

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

|                    |   |                                  |
|--------------------|---|----------------------------------|
| In re:             | ) |                                  |
|                    | ) | Chapter 11                       |
|                    | ) |                                  |
| PETROSHARE CORP.,  | ) | Case No. 19-17633(KHT)           |
| EIN: 46-1454523    | ) |                                  |
| Debtor.            | ) |                                  |
|                    | ) |                                  |
| CFW RESOURCES LLC, | ) | Case No. 19-17634(KHT)           |
| EIN: 82-0686628    | ) |                                  |
|                    | ) | (Joint Administration Requested) |
| Debtor.            | ) |                                  |
|                    | ) |                                  |

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**EXPEDITED MOTION OF DEBTORS FOR ENTRY OF INTERIM AND  
FINAL ORDERS (I) AUTHORIZING THE USE OF CASH  
COLLATERAL, (II) GRANTING ADEQUATE PROTECTION,  
(III) MODIFYING THE AUTOMATIC STAY, (IV) SETTING A FINAL  
HEARING, AND (V) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (the “**Debtors**”), hereby move (this “**Motion**”) pursuant to sections 105, 361, 362, 363, 506, 507, and 552(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004(h), 7062 and 9014 of Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”), and Rules 2081-1, 4001-2, and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure for the District of Colorado (the “**Local Rules**”) for entry of an order (the “**Interim Order**”) (i) authorizing the Debtors to use the Cash Collateral (as defined below) of the Prepetition Secured Lenders (as defined below); (ii) granting adequate protection to the Prepetition Secured Lenders upon the terms set forth in the Interim Order and in any final orders; (iii) modifying the automatic stay; (iv) scheduling a final hearing (the “**Final Hearing**”) on the Motion; and (v) granting such other and further relief as the Court deems just and appropriate. In support of the Motion, the Debtors rely upon the *Declaration of Drew McManigle, Chief Restructuring Officer of PetroShare Corp., in Support of*

*the Debtors' First Day Pleadings* (the "**First Day Declaration**") filed with the Court contemporaneously herewith. In further support of the Motion, the Debtors respectfully represent as follows:

### **JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 361, 362, 363, 506, 507, and 552(b); Bankruptcy Rules 2002, 4001, 6004(h), 7062 and 9014; and Local Rules 2081-1, 4001-2, and 9013-1.

### **BACKGROUND**

#### **I. General Background**

4. On the date hereof (the "**Petition Date**"), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**").
5. The factual background regarding the Debtors, including business operations, capital and debt structure, and the events leading to the filing of the Chapter 11 Cases is set forth in the First Day Declaration and incorporated herein by reference.
6. The Debtors continue to operate and manage its business as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.
7. No trustee, examiner, or creditors' committee has been appointed in the Chapter 11 Cases.

## **II. Debtors' Prepetition Secured Obligations**

8. On May 13, 2015, Debtor PetroShare Corp. ("**PetroShare**") entered into that certain Revolving Line of Credit Facility Agreement (as subsequently amended, restated, supplemented or otherwise modified from time to time, the "**Facility A Agreement**") with Providence Energy Operators, LLC ("**PEO**"), which provided to the Company a revolving line of credit of up to \$5 million ("**Facility A**"), primarily to fund the acquisition and development of crude oil and natural gas properties. The Company's obligations under the Facility A Agreement were satisfied in full in 2018.

9. In May 2015, in connection with the Facility A Agreement, PetroShare entered into a participation agreement with PEO (as subsequently amended, restated, supplemented or otherwise modified from time to time, the "**Participation Agreement**"). PEO is an affiliate of Providence Energy Corp., a privately-held multi-million-dollar acquirer of oil and gas properties throughout the United States. PEO is also the beneficial owner of approximately 11.6% of PetroShare's outstanding common stock. The Participation Agreement grants PEO the option to acquire up to a 50% interest and participate in any oil and gas development on acreage the Company obtains within an area of mutual interest ("**AMI**") near the Southern Core area. To date, PEO has exercised its option under the Participation Agreement or otherwise participated or agreed to participate in all of the Company's acreage acquisitions and drilling operations. The Participation Agreement expired on June 1, 2019.

10. On October 13, 2016, PetroShare entered into that certain Revolving Line of Credit Facility Agreement (the "**Facility B Agreement**") with Providence Energy Partners III, LP ("**PEP III**"), which permitted PetroShare to borrow up to \$10 million ("**Facility B**") to pay costs associated with its acquisition and development of oil and gas properties in the Wattenberg Field. In connection with the Facility B, PetroShare made that certain Promissory Note dated

October 13, 2016 in favor of PEP III in the original principal amount of \$10 million (the “**PEP III Promissory Note**”). PEP III is an affiliate of PEO by virtue of having some common management personnel. The original maturity date for Facility B was April 13, 2017. The Company agreed to repay \$3,552,500 in outstanding principal not later than April 13, 2017 and not to borrow additional funds in exchange for PEP III extending the maturity date of the Facility B. The Company’s obligations under the Facility B Agreement were satisfied in full in 2018.

11. On December 21, 2017, the Company entered into that certain letter agreement (as subsequently amended, restated, supplemented or otherwise modified from time to time, the “**Letter Agreement**”) with Providence Energy Ltd., a Texas limited partnership (“**PEL**”), PEP III, PEO, and Fifth Partners, LLC, a Texas limited liability company (“**Fifth**,” and together with PEL, PEP III, and PEO, the “**Initial Lenders**”) pursuant to which the Company borrowed \$5 million from the Initial Lenders (the “**Initial Funding**”). In connection with the Initial Funding, the Company and the Initial Lenders agreed to negotiate a second debt financing of \$20 million.

12. On February 1, 2018, PetroShare entered into that certain Secured Term Credit Agreement (as subsequently amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) with Providence Wattenberg Ltd. (“**PWL**”), a Texas limited partnership and affiliate of PEO, as lender and the administrative agent (the “**Administrative Agent**”), and 5NR Wattenberg, LLC (“**5NR**”), a Texas limited liability company, as lender (together with the Administrative Agent, the “**Prepetition Secured Lenders**”). Pursuant to the Credit Agreement, the Prepetition Secured Lenders, severally and not jointly, agreed to make available to the Company an aggregate amount equal to \$20 million. Pursuant to the Credit Agreement, the \$20 million and the Initial Funding became part of an aggregate facility providing the Company with a \$25 million secured credit facility (the “**Prepetition Secured**

**Facility**”). Also pursuant to the Credit Agreement, the Company’s obligations to the Initial Lenders under the Letter Agreement were satisfied in full. As required under the Credit Agreement, the Company used the proceeds of the Prepetition Secured Facility to, *inter alia*, (i) pay all debt owing under Facility A; (ii) pay a principal amount of the outstanding debt owing under Facility B equal to \$1,500,000, together with all accrued and unpaid interest owing under such facility as of the closing of the Prepetition Secured Facility; and (iii) make other payments expressly set forth in the funds flow referenced in the Credit Agreement.

13. In connection with the Prepetition Secured Facility, PetroShare made that certain Promissory Note dated February 1, 2018 in favor of 5NR in the original principal amount of \$12,500,000 (the “**5NR Promissory Note**”) and that certain Promissory Note dated February 1, 2018 in favor of PWL in the original principal amount of \$12,500,000 (the “**PWL Promissory Note**”), together with the 5NR Promissory Note, the “**Promissory Notes**”).

14. The Promissory Notes are secured by: (i) that certain Deed of Trust, Mortgage, Assignment of Production, Security Agreement and Financing Statement from PetroShare to the Public Trustee of Adams County, Colorado, Prepetition Secured Lenders for the Benefit of PWL, as Administrative Agent (the “**Adams Deed of Trust**”); (ii) that certain Deed of Trust, Mortgage, Assignment of Production, Security Agreement and Financing Statement from PetroShare to the Public Trustee of Arapahoe County, Colorado, Prepetition Secured Lenders for the Benefit of PWL, as Administrative Agent (the “**Arapahoe Deed of Trust**”); (iii) that certain Deed of Trust, Mortgage, Assignment of Production, Security Agreement and Financing Statement from PetroShare to the Public Trustee of Broomfield County, Colorado, Prepetition Secured Lenders for the Benefit of PWL, as Administrative Agent (the “**Broomfield Deed of Trust**”); (iv) that certain Deed of Trust, Mortgage, Assignment of Production, Security

Agreement and Financing Statement from PetroShare to the Public Trustee of Elbert County, Colorado, Prepetition Secured Lenders for the Benefit of PWL, as Administrative Agent (the “**Elbert Deed of Trust**”); and (v) that certain Deed of Trust, Mortgage, Assignment of Production, Security Agreement and Financing Statement from PetroShare to the Public Trustee of Weld County, Colorado, Prepetition Secured Lenders for the Benefit of PWL, as Administrative Agent (the “**Weld Deed of Trust**”, together with the Adams Deed of Trust, the Arapahoe Deed of Trust, the Broomfield Deed of Trust, the Elbert Deed of Trust, and the Weld Deed of Trust, the “**Deeds of Trust**”). Pursuant to the Deeds of Trust, PetroShare granted the applicable Public Trustee all of its right, title, and interest in substantially all of PetroShare’s real and personal property (as defined in each Deed of Trust, the “**Mortgaged Properties**”) for the benefit of the Administrative Agent. PetroShare further granted the Administrative Agent security interests in the Mortgaged Properties.

15. On February 1, 2018, PetroShare, PEP III, and the Administrative Agent entered into that certain Intercreditor Agreement (the “**Intercreditor Agreement**”), pursuant to which PEP III consented to the terms of the Prepetition Secured Facility. PEP III further consented to the granting of perfected security interests to the Prepetition Secured Lenders that are *pari passu* with the security interests of PEP III, pro rata based on the amounts of the respective obligations owed under the Facility B Agreement and under the Credit Agreement. The Intercreditor Agreement remained in effect until the Company satisfied all of its obligations to PEP III under the Facility B Agreement. As discussed above, the Company satisfied all of its obligations under the Facility B Agreement in 2018.

16. On February 27, 2018, PetroShare and the Prepetition Secured Lenders entered into that certain Pledge Agreement (the “**Pledge Agreement**”), pursuant to which PetroShare

pledged all of its right, title, and interest in certain collateral to the Prepetition Secured lenders, including certain: (i) promissory notes; (ii) shares; (iii) membership interests; and (iv) dividends, distributions, interest, and other payments related to (i)–(iii) (the “**Pledged Collateral**”, together with the Mortgaged Properties, the “**Prepetition Collateral**”). Also pursuant to the Pledge Agreement, the Prepetition Secured Lenders were granted security interests in the Pledged Collateral.

17. The Deeds of Trust, the Promissory Notes, the Credit Agreement, the Intercreditor Agreement, the Pledge Agreement, and any other related security instruments shall be collectively referred to herein as the “**PetroShare Loan Documents**”.

18. Pursuant to the Credit Agreement, on February 27, 2018, Debtor CFW Resources, LLC (“**CFW**”) and the Prepetition Secured Lenders entered into that certain Guaranty Agreement (the “**CFW Guaranty**”), pursuant to which CFW agreed to guaranty PetroShare’s obligations under the PetroShare Loan Documents. The Guaranty Agreement is secured by that certain Deed of Trust, Mortgage, Assignment of Production, Security Agreement and Financing Statement from CFW to the Public Trustee of Adams County, Colorado, Prepetition Secured Lenders for the Benefit of PWL, as Administrative Agent (the “**CFW Deed of Trust**”, together with the Guaranty Agreement, the “**CFW Loan Documents**”). The CFW Loan Documents and the PetroShare Loan Documents shall be collectively referred to herein as the “**Prepetition Loan Documents**”.

19. As of the Petition Date, the Debtors’ outstanding balance under the Prepetition Loan Documents was approximately \$14.3 million (the “**Prepetition Secured Debt**”). Debtors believe that the value of the Prepetition Collateral far exceeds the Prepetition Secured Debt. Accordingly, the Prepetition Secured Lenders are over-secured.

### **III. The Debtor's Need for the Use of Cash Collateral**

20. As described in the First Day Declaration, the Debtors explored various strategic alternatives, including a forbearance agreement with the Prepetition Secured Lenders. The Debtors have determined that absent the use of “cash collateral” (as defined in section 363(a) of the Bankruptcy Code, “**Cash Collateral**”), they will be unable to operate their business during the Chapter 11 Cases, irreparably harming the Debtors’ estates and creditors.

21. Without the use of Cash Collateral, the Debtors are unable to continue normal operation of their business during the Chapter 11 Cases. The Debtors anticipate being able to subsist on cash collateral for the initial thirteen (13) weeks while it explores a sale process. Therefore, the Debtors seek authority to use Cash Collateral, on an interim basis, pending entry of a final order. The Debtors’ immediate access to Cash Collateral is necessary to preserve and maximize the value for the benefit of all parties in interest.

22. The Debtors propose to pay, in accordance with the 13-week budget (the “**Budget**”) annexed to the proposed Interim Order as Exhibit 1, various items in the ordinary course of business, including employee salaries, employee benefits, the Debtors’ obligations under their various oil and gas leases, and other payments that, in the judgment of the Debtors’ management, provide the essential services needed to operate and maintain the Debtors’ assets. In addition, the Debtors require the use of Cash Collateral to retain and pay costs of professionals, consultants, and advisors who will enable the Debtors to conduct a sale of its assets in a manner that maximizes value for the Debtors’ estates and their creditors.

23. The Debtors believe that because the Prepetition Secured Lenders are over-secured, the terms of the use of Cash Collateral contained in the Interim Order are sufficient to protect the Prepetition Secured Lenders against any diminution in the value of their interests in the Cash Collateral. Prior to the Petition date, the Debtors sought and obtained consent to use of



Cash Collateral from the Prepetition Secured Lenders. Such consent is conditioned upon the Court’s entry of the Interim Order. After considering their alternatives, the Debtors have concluded that the use of Cash Collateral pursuant to the terms of the Interim Order represents the best option available to interested parties.

24. At this time, the Debtors are not contemplating the need for postpetition financing. Instead, the Debtors intend to operate their business solely on the use of the existing Cash Collateral. Access to existing Cash Collateral on an interim basis will provide the Debtors with the liquidity necessary to ensure that the Debtors have sufficient working capital to operate their business and thus preserve and maintain the value of the Debtors’ estates. Without access to such liquidity, the Debtors and their estates will face irreparable harm.

**RELIEF REQUESTED**

25. The Debtors respectfully request entry of the Interim and Final Orders pursuant to Bankruptcy Code sections 105, 361, 362, 363, 506, 507, and 552(b) and Bankruptcy Rules 2002, 4001, 6004(h), 7062 and 9014 (i) authorizing the Debtors to use Cash Collateral, (ii) granting the Prepetition Secured Lenders adequate protection upon the terms set forth in the Interim Order and any final orders, (iii) modifying the automatic stay, and (iv) scheduling a final hearing on the Motion.

26. Pursuant to Bankruptcy Rule 4001(c)(1)(B) and Local Rule 4001-2, the following is a concise statement of the material provisions of the Interim Order:<sup>1</sup>

| Special Provision         | Summary                     | Reference to Interim Order |
|---------------------------|-----------------------------|----------------------------|
| 4001(b)(1)(B)(i) – entity | Prepetition Secured Lenders | Paragraph E of the         |

<sup>1</sup> This summary and any other description of the Interim Order provided for in this Motion is qualified in its entirety by the actual terms of the Interim Order. The actual terms of the Interim Order will control in the event of any inconsistency between this Motion and the Interim Order.

| Special Provision  | Summary  | Reference to Interim Order   |
|--|--|--|
| with interest  |  | Interim Order.   |
| 4001(b)(1)(B)(ii) – purpose for use<br><br>Local Rule 4001-2(a)(1)(I) – use of funds limitations | Cash Collateral to be used in the ordinary course of business for categories of expenses listed in the Budget (as defined in Paragraph 3 of the Interim Order).  | Paragraph 3 of Interim Order, including the Budget attached to the Interim Order.                    |
| 4001(b)(1)(B)(iii) – material terms and duration of use  | <p>Material terms of the Interim Order are described in this Motion, which requests the interim use of Cash Collateral through September ___ to fund day-to-day operations, including payroll for Debtors’ employees.</p> <p>The Debtors also request the use of Cash Collateral on a final basis pursuant to the terms of a Budget (subject to earlier termination pursuant to Paragraphs 2 and 3 of the Interim Order) provided, however, that the Debtors’ use of Cash Collateral may vary weekly by 10% on any line item basis (other than with respect to the amounts set forth in the Budget for utility expenses which the Debtors are authorized to pay in the amount reflected on any utility bill for utility services incurred); <i>provided</i> that the Debtors’ use of Cash Collateral on an aggregate basis does not vary from the aggregate amount authorized in the Budget (the “<b>Variance</b>”).</p> <p>Upon the Challenge Period Termination Date (defined in Paragraph 12 of the Interim Order) and for all purposes in the Case and any Successor Case, (a) any and all such unsuccessful or untimely Challenges by any party in interest shall be deemed to be forever released, waived, and barred, (b) the Prepetition Obligations shall be deemed to be a fully allowed secured claim within the meaning of section 506 of the Bankruptcy Code, (c)</p> | <p>Paragraph 3 of Interim Order and the Budget.</p> <p>Paragraphs 12 and 13 of the Interim Order</p> |

| Special Provision  | Summary   | Reference to Interim Order                             |
|--|---|--|
|  | <p>the Prepetition Obligations shall be deemed to be a fully allowed claim, and (d) the Stipulations shall be binding on all parties in interest, including the Committee or any trustee appointed in the Case or any Successor Case.</p>   |  |
| <p>4001(b)(1)(B)(iv) – liens, cash payments, or other adequate protection to be provided to entity with interest</p> <p>Local Rule 4001-2(a)(1)(J) – protections afforded under 11 U.S.C. §§ 363 and 364</p> | <p>As security for and solely to the extent of any diminution in the value of Prepetition Collateral from and after the Petition Date, calculated in accordance with Bankruptcy Code section 506(a) (a “<b>Diminution in Value</b>”), the Prepetition Secured Lenders are hereby granted senior priority, continuing, valid, automatically perfected, nonavoidable and enforceable replacement liens upon all assets and property of the Debtors and their estates of any kind or nature whatsoever (and any proceeds therefrom), now existing or hereafter acquired, including, without limitation, the Prepetition Collateral (the “<b>Replacement Liens</b>”), but excluding any claims and causes of action, and the products and proceeds thereof, arising under or permitted by Bankruptcy Code sections 502(d), 506(c), 544, 545, 547, 548, 549, and 550; <i>provided, however</i>, that the Replacement Liens shall be subject and subordinate to the Carve-Out (as defined below).</p> <p>The Replacement Liens granted hereunder shall be junior and subordinate to the following fees and expenses (the “<b>Carve-Out</b>”): (a) all budgeted accrued but unpaid fees and expenses (the “<b>Professional Fees and Expenses</b>”) of the attorneys, accountants, or other professionals retained by the Debtors or the Committee appointed in the Case under Bankruptcy Code sections 327 or 1103(a) (collectively, the “<b>Professionals</b>”) incurred from the</p> | <p>Paragraphs 4, 7, 8, 9, and 11 of Interim Order.</p> |

| Special Provision                                     | Summary  | Reference to Interim Order         |
|---|--|------------------------------------|
|   | <p>Petition Date through the earlier of (1) forty-five (45) days from the date of entry of this Interim Order; or (2) the entry of the Final Order; provided that all such fees and expenses shall be subject to approval by a final order of the Court pursuant to Bankruptcy Code sections 327, 328, 330, 331, or 363.</p> <p>Any payments to the Prepetition Secured Lenders authorized in this order and the Replacement Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code and shall not be subject to subordination, impairment, or avoidance for all purposes in the Case and any successor case.</p> <p>The automatic stay under Bankruptcy Code section 362(a) shall be vacated and modified to the extent necessary to permit the Debtors to grant the Replacement Liens to the Prepetition Secured Lenders, subject to the terms and conditions contained in the Interim Order.</p> |                                    |
| Local Rule 4001-2(a)(1)(I) – use of funds limitations | Neither Debtors nor any other parties in interest may use Cash Collateral for any purpose relating to or in the furtherance of an Adverse Lender Action.   | Paragraph 3 of Interim Order.      |
| Local Rule 4001-2(a)(1)(K) – line item budget         | <i>See Budget.</i>   | <u>Exhibit 1</u> to Interim Order. |

### **BASIS FOR RELIEF**

#### **I. Cash Collateral and Adequate Protection**

27. Bankruptcy Code section 363(c) provides that a debtor in possession may use cash collateral if all interested entities consent or the Court, after notice and a hearing, authorizes

such use. 11 U.S.C. § 363(c). Bankruptcy Code section 363(e) provides that s that “on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). *See also In re DeSardi*, 350 B.R. 790, 797 (Bankr. S.D. Tex. 2006) (“Adequate protection . . . is grounded in the belief that secured creditors should not be deprived of the benefit of their bargain”). The concept of adequate protection is designed to shield a secured creditor from diminution in the value of its interest in collateral during the period of a debtor’s use. *See In re Carbone Cos.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) (“The test is whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash collateral); *see also In re Cont’l Airlines, Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993) (holding that adequate protection for use of collateral under section 363 is limited to use-based decline in value).

28. Bankruptcy Code section 361 delineates non-exhaustive forms of adequate protection, which include periodic cash payments, additional liens, replacement liens and other forms of relief. Adequate protection is determined on a case-by-case basis and may take various forms. *See, e.g., United Sav. Ass’n of Tex. V. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 793 F.2d 1380, 1388 (5th Cir. 1986). *See also In re Self*, 239 B.R. 877, 881 (E.D. Tex. 1999) (noting that the adequate protection determination is not an “exact science”); *In re Continental Airlines, Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993); *MBank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F.2d 1393, 1396-97 (10th Cir. 1987); *Martin v. U.S. (In re Martin)*, 761 F.2d 472, 474 (8th Cir. 1985); *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003). The focus of this requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period

of use. *See In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.”). “[T]he debtor-in-possession has the burden of proof on the issue of adequate protection.” *In re Cafeteria Operators, L.P.*, 299 B.R. 400, 406 (Bankr. N.D. Tex. 2003).

29. The proposed adequate protection included in the Interim Order provides adequate protection in the form of, among other things, replacement liens and reporting requirements. The Debtors submit that the proposed adequate protection is appropriate and sufficient to protect the Prepetition Secured Lenders from any diminution in value of the Cash Collateral.

30. The Cash Collateral will be used for funding business operations and allowing the Debtors to transition into the Chapter 11 Cases. Immediate access to this liquidity will permit the Debtors to fund payroll, pay vendors, and otherwise continue business in the ordinary course. If Cash Collateral is not available, the Debtors will dissipate value to the detriment of the Prepetition Secured Lenders and other stakeholders. Thus, the use of Cash Collateral will protect the Prepetition Secured Lenders’ security interests by preserving the value of the Cash Collateral. *See In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that a debtor’s use of cash collateral to pay operating expenses, thereby “preserv[ing] the base that generates the income stream,” provided adequate protection to the secured creditor). *See also Save Power Ltd. v. Pursuit Athletic Footwear, Inc. (In re Pursuit Athletic Footwear, Inc.)*, 193 B.R. 713, 716 (Bankr. D. Del. 1996); *In re 499 W. Warren St. Assocs., Ltd. P’ship*, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992).

31. Assuming the statutory predicates for the use of Cash Collateral have been met, courts generally defer to a debtors' business judgment. *E.g., In re Ames*, 115 B.R. at 40; *In re YL W. 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010). Debtors submit that they have exercised their sound business judgment with respect to the relief requested herein. *See In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985) (discussing the role of a debtor's business judgment).

32. In light of the foregoing, the Debtors submit that the proposed adequate protection to be provided is appropriate and necessary to protect such party against any diminution in value and is also fair and appropriate on an interim basis under the circumstances. The Debtors respectfully submit that entry of the Interim Order authorizing the interim use of Cash Collateral and scheduling a Final Hearing to approve the use of Cash Collateral on a final basis is necessary and appropriate.

## **II. Modification of the Automatic Stay is Warranted**

33. The relief requested by this Motion contemplates a modification of the automatic stay. 11 U.S.C. § 362. The automatic stay should be modified on a limited basis to effectuate the terms and provisions of the Interim Order, including, without limitation, to permit the Debtors to grant replacement liens.

34. Stay modification provisions of this sort are ordinary features of cash collateral arrangements and, in Debtors' business judgment, are reasonable under the circumstances. *See, e.g., In re Gen. Growth Prop. Inc.*, Case No. 09-11977 (Bankr. S.D.N.Y. May 14, 2009); *In re Tronox Inc.*, Case No. 09-10156 (Bankr. S.D.N.Y. Feb. 6, 2009); *In re Chemtura Corp.*, Case No. 09-11233 (Bankr. S.D.N.Y. Apr. 23, 2009). Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order.

35. Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order.

### **III. Interim Approval and Scheduling of a Final Hearing**

36. Interim relief may be granted on a motion to use cash collateral pursuant to Bankruptcy Code sections 363(c) or 364 where relief “is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” FED. R. BANKR. P. 4001(b)(2), (c)(2).

37. The Debtors believe that all or substantially all of their available cash constitutes Cash Collateral and is therefore unable to proceed to continue its business operations without the ability to use Cash Collateral and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. The Debtors’ ability to finance its operations is vital to the preservation and maintenance of the value of the Debtors’ assets.

38. Moreover, Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” FED. R. BANKR. P. 6003. The Debtors submits that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors. Further, the Debtors respectfully request that the Court schedule the Final Hearing.

### **WAIVER OF BANKRUPTCY RULES**

39. To the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code section 363(b), the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay under Bankruptcy Rule 6004(h), to the extent applicable. *See* FED. R. BANKR. P. 6004(a), (h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their business and preserve the value of the estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule



6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

**NOTICE**

40. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Colorado; (b) the Securities and Exchange Commission; (c) the Colorado Oil & Gas Conversation Commission and any local, state, or federal agencies that regulate the Debtors' businesses (d) those parties listed on each of the Debtors' lists of creditors holding the thirty (30) largest unsecured claims; (e) counsel to any official committee(s) establish in these cases pursuant to Section 1102 of the Bