTPETITION
SECURED FINANCING, (II) GRANTING LIENS AND SUPERPRIORITY CLAIMS,
(III) AUTHORIZING USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE
PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, AND (VI) SCHEDULING
FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(b)

Mountain Divide, LLC ("Mountain Divide" or "Debtor") as Debtor and debtor-in-
possession, and pursuant to Sections 105, 361, 362, 363, 364 and 507 title 11 of the United States

Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), moves this Court (this “**Motion**”) to enter an interim order (the “**Interim Order**”) and a final order (the “**Final Order**”) substantially in the form attached to this Motion as **Exhibit A** that, among other things:

(1) authorizes the Debtor to obtain up to \$450,000 in new postpetition loans, advances and other financial accommodations (the “**DIP Loan**” or “**DIP Financing**”), with \$300,000 authorized for immediate use pending the entry by the Court of the Final Order, from Wells Fargo Energy Capital, Inc. (“**Wells Fargo**”), secured by first priority priming, valid, perfected and enforceable security interests in and liens upon all of the Collateral (as defined below, but consisting of all of the Debtor’s prepetition and postpetition assets of whatever kind or character except as set forth below) pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code and the terms of the Interim Order and the Final Order (collectively, the “**Financing Orders**”) and as further set forth in and evidenced by the DIP Credit Documents (as defined below);

(2) authorizes the Debtor to enter into a Secured Promissory Note (“**Secured Note**”) and a Debtor-in-Possession Loan and Security Agreement (the “**DIP Loan Agreement**”), with Wells Fargo substantially in the forms attached hereto as **Exhibit B** together with all other agreements, documents and instruments contemplated thereby (collectively, the “**DIP Credit Documents**”);

(3) grants Wells Fargo first priority priming, valid, perfected and enforceable security interests in and liens upon all of the Collateral as provided in and as contemplated by the Financing Orders to secure the DIP Loan and all unpaid, postpetition obligations incurred under the Financing Orders and the DIP Credit Documents (collectively, the “**DIP Obligations**”);

(4) modifies the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the relief requested herein;

(5) grants Wells Fargo an allowed superpriority administrative claim status pursuant to Section 364(c)(1) of the Bankruptcy Code in respect of the DIP Obligations; and

(6) authorizes the Debtor to use “cash collateral,” as such term is defined in Section 363 of the Bankruptcy Code, including, without limitation, cash and receivables (collectively, “**Cash Collateral**”) in which Wells Fargo has and certain Lien Claimants (defined below) have or may claim to have a lien or other interest, grants certain adequate protection to Wells Fargo and other parties asserting an interest in Cash Collateral, and scheduling a final hearing as necessary.

BASIS FOR RELIEF REQUESTED

Mountain Divide requires postpetition financing and the ability to use funds on hand and funds generated from the production of revenue in order to continue operations, preserve asset value and implement a process for the prompt sale of the Debtor’s assets on a going concern basis. The Debtor believes that the use of the funds for disbursements as and to the extent set forth in the Budget attached hereto as **Exhibit C** (the “**Budget**”) is essential to preserve the value of the business and the company’s assets and to implement a prompt sale transaction and provide an avenue of recovery for creditors. In addition to the use of Cash Collateral, Mountain Divide requires limited postpetition financing in the maximum amount of \$450,000 (with up to \$300,000 to be used immediately pending entry of the Final Order) to complete critical well reworking tasks that are necessary in order to maximize the value of its assets for sale and to preserve the value of the of operating wells. An inability to obtain authorization for the use of Cash Collateral and

financing requested in this Motion will be fatal to the Debtor's ability to operate and be disastrous to its creditors, secured and unsecured.

Mountain Divide believes that the relief requested in this Motion is in the best interests of creditors. In support of this Motion, the Debtor relies on the *Affidavit of Patrick M. Montalban*, filed contemporaneously herewith, and states as follows:

JURISDICTION AND VENUE

1. On October 14, 2016 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the Clerk of this Court. The Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtor's Chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested are 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 in addition to Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure.

FACTUAL BACKGROUND

4. Mountain Divide is a Montana limited liability company with its principal place of business and company administrative offices in Cut Bank, Montana, which owns and operates oil and gas wells, situated in Divide County, North Dakota. Mountain Divide was formed on October 18, 2012, by the filing of Articles of Organization with the Montana Secretary of State. Mountain Divide has also maintained a company administrative office in Billings, Montana.

5. Mountain Divide has employed, throughout the year, approximately 9 employees, some of which were part-time employees. At present, the company employs 5 employees.

6. Mountain Divide is engaged in the business of oil and gas exploration, development and production. As an exploration, development and production company, Mountain Divide's assets, revenue and general financial condition are directly correlated to the price of oil and natural gas. Mountain Divide operates 9 wells in the 12 Gage Project in Divide County, North Dakota and owns interests in 2 well bores for uncompleted wells for which the oil and gas leases have been terminated.

7. On November 1, 2012, Mountain Divide obtained loans and other financial accommodations from Wells Fargo and incurred obligations pursuant to the terms of various instruments, including under that certain Credit Agreement by and between Mountain Divide as borrower and Wells Fargo as lender and other interrelated agreements, notes, pledges, documents, certificates, assignments and other instruments that evidence and secure obligations owed to Wells Fargo (collectively, as may have been amended, modified, supplemented, extended, restated and/or replaced from time to time, the "**Prepetition Loan Documents**"). Mountain Divide used the funds borrowed under the Prepetition Loan Documents to fund drilling, equipping and completing certain wells and to fund engineering and other costs. As of the Petition Date, Mountain Divide was validly and justly indebted and liable to Wells Fargo, without objection, dispute, defense, claim, counterclaim or offset of any kind in the aggregate amount of not less than: (i) principal and interest outstanding under the Wells Fargo Loan Documents of \$56,100,925.19, and (ii) additional amounts for obligations due and becoming due under the Loan Documents including, but not limited to, interest, fees, expenses, costs, charges, collateral preservation advances, indemnification, reimbursement and other payment obligations and all

other indebtedness, liabilities and obligations arising under the Loan Documents (collectively, the “**Prepetition Obligations**”). All Prepetition Obligations of Mountain Divide under the Prepetition Loan Documents are secured by assignments, pledges, mortgages, control agreements, financing statements, fixture filings, and other related instruments that, among other things, provide for valid, enforceable and continuing liens on and security interests in substantially all of the Debtor’s properties and assets including, without limitation, cash, deposits, leases and interests in leaseholds, wells and related rights, accounts, receivables and other rights to payment, revenues, proceeds of production, insurance proceeds, chattel paper, contracts, contract rights, goods, inventory, intellectual property, documents, equipment, machinery, fixtures, general intangibles, payment intangibles, causes of action, commercial tort claims, Cash Collateral, deposit accounts, books and records, investment property and instruments, together with the products, accessions and proceeds of all of the foregoing (the “**Prepetition Collateral**”).

8. A sudden and unexpected decrease in the market prices for oil and natural gas from the time the obligations were incurred and the fact that such prices have remained depressed until now has had a severe impact on the Debtor’s business. The persisting state of declining market values for oil and gas and related economic uncertainties has made it difficult for Mountain Divide to obtain capital necessary to sustain positive operations and satisfy its liabilities. Unable to raise capital in this environment and generate sufficient positive net revenue from production has resulted in a sustained situation in which Mountain Divide has declining asset values and revenue while operating costs remain relatively constant.

9. The liquidity constraints confronting the company precluded Mountain Divide from satisfying its obligations to Wells Fargo under the Prepetition Loan Documents as well as obligations owed to a number of other creditors. In June of 2015, Wells Fargo agreed to forbear

from collecting payments due under the Prepetition Loan Documents, which allowed the company to retain all cash generated from the sale of oil and gas products to maintain operations, to satisfy other obligations and to afford the company an opportunity to address its situation.

10. During 2015, Mountain Divide similarly fell behind in paying its trade creditors due to cash flow short falls attributable to the suddenly decreased price of crude oil. A number of trade vendors, including Canary LLC, Canrig Drilling Technology Ltd., Coil Tubing Solutions, LLC, Irongate Rental Services, LLC, K&D Enterprises, Inc. d/b/a Pressure Pumping Services, MBI Energy Logistics, LLC, MBI Energy Rentals, Inc., MBI Energy Services, M-I, LLC, d/b/a MI-SWACO, Nabors Drilling USA, LP, Northern Energy Services, LLC, Northern States Completions, Precision Completion and Production Services, Ltd., Weatherford U.S. L.P., Yankee Fishing & Rentals, High Plains, Inc., American Pipe and Supply Company, Sanjel USA Inc., Schlumberger Technology Corporation, and Precision Directional Services, Inc. (the “**Oil and Gas Lien Claimants**”), filed and/or served oil and gas lien claims against certain wells and the products and proceeds thereof. Thus, a number of Oil and Gas Lien Claimants have asserted or may assert claims on certain Cash Collateral. While the Debtor reserves the right to object to the claims of such vendors and to determine whether in fact the claims of a particular Oil and Gas Lien Claimant are secured under 11 U.S.C. § 506 or otherwise avoidable, the filing of such lien claims prepetition has detrimentally affected the cash flows of the company. As a result of some of these asserted claims, liens and interests, payments from the purchaser of Mountain Divide’s oil and gas production payments have been temporarily suspended until Mountain Divide could successfully obtain lien releases from certain creditors that asserted liens with the company’s oil and gas purchaser.

11. During 2016, Mountain Divide fell behind in paying oil and gas royalties to mineral owners or their assignees due to cash flow shortfalls attributable to the suddenly decreased price of crude oil. During September of 2016, at least two royalty owners, Kathryn Holle and Larry Lee (collectively, the “**Mineral Interest Lien Claimants**”) filed oil and gas sales liens asserting claims against certain wells and the products and proceeds thereof. The Mineral Interest Lien Claimants may assert claims on certain Cash Collateral. The Debtor reserves the right to object to the claims of such Mineral Interest Lien Claimants and to determine whether in fact the claims of a particular Mineral Interest Lien Claimant is secured under 11 U.S.C. § 506 or otherwise avoidable. The Oil and Gas Lien Claimants and the Mineral Interest Lien Claimants are referred to collectively herein as the “**Lien Claimants**”.

12. Mountain Divide has worked on multiple different solutions to resolve its outstanding obligations prior to the commencement of the bankruptcy case, including proposals to settle its trade credit debt with Oil and Gas Lien Claimants that included a partial sale of 3 wells to a buyer in an arm’s-length transaction. Proceeds from the transaction were to be used to fund a settlement agreement with 56 of Mountain Divide’s creditors. Mountain Divide was successful in getting all 56 vendors to agree to the settlement agreement. Terms of the debt settlement agreement included all lien holders, including Wells Fargo, depositing original lien releases with a trustee to be held in trust and recorded after settlement amounts were paid per the terms of the agreement. The simultaneous partial asset sale and settlement agreement did not close. Despite the fact that Mountain Divide and the purchaser of the assets worked on the transaction for over 6 months, the purchaser abandoned the deal due to the further drastic drop in commodity prices in early 2016.

13. In response to the initial debt settlement failing to close, Mountain Divide negotiated a forbearance and preservation of collateral agreement with Wells Fargo and proposed to enter into a debt forbearance proposal with its trade creditors. The major terms of the proposal included a resolution under which all creditors participating in the proposal would forbear for a period of time in order to permit the market to rebound and time to pursue a strategic transaction that would produce value for the benefit of creditors. Under the Debtor's proposal, creditors would release liens and claims in exchange for a settlement amount to be paid to each creditor upon the successful close of a strategic transaction. Unfortunately, despite its significant efforts, management was unable to reach a settlement with a small number of vendors.

14. Because market oil prices have remained low and have not recovered, Mountain Divide has experienced an extreme cash flow problem over the last 12 to 18 months. In response to its liquidity problems, Mountain Divide has made numerous attempts in good faith to settle its debts outside of a bankruptcy proceeding through either a comprehensive debt restructure plan or through the sale of its assets. Mountain Divide's attempts were unsuccessful and the company was forced to file for protection under Chapter 11 of the Bankruptcy Code to address its situation in order to provide an opportunity to obtain value for the benefit of creditors.

15. Mountain Divide also has reduced its general and administrative expenses to the extent possible for continued operation and survival. It has closed its leased Billings, Montana office and maintains some of its financial operations from the office of its Controller in Billings. It has reduced its staff, including its land department, engineering and accounting staff. The company has also (1) enacted salary reductions for remaining employees, (2) reduced its contribution to employee health insurance coverage, and (3) renegotiated its water gathering and disposal contracts, the largest variable costs incurred in field operations. Through the cost

conservation efforts outlined above in addition to other general cuts not listed, monthly general and administrative costs for the company have decreased from approximately \$100,000 during 2014 to approximately \$29,000 during 2016, a 70% decrease. Monthly field operating costs have decreased from \$624,000 in 2014 to \$310,000 during 2015 a 50% decrease. Monthly operating costs for 2016 have decreased further from the 2015 benchmark, however, the decrease relates to additional factors such as production interruptions.

16. Mountain Divide forecasts that based upon prevailing crude oil prices, and reduction of its administrative expenses, with use of Cash Collateral and approval of the proposed DIP financing, it can pay its anticipated operational expenses during the period of administration of this Chapter 11 case and will have sufficient revenues to achieve its objectives in this bankruptcy case, which may include a Chapter 11 plan.

17. With use of the Cash Collateral and the proposed DIP financing, for the period set forth in the Budget, Mountain Divide forecasts that its revenue will exceed its expenses, thus allowing survival of the operating business while its assets are sold.

18. In accordance with a prepetition contract, all of the oil production of the Mountain Divide wells is purchased by Sunoco Partners Marketing & Terminals L.P. ("Sunoco"), which disburses the proceeds on a monthly basis.

19. In accordance with the Prepetition Loan Documents, Sunoco deposits revenues from the production of oil and gas products in a restricted bank account at Wells Fargo Bank. Wells Fargo has a security interest and lien in cash as well as these oil and gas revenues and all receivables. All such funds and receivables are considered Wells Fargo's Cash Collateral.

20. As typical for oil and gas operations, Sunoco is generally one month in arrears in remitting Mountain Divide's well production so an outstanding receivable exists and is owing from

Sunoco based upon earlier production and sales. For example, revenue from September production is not distributed until the last week of October. Additionally, as long as Mountain Divide's wells operate, revenues continue to be generated and held by Sunoco for remittance.

21. Thus, Sunoco is at all times holding at least one month's worth of Cash Collateral in reserve. Accordingly, Wells Fargo and other creditors that assert or may assert a lien or other interest in Cash Collateral are protected from the Debtor's use of Cash Collateral and will be granted replacement liens in Cash Collateral that is generated from production and includes receivables, with such replacement liens subject to the same validity, extent and priority as the creditor's prepetition liens in Cash Collateral.

22. Mountain Divide is currently in negotiations with a prospective purchaser to sell substantially all of the Debtor's business assets and assume certain contracts and obligations in a sale to be conducted pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, subject to higher and better offers (the "**Sale**"). Those negotiations may result in the prospective purchaser serving as a stalking horse in a sale process. Any purchase agreement will be negotiated at arm's length. The Debtor intends to file a motion in the near future seeking approval of (i) sale and auction procedures, and (ii) the Sale (the "**Sale Motion**"), with or without a stalking horse purchase agreement in place.

23. In addition to its prepetition negotiations with the prospective purchaser, the Debtor sought to obtain debtor-in-possession financing, which is critical to the preservation of value, from other sources. The Debtor also contacted 7 potential DIP lenders. Of those parties, one executed a non-disclosure agreement with the Debtor and was provided access to due diligence materials. The Debtor was unable to consummate a transaction providing for financing with the purchaser and did not receive any DIP financing term sheets from other third parties.

24. In the course of the Debtor's efforts to seek out alternative financing, the Debtor gauged whether parties would be willing to provide postpetition financing on a non-superpriority, unsecured, or non-priming basis. The Debtor was unable to obtain financing, or to even identify offers to provide financing, on such terms. The Debtor's significant prepetition secured debt precludes it from obtaining postpetition financing in the amount it requires for well reworking and continued operations on terms other than on a senior secured, priming and superpriority basis.

25. The necessary well workover expenses for four of Debtor's wells are set forth in footnote 2 to the Budget. Mountain Divide is required to produce quantities of oil from its wells in order to hold its oil and gas leases. It is essential that Mountain Divide complete this well workover program to maintain its leases and production of revenue. In addition, the workovers will increase the value of its properties for sale.

26. Mountain Divide estimates that its current oil production will increase from 106 net barrels per day to 241 net barrels per day upon completion of the well reworking. It is estimated that the well workovers can be completed in 10 to 14 days from receipt of the DIP Loan.

27. The Debtor currently has no present alternative borrowing source from which it can secure additional funding to complete this well reworking in order to preserve and protect its oil and gas properties for sale.

28. In order to continue to operate while in Chapter 11 in the ordinary course of business until the Sale occurs and to and preserve value, the Debtor must be able to, among other things, use Cash Collateral in the ordinary course of business and obtain financing. Without access to Cash Collateral and a certain level of financing, the Debtor, the bankruptcy estate and creditors will be irreparably harmed as the Debtor will not be able to operate or achieve its goals in

connection with this bankruptcy case, which include the preservation and generation of value from the company's assets.

RELIEF REQUESTED FOR POSTPETITION SECURED FINANCING

29. Pursuant to Sections 364(c) and (d) of the Bankruptcy Code, the Debtor requests that this Court authorize and approve the Debtor obtaining postpetition senior secured financing with superpriority administrative status for the payment of the DIP Obligations for the protection and preservation of Debtor's assets as set forth in the Budget. All properties and assets of the Debtor and the bankruptcy estate (other than avoidance actions and a vehicle encumbered by a preexisting lien) will serve as collateral for such postpetition financing and be subject to first priority priming, valid, perfected and enforceable security interests in and liens.

30. By this Motion, the Debtor requests entry of an Interim Order and a Final Order, each substantially in the form attached hereto as **Exhibit A**:

a) authorizing the Debtor obtain up to \$450,000 in new postpetition loans, advances and other financial accommodations, with \$300,000 authorized for immediate use pending the Final Hearing on the Motion (the "**Final Hearing**"), from Wells Fargo, with such DIP Loan secured by first priority priming, valid, perfected and enforceable security interests in and liens upon all of the Collateral (as defined below) pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code and the terms of the Financing Orders and as further set forth in and evidenced by the DIP Credit Documents;

b) authorizing the Debtor to enter into a Secured Promissory Note and a Debtor-in-Possession Loan and Security Agreement, with Wells Fargo substantially in the forms attached to the Motion as **Exhibit B** or otherwise filed with Court, together with all other agreements, documents and instruments contemplated thereby and to perform such other and further acts as may be required in connection with the DIP Credit Documents;

c) granting Wells Fargo first priority priming, valid, perfected and enforceable security interests in and liens upon all of the Collateral as provided in and as contemplated by the Financing Orders to secure the DIP Loan and all unpaid, postpetition obligations incurred under the Financing Orders and the DIP Credit Documents;

d) granting Wells Fargo an allowed superpriority administrative expense status pursuant to Section 364(c)(1) of the Bankruptcy Code in respect of all of the DIP Obligations;

e) modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the relief requested herein;

f) pending a final hearing on the Motion, approving the DIP Loan in the principal amount not to exceed \$300,000 authorizing the immediate use of such fund up to and including the date of the Final Hearing and, upon entry of the Final Order, approving the DIP Loan in the principal amount not to exceed \$450,000; and

g) scheduling the Final Hearing within 30 days of the entry of the Interim Order and approving notice with respect thereto in accordance with Bankruptcy Rule 4001(c)(2).

CONCISE STATEMENT OF MATERIAL TERMS OF DIP LOAN AND FINANCING ORDERS

31. Pursuant to, and in accordance with, Bankruptcy Rule 4001, the following is a summary of the material provisions of the DIP Loan, all of which provisions shall be in force and remain in effect if the Interim Order is entered but the Final Order not:¹

a) Principal. The principal amount of the DIP Loan made available to the Debtor under a multiple-draw facility of up to \$450,000, with up to \$300,000 immediately available on an interim basis upon entry by the Court of the Interim Order. *See* Exhibit B, Secured Note; Financing Orders ¶ 1.2.

b) Interest. The principal amount outstanding under the Secured Note shall bear interest at the fixed rate of eight percent (8%) per annum, computed on the basis of a 360-day year for the actual number of days elapsed, commencing on the date of the first advance under the Secured Note. *See* Exhibit B, Secured Note ¶ 1.2; DIP Loan Agreement ¶ 3.

c) Use of Proceeds. Loan proceeds shall be used exclusively to preserve and protect the value of the business and the Debtor's assets, as set forth in the following priority: (i) for well reworking costs as set forth in the Budget; and, (ii) to pay certain approved operating expenses incurred during the course of the Bankruptcy Case that are reasonably necessary to operate the business and implement a sale transaction. The proceeds of the DIP Loan and Cash Collateral shall only be used in accordance with the Budget, the DIP Loan Agreement and the Financing Orders and shall not be used, directly or indirectly, for any other purposes. *See* Exhibit C, Budget; Financing Orders ¶ 1.2; DIP Loan Agreement ¶ 5.

¹ For a complete description of the terms and conditions of the DIP Loan, reference should be made to the Secured Note, the DIP Loan Agreement and the Financing Orders. The summary herein is qualified in its entirety by reference to such documents and such orders, the terms of which shall control in all respects.

d) Continuation of Prepetition Procedures. All prepetition practices for the payment and collection of proceeds of the Collateral and the turnover of cash, including the prepetition account control agreements and similar arrangements between the Debtor and Wells Fargo shall continue without interruption after the Petition Date. *See* Financing Orders ¶ 1.4.

e) Event of Maturity. The DIP Loan matures and shall be immediately payable upon the earliest to occur of any of the following: (a) the closing date of any sale of all or substantially all of the Debtor's assets pursuant to any order of the Court; (b) the effective date of a plan of reorganization or liquidation that is confirmed by the Court; or (c) February 4, 2017. *See* DIP Loan Agreement ¶ 11.

f) Liens, Collateral and Priority. To secure the DIP Loan and all of the DIP Obligations, effective immediately upon entry of an Interim Order, Wells Fargo shall have and be granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected, first priority priming security interests and liens, superior to all other liens, claims, encumbrances or security interests that any creditor of the Debtor and the Debtor's bankruptcy estate may have, in and upon any and all assets and properties of the Debtor and the bankruptcy estate, wherever located, now owned or hereafter acquired, real and personal, tangible and intangible and all proceeds therefrom (as more fully described and defined in the Financing Orders and the DIP Loan Agreement, the "Collateral"); provided, however, no such security interests and liens shall extend to avoidance actions or the Debtor's Ford F-350 pickup truck. *See* Secured Note ¶ 1.5; DIP Loan Agreement ¶ 3(d); Financing Orders ¶ 2.1.

g) Superpriority Claim. Upon entry of the Financing Orders, Wells Fargo shall be granted, pursuant to 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim for all of the DIP Obligations, which superpriority claim has and shall continue to have priority in right of payment over any and all other obligations, liabilities and indebtedness of the Debtor and the bankruptcy estate, whether now in existence or hereafter incurred by the Debtor. *See* Financing Orders ¶ 2.2, subject only to the "Carve Out Expenses" described below.

h) Carve Out Expenses. Upon the declaration by Wells Fargo of the occurrence of an Event of Default, which is not waived or cured, Wells Fargo's liens, claims and security interests in the Collateral and its Superpriority Claim shall be subject only to the right of payment of the following expenses (i) statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6); (ii) fees payable to the Clerk of Court; and (iii) the unpaid, budgeted and outstanding reasonable fees and expenses actually incurred on or after the Petition Date through the occurrence of an Event of Default by professionals retained by the Debtor to the extent such fees and expenses are incurred in connection with the activities set forth above and described in this Motion, subject to the terms and conditions of the Financing Orders (including the Professional Fee Carve Out Cap set forth therein). *See* Financing Orders ¶ 2.3.

i) Events of Default. An Event of Default will include any of the following: (i) the Debtor's failure to make any payment of principal or interest under the Secured Note or otherwise when due; (ii) the Debtor's failure to perform or comply with any obligation, covenant, term or provision contained or referred to in the DIP Credit Documents or the Financing Orders; (iii) conversion or dismissal of the Bankruptcy Case; (iv) appointment of a trustee, examiner or other responsible officer under Chapter 11 of the Bankruptcy Code; (v) the granting of a superpriority claim or lien *pari passu* with or senior to that granted to Wells Fargo under the DIP Loan Agreement and the Financing Orders; (vi) any party attempts to vacate or modify the Financing Orders or seeks to surcharge any of the Collateral pursuant to Section 506(c) of the Bankruptcy Code; (vii) failure to obtain entry of a Final Order approving the DIP Obligations within 30 days after the date the Motion; and (viii) a failure by the Debtor to comply with the terms, provisions and conditions of the Financing Orders. *See* DIP Loan Agreement ¶ 10; Financing Orders ¶¶ 3 and 5.4.

j) Debtor's Stipulations and Waivers. The Debtor has made certain acknowledgements with respect to the amount and validity of the prepetition debt owed to Wells Fargo and has acknowledged that the prepetition debt is an allowed claim secured by the collateral, including Cash Collateral, under prepetition loan arrangements. *See* Financing Orders ¶ C. Further, the Financing Orders provide that no costs or expenses of administration which have or may be incurred in connection with the Bankruptcy Case shall be charged against Wells Fargo, its claims or the Collateral pledged to secure the DIP Obligations pursuant to Section 506(c) of the Bankruptcy Code or otherwise. *See* Financing Orders ¶¶ 4 and 5.5.

k) Relief from Stay. The Financing Orders modify the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the relief requested in the Motion, including but not limited for the purposes of allowing Wells Fargo to implement the financing arrangements and exercise rights and remedies upon an Event of Default. *See* Financing Orders ¶ 3.3

l) Adequate Protection. The Financing Orders grant Wells Fargo adequate protection for the use of Cash Collateral in the form of replacement liens in postpetition Cash Collateral and superpriority claims for any diminution in value in the prepetition Cash Collateral. *See* Financing Orders ¶ 2.4.

m) Conditions Precedent. Wells Fargo has indicated a willingness to provide financing to the Debtor in accordance with the DIP Credit Documents, subject to, among other things: (1) the entry of the Financing Orders, (2) finding by the Court that such financing is essential and that Wells Fargo is a good faith lender entitled to all of the protections and benefits of Section 364 of the Bankruptcy Code, and (3) that Wells Fargo's claims, superpriority claims, security interests, liens and other protections granted pursuant the Financing Orders will not be affected by any subsequent reversal, modification or amendment of the Financing Orders. *See* Financing Orders ¶ D.

n) Post-Financing Milestones. The Financing Orders set forth certain dates by which the Debtor is required to obtain an order from the Court approving bidding

procedures for the auction and sale of its assets and by which a sale shall be approved, which dates are currently set at November 22, 2016 and January 20, 2017, respectively, or such later date as may be consented to by Wells Fargo. Any order entered in connection with any sale is required to provide for the indefeasible payment in full of all amounts due to Wells Fargo in connection with the DIP Loan. *See* Financing Order ¶ 1.5.

RELIEF REQUESTED FOR USE OF CASH COLLATERAL

32. The Debtor seeks authority to use Cash Collateral in the ordinary course of business in conformity with the Budget until the Termination Date (as defined below) in order to operate and so as to realize the highest possible value from its assets. From the date of this Motion through the Termination Date, Cash Collateral shall not, directly or indirectly, be used for any payments, expenses or disbursements of the Debtor except for the payment of: (i) those ordinary course payments, expenses and/or disbursements for operating expenses of the Debtor which are necessary to preserve the value of the company's assets and to implement a sale process, all in a manner that is consistent with the Budget, (ii) statutory fees of the Clerk of the Bankruptcy Court and the United States Trustee pursuant to 28 U.S.C. § 1930(a), and (iii) unpaid compensation and reimbursement of reasonable fees and expenses incurred on or after the Petition Date and allowed and approved by the Court to the extent such fees and expenses are incurred in connection with the activities set forth above and prior to the Termination Date, and subject to the limitations and cap on professional fees set forth in the Financing Orders. The Debtor respectfully requests that this Court authorize and approve the Debtor's use of Cash Collateral under the terms of the Budget and grant adequate protection to Wells Fargo and other parties that have or assert an interest in Cash Collateral subject to the terms and conditions set forth in the proposed Interim Order and the Final Order, substantially in the form attached to this Motion.

BASIS FOR RELIEF

A. Use of Cash Collateral and Adequate Protection

33. Section 363(c)(2) of the Bankruptcy Code governs the Court's approval of the use of cash collateral and provides that a debtor "may not use, sell, or lease cash collateral...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)(2). Section 363(e) of the Bankruptcy Code provides that upon request of an entity that has an interest in property to be used by a debtor, the court shall prohibit or condition such use as is necessary to provide adequate protection of such interest. 11 U.S.C. § 363(e).

34. A debtor has the burden to establish that the holder of a lien to be subordinated, or whose cash collateral will be used, has adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection must be determined on a case-by-case basis, permitting a debtor maximum flexibility in structuring its adequate protection proposal. *See In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985); *In re George Ruggerie Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11th Cir. 1984). Nonetheless, "[a] debtor, attempting to reorganize a business under chapter 11, clearly has a compelling need to use 'cash collateral' in its effort to rebuild." *George Ruggerie*, 727 F.2d at 1019.

35. The absolute limits and requirements of adequate protection are not defined under the Bankruptcy Code. However, adequate protection may, in addition to or instead of the traditional notion of an equity cushion, include such protection as an offer to provide an additional or replacement lien or other relief to the secured creditor which provides them with the "indubitable equivalent" for their claim or a measure thereof. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). While the adequate protection offered by the Debtor is discussed in detail

below, the oil and gas business at issue is different from the “standard” type of Montana Chapter 11 bankruptcy in that it is based upon the extraction, marketing and sale of a commodity whose price can change frequently, as has occurred in the recent past. While currently the price paid for production is low, creditors are generally protected in that, as long as the oil and gas properties and related assets are properly protected by financing critical repairs (which is one reason for the Debtor’s request for use of Cash Collateral herein and its request to approve debtor-in-possession financing), they are capable of producing a commodity that is desired in the market place and which can increase, and is expected to increase, in value. In other words, the preservation of value generally constitutes adequate protection sufficient to justify the use of cash collateral as well as the priming of prepetition liens. *See, e.g., Norton Bankruptcy Law & Practice* 2d § 38:7, p. 38-17; *In re 495 Central Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992)(funds from lender given priming lien used to improve collateral is transferred into value and such value will serve as adequate protection).

36. Mountain Divide needs immediate authority to use the Cash Collateral to fund its day-to-day operations, preserve the oil and gas properties and other assets and ultimately achieve a successful sale of its assets. Specifically, the Debtor requires the use of Cash Collateral for the payment of the operating expenses as and to the extent set forth in the Budget. The foregoing expenses are reasonable and necessary business expenses which must be paid in order to maintain and preserve its assets and to continue the operation of its business pending the Sale.

37. The Debtor’s management has determined that the prudent course of action, given the inability to negotiate a resolution to meet its obligations outside of bankruptcy, is to promptly sell its assets and thereafter cease operations. After diligently seeking purchasers and investors

for its assets since 2015, the Debtor has negotiated with a prospective purchaser for two months to enter into a purchase agreement for its assets. Those negotiations continue.

38. Other than the limited debtor-in-possession financing that may be provided by Wells Fargo, Mountain Divide currently has no present alternative borrowing source from which it can secure funding to operate its business or preserve assets that serve as collateral and will be subject to sale, which is of benefit to all creditors, including those that have or assert a lien or other interest in the assets of the company. In sum, the failure to obtain authorization for the use of the Cash Collateral will be fatal to the Debtor's ability to operate, and be disastrous to its creditors, both secured and unsecured.

39. The Debtor's use of Cash Collateral shall be subject to and governed by the terms of the Budget and the Debtor acknowledges that it has no consent or authority to use Cash Collateral other than in accordance with the Budget, except as and to the extent set forth in an order of the Court. Notwithstanding the Budget, so long as no Termination Event has occurred, the Debtor shall be authorized to use Cash Collateral, with respect to any line items in the Budget, in an amount greater than that shown for such line items on the Budget, as measured on a four-week rolling basis; provided, however, that in no event shall the collective variances to the Budget cause the Debtor to use Cash Collateral in an amount greater than the total of the Budget for such applicable period. If the aggregate amount of Cash Collateral actually used by the Debtor, measured on a four-week rolling basis, is less than the aggregate amount of Cash Collateral available for use by the Debtor in the Budget during such period, then the Debtor may carry over any such unused amount to future periods in the Budget to the extent necessary and allocate such unused amounts to any line item in the Budget.

40. Notwithstanding anything in this Motion to the contrary, the Debtor's right to use Cash Collateral shall terminate automatically upon the happening of any of the following events or conditions under the DIP Credit Documents ("**Event of Maturity**"):

- a. 10 days after the closing date of any sale of all or substantially all of the Debtor's assets pursuant to any order of the Bankruptcy Court;
- b. the effective date of any plan filed in the Bankruptcy Case that is confirmed by order of the Bankruptcy Court; or
- c. expiration of the Budget on February 4, 2017.

See DIP Loan Agreement ¶ 11. In addition, (i) the happening of and during the continuance of any of the following events or conditions shall constitute an event of default ("**Event of Default**") under the DIP Credit Documents, unless waived or extended in writing by Wells Fargo:

- a. The Debtor fails to make any payment of principal or interest under the Secured Note or otherwise when due, including the payments that are due upon any Event of Maturity.
- b. The fails to perform or comply with any obligation, covenant, term or provision contained or referred to in the DIP Credit Documents or the Financing Orders.
- c. The incurrence or payment by the Debtor of any fees, expenses or obligations in excess of the line-item amount budgeted for such fees, expenses or obligations in the Budget (subject to permitted variances).
- d. The Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or a trustee, examiner or other responsible officer under Chapter 11 of the Bankruptcy Code is appointed in the bankruptcy case.
- e. An order of the Bankruptcy Court is entered granting another superpriority claim or Lien pari passu with or senior to that granted to Wells Fargo pursuant to this DIP Loan Agreement and the Financing Orders, or an order of a court of competent jurisdiction shall be entered reversing, staying, vacating or rescinding either of the Financing Orders, or an order of a court of competent jurisdiction shall be entered amending, supplementing or otherwise modifying either of the Financing Orders without the consent of Wells Fargo.
- f. Borrower or any other person shall attempt to vacate or modify the Financing Orders or seeking to surcharge any of the Collateral pursuant to Section 506(c) of the Bankruptcy Code or otherwise.

g. The entry of the Final Order shall not have occurred within thirty (30) days after the date the Motion seeking approval of the DIP Loan has been filed (unless the Wells Fargo consents to a longer period).

h. The failure of the Debtor to obtain an order of the Court approving bidding procedures by **November 22, 2016**, which, among other things, authorizes the Debtor to solicit bids for or sets a hearing to approve the sale of its assets.

i. The failure of the Debtor to obtain an order of the Court approving the sale of substantially all of its assets on or before **January 20, 2017** or to close on such sale on or before **February 4, 2017**.

See DIP Loan Agreement ¶ 10. If an Event of Default occurs, in addition to any other remedy contained in the DIP Credit Documents and applicable law, Wells Fargo shall have the immediate right to terminate the Debtor's right to use Cash Collateral subject to the giving of five (5) Business Day's prior written notice to the Debtor (with a copy to the Debtor's counsel and the U.S. Trustee); provided that the Debtor reserves its right to challenge such termination and/or seek to continue to use Cash Collateral under the terms as determined by the Court. The occurrence of an Event of Maturity or an Event of Default shall be a "**Termination Event**" and the date Debtor's authority to use Cash Collateral is terminated due to an Event of Maturity or an Event of Default shall be a "**Termination Date**."

41. As adequate protection for the use of Cash Collateral, the Debtor believes that the ongoing revenues from its oil and gas revenues, including receivables on account of production proceeds in the custody of Sunoco, provides a cash cushion that in the ordinary course of business is available to cover the current month's Cash Collateral used by the Debtor. The generation of proceeds from future production is only possible if the use of Cash Collateral is authorized. As adequate protection, the Debtor proposes to grant Wells Fargo and the Lien Claimants continuing replacement liens and security interests to the extent Cash Collateral subject to their liens or interests is used by the Debtor pursuant to Sections 361, 363 and 552 of the Bankruptcy Code,

with such replacement liens being of the same validity, extent and priority as their respective prepetition liens and interests on property and income of the Debtor that constitutes postpetition Cash Collateral, whether now existing or hereafter acquired (the “**Adequate Protection Replacement Liens**”) and subject to any claims or defenses the Debtor or its estate may possess with respect thereto. The Adequate Protection Replacement liens will be deemed to be valid, enforceable, granted and perfected automatically as of the Petition Date upon entry of the Interim Order. *See Small v. Beverly Bank*, 936 F.2d 945, 948-49 (7th Cir. 1991).

42. To the extent of any diminution in value of such parties’ interest in collateral from the use of Cash Collateral such that the adequate protection provided proves to be insufficient, Wells Fargo and the Lien Claimants shall be granted superpriority administrative expense claims under Section 507(b) of the Bankruptcy Code (the “**Adequate Protection Priority Claims**”) with priority in payment over any other administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, without limitation, Section 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), and 546(c), whether or not such expenses or claims arise in this Chapter 11 case or in any subsequent case or proceedings under the Bankruptcy Code that may result therefrom.

43. The Adequate Protection Replacement Liens and the Adequate Protection Priority Claims will be subject to and subordinate to any and all claims and liens for debtor-in-possession financing approved by the Court and provided by Wells Fargo in connection with the DIP Loan as well as a “Carve-Out” for the payment of “**Carve Out Expenses**”: (i) the unpaid fees of the Clerk of the Bankruptcy Court and the United States Trustee pursuant to 28 U.S.C. § 1930(a), and (ii) the unpaid, budgeted allowed and reasonable fees and expenses incurred by the Debtor’s professionals, which are incurred prior to the Termination Date (regardless of whether an

application for approval of such fees or expenses is brought before or following the Termination Date); provided, however, that (i) the allowance of any such fees and expenses are subject to the rights of any party in interest to object, (ii) the Carve-Out for any such fees and expenses shall be only for those fees and expenses incurred in connection with the activities set forth in the Budget and that are necessary to preserve the value of the assets and implement a sale process, and such Carve-Out is in all respects capped and limited in aggregate dollar amount to the fees and expenses set forth in the line-item of the Budget (the “**Carve-Out Cap**”) and the Carve-Out Cap shall automatically decrease on a dollar-for-dollar basis by any amounts that have been paid to such professionals postpetition in connection with such activities. For the avoidance of doubt, and without limiting the foregoing, so long as the Termination Date has not occurred, the Debtor is authorized, subject to applicable court orders, to pay any and all reasonable fees or expenses that fall within the Carve-Out.

44. The Debtor’s use of Cash Collateral itself also protects all creditors interests, as it allows Mountain Divide to continue operations and implement a process for preserving, and indeed, maximizing value for the benefit of creditors. The Debtor will continue to provide the reporting and inspection rights Wells Fargo is entitled to under their respective Loan Documents and other agreements. Finally, the Debtor submits that all creditors will enjoy the benefit and protection afforded by the capacity to review, on an ongoing basis, the Debtor’s financial condition through the Debtor’s Chapter 11 monthly operating reports which will be submitted by the Debtor to the Court.

45. In the event that this Court does not authorize the Debtor’s use of Cash Collateral, the Debtor believes that it will be unable to maintain its current business operations, preserve and protect the oil and gas properties and other assets that serve as collateral and complete a sale

process that will result in the best possible return for creditors and further that the value of the Debtor's properties will be at risk of substantial loss.

46. Mountain Divide believes that the proposed adequate protection is fair and reasonable and sufficient to satisfy any diminution in value of the prepetition collateral.

B. The Proposed DIP Financing and Adequate Protection

47. Section 364 of the Bankruptcy Code authorizes a debtor to obtain, in certain circumstances, postpetition financing on a secured or superpriority basis, or both. Specifically, Section 364(c) of the Bankruptcy Code provides, in pertinent part, that the Court, after notice and a hearing, may authorize a debtor that is unable to obtain credit allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code];

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.
11 U.S.C. § 364(c).

48. To satisfy the requirements of Section 364(c) of the Bankruptcy Code, a debtor need only demonstrate “by a good faith effort that credit was not available” to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). “The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Id.*; *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). When few lenders are likely to be able and willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an

exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n. 4 (N.D. Ga. 1989); *see also Ames Dep’t Stores*, 115 B.R. at 40 (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of Section 364(c) where it approached four lending institutions, was rejected by two, and selected the more favorable of the two offers it received).

49. In addition to authorizing financing under Section 364(c) of the Bankruptcy Code, courts also may authorize a debtor to obtain postpetition credit secured by a lien that is senior or equal in priority to existing liens on the encumbered property if the debtor cannot otherwise obtain such credit and the interests of existing lienholders are adequately protected. *See* 11 U.S.C. § 364(d)(1). When determining whether to authorize a debtor to obtain credit secured by a “priming” lien as authorized by Section 364(d) of the Bankruptcy Code, courts focus on whether the transaction will enhance the value of the Debtors’ assets. Courts consider a number of factors, including, without limitation:

- a) whether alternative financing is available on any other basis (*i.e.*, whether any better offers, bids or timely proposals are before the court);
- b) whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtors’ business;
- c) whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtors and proposed lender(s);
- d) whether the proposed financing agreement was negotiated in good faith and at arm’s length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor’s estate and its creditors; and
- e) whether the proposed financing agreement adequately protects prepetition secured creditors.

See, e.g., Ames Dep’t Stores, 115 B.R. at 37–39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *see also* 3 Collier on Bankruptcy ¶ 364.04[1] (15th ed. rev. 2008). The

financing provided by Wells Fargo in connection with the DIP Loan will preserve and indeed maximize the value of the assets for the benefit of creditors, which in and of itself generally constitutes adequate protection sufficient to justify the priming of prepetition liens. *See, e.g., Norton Bankruptcy Law & Practice* 2d § 38:7, p. 38-17; *In re 495 Central Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992)(funds from lender given priming lien used to improve collateral is transferred into value and such value will serve as adequate protection).

50. After extended good faith, arm's-length negotiations with a number of parties to provide DIP financing, including recent efforts with prospective purchaser that were undertaken shortly before the commencement of the bankruptcy case, the Debtor was unable to obtain postpetition financing from any source other than Wells Fargo.

51. The financial terms and covenants of the DIP facility are standard and reasonable for financing of this kind. Based on their extensive negotiations, the Debtor believes that these are the only terms on which Wells Fargo will provide the financing. As the DIP Loan proceeds are necessary and the only financing available, the Debtor believes that sufficient justification exists for agreeing to these provisions. Moreover, the Debtor understands that Wells Fargo would not have been amenable to providing financing without these material and bargained-for-protections.

52. As described above, the Debtor identified and solicited offers from potential postpetition lenders other than Wells Fargo in the weeks prior to the Petition Date. The Debtor did not receive any proposals for DIP financing from third parties on terms anywhere near as favorable as provided by Wells Fargo. Notwithstanding the Debtor's substantial efforts, it was simply unable to obtain postpetition financing in the form of unsecured credit, solely as an administrative expense, or secured by a junior lien.

53. A debtor may obtain postpetition credit “secured by a senior or equal lien on property of the estate that is subject to a lien only if” the debtor, among other things, provides “adequate protection” to those parties whose liens are primed. *See* 11 U.S.C. § 364(d)(1)(B). By requiring debtors to provide adequate protection to those creditors whose liens are being primed, the Bankruptcy Code seeks to protect a secured creditor from diminution in the value of its interest in the particular collateral. *See In re Cont’l Airlines, Inc.*, 146 B.R. 536, 539–40 (Bankr. D. Del. 1992) (secured creditor only entitled to adequate protection to the extent the collateral declined in value); *In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996) (if there is no diminution in the value of the secured creditor’s collateral and the debtor can operate profitably postpetition, the secured creditor is adequately protected against the use of cash collateral); *see also In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (“The goal of adequate protection is to safeguard the secured creditor from diminution in the value of its interest during the chapter 11 reorganization.”).

54. As adequate protection, the Debtor proposes to grant the Adequate Protection Replacement Liens as described above. To the extent of any diminution in value of such parties’ asserted interest in cash collateral such that the adequate protection provided proves to be insufficient, Wells Fargo and the Lien Claimants shall be granted the Adequate Protection Priority Claims as described above and to the extent set forth in the Financing Orders. *See* Financing Orders ¶ 2.4.

55. The Adequate Protection Replacement Liens and the Adequate Protection Priority Claims will be subject to and subordinate to any lien approved by the Court for debtor-in-possession financing approved by the Court and provided by Wells Fargo to preserve asset value

and increase revenues as well as for Carve Out Expenses as described above. *See* Financing Orders ¶ 2.3

56. The Debtor submits that the DIP financing itself also protects all creditors' interests, as it allows Mountain Divide to continue operations and implement a process for preserving, and indeed, maximizing value for the benefit of creditors. The Debtor will continue to provide the reporting and inspection rights Wells Fargo and the Lien Claimants are entitled to under their respective loan documents and other agreements. Finally, the Debtor submits that all creditors will enjoy the benefit and protection afforded by the capacity to review, on an ongoing basis, the Debtor's financial condition through the Debtor's Chapter 11 monthly operating reports which will be submitted by the Debtor to the Court.

57. The Debtor believes that the proposed adequate protection is fair and reasonable and to satisfy the requirements of Section 364(d)(1)(B) of the Bankruptcy Code. Further, Wells Fargo has consented to the terms of the DIP financing, including the adequate protection proposed. Accordingly, the Court should approve the proposed financing.

C. The DIP Loan Is An Exercise of Debtor's Sound Business Judgment and Will Enhance the Value of the Debtor's Assets.

58. Provided that an agreement to obtain secured credit does not run afoul of the Bankruptcy Code, courts grant debtors considerable deference in acting in accordance with their sound business judgment in obtaining such credit. *See In re Barbara K. Enters., Inc.*, Case No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("Cases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds

that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in interest.”).

59. Mountain Divide has determined that a sale of its assets as a going concern is the best and likely the only means to provide a source of repayment to its creditors. In order to sell its assets, the company must protect and preserve its oil and gas properties and wells from loss. The Debtor believes that the proposed DIP financing is the best alternative available to preserve and protect its assets pending a sale and to optimize and increase oil production which will serve the dual purposes of preventing potential loss of its oil and gas leases, and increase the value of the assets for sale to the highest bidder at auction. In addition the DIP financing is necessary for operational expenses pending sale to ensure that the Debtor can survive, including in a further downturn in oil revenues, while its assets are being marketed.

60. The Court should authorize the Debtor to enter into the DIP Credit Documents and obtain access to the DIP Loan as an exercise of the Debtor's sound business judgment.

61. The Debtor believes that the factors to consider in authorizing credit secured by a priming lien under Section 364(d) of the Bankruptcy Code are satisfied for the DIP Loan. First, as described above, the Debtor explored a variety of possible financing sources and was unable to obtain financing other than secured by first priority priming liens. Second, the funds provided under the DIP Loan facility are necessary to preserve the value of its estate for the benefit of all creditors and other parties in interest. Absent the DIP Loan and use of the Cash Collateral, the Debtor would be unable to operate its business or pursue an optimal sale of its assets in this Bankruptcy Case, which would seriously threaten the value of the Debtor's assets. Providing the Debtor with the liquidity necessary to preserve its going concern value through the pendency of

its Bankruptcy Case is in the best interest of all stakeholders. Third, the terms of the DIP Credit Documents are reasonable and adequate to ensure the Debtor's ongoing ability to operate in Chapter 11 and ultimately sell its assets at an optimal price. Indeed, the DIP Loan will provide Debtor with access to up to \$450,000 in postpetition financing, which the Debtor has independently determined is sufficient and necessary together with use of Cash Collateral to allow it to maintain its operations and its assets during its Bankruptcy Case. Fourth, the Debtor negotiated the DIP Loan facility in good faith and at arm's-length, and the Debtor's entry into the DIP Loan is an exercise of sound business judgment and is in the best interests of its estate, creditors and other parties in interest.

62. The Court should therefore (a) authorize the Debtor to provide Wells Fargo senior secured priming liens on the Collateral as provided in Section 364(d)(1) of the Bankruptcy Code; (b) grant Wells Fargo's Loan DIP Obligations superpriority administrative expense status as provided for in Section 364(c)(1) of the Bankruptcy Code; and (c) enter the Financing Orders providing other protections consistent with loans of this kind.

D. Wells Fargo Should be Deemed a Good Faith Lender

63. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Specifically, Section 364(e) provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

64. The Debtor obtained a proposal for the DIP financing from Wells Fargo only after it had fully exhausted any and all other alternatives, including attempts to obtain such financing from other parties. As explained herein, the DIP Loan is the result of the Debtor's reasonable and informed determination that Wells Fargo offered the most favorable terms on which to obtain needed postpetition financing, and of extended arm's-length, good faith negotiations between the Debtor and Wells Fargo. The terms and conditions of the DIP Loan are fair and reasonable, and the proceeds under the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code and the Financing Orders. Accordingly, the Court should find that Wells Fargo is a "good faith" lender within the meaning of Section 364(e) of the Bankruptcy Code, and entitled to all of the protections afforded by that section.

E. Interim Approval Should Be Granted

65. Rule 4001(b) of the Bankruptcy Rules provides that a final hearing (the "**Final Hearing**") on a motion to use cash collateral pursuant to Section 363 may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of Cash Collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. Rule 4001(c) of the Bankruptcy Rules provides the same requirements for a motion to obtain credit.

66. Pursuant to Bankruptcy Rules 4001(b) and (c), the Debtor requests that the Court conduct an expedited preliminary hearing on the Motion (the "**Interim Hearing**") and grant the relief requested in the proposed Interim Order in order to (a) maintain the Debtor's ongoing operations, (b) complete well workovers on 3 of 4 of the Debtor's wells requiring this work, and (c) avoid the immediate and irreparable harm and prejudice to the Debtor's estates, the value of

the assets and all parties in interest that would otherwise ensue. The Debtor's oil and gas leases are under threat of termination if there is not production or prolonged cessation of production. In such circumstances, the Debtor's primary assets are at risk of losing all value.

67. The Debtor has an urgent and immediate need for cash to continue to operate. The Debtor will be immediately and irreparably harmed absent authorization from the Court have access to DIP financing funds in addition to use of Cash Collateral as requested on an interim basis pending a Final Hearing on the Motion. In the short-term, without full use of its cash collateral and some additional funds from the DIP Loan, the Debtor is at risk of being forced to cease operations and shut down its wells, which will have a long-term negative impact on the value of the Debtor's business and assets, to the detriment of all parties in interest.

REQUEST FOR FINAL HEARING

68. The Debtor requests that the relief granted in this Motion shall be effective as of the Petition Date and also requests that the Court schedule the Final Hearing during the week of November 7, 2016, with objections, if any, to the Final Order being due in writing on or before the date that is at least two (2) business days prior to the Final Hearing.

NOTICE OF MOTION

69. Notice of this Motion has been provided to (1) the Office of the United States Trustee for the District of Montana; (2) the Debtor's major secured creditor, Wells Fargo Capital Energy, Inc.; (3) entities that have filed pre-petition oil and gas liens against or otherwise asserted an interest the Debtor's income producing properties: Canary LLC, Canrig Drilling Technology Ltd., Coil Tubing Solutions, LLC, Irongate Rental Services, LLC, K&D Enterprises, Inc. d/b/a Pressure Pumping Services, MBI Energy Logistics, LLC, MBI Energy Rentals, Inc., MBI Energy Services, M-I, LLC, d/b/a MI-SWACO, Nabors Drilling USA, LP, Northern Energy Services,

LLC, Northern States Completions, Precision Completion and Production Services, Ltd., Weatherford U.S. L.P., Yankee Fishing & Rentals, High Plains, Inc., American Pipe and Supply Company, Sanjel USA Inc., Schlumberger Technology Corporation, Precision Directional Services, Inc., Kathryn Holle, and Larry Lee; (4) the Debtor's twenty (20) largest unsecured creditors; (5) the Montana Department of Revenue; (6) the North Dakota Tax Commission; and (7) the Internal Revenue Service. The Debtor has not filed a prior Motion requesting this relief.

WHEREFORE, the Debtor respectfully requests that the Court enter an order substantially similar to the order attached hereto as **Exhibit A** and granting such further or different relief as this Court may deem just and proper; and scheduling this matter for preliminary expedited hearing at the Court's regular hearing date on Monday, October 24, 2016 in Billings, Montana.

DATED this 19th day of October, 2016.

GUTHALS, HUNNES & REUSS P.C.

By: /s/ Jeffery A. Hunnes

Jeffery A. Hunnes

Attorneys for Debtor

NOTICE

If you object to the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the motion. The responding party shall schedule the hearing on the motion at least twenty-one (21) days after the date of the response and request for hearing and shall include in the caption of the responsive pleading the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.

Please take notice that the Debtor has requested an expedited hearing on this Motion.

DATED this 19th day of October, 2016.

GUTHALS, HUNNES & REUSS P.C.

By: /s/ Jeffery A. Hunnes
Jeffery A. Hunnes
Attorneys for Debtor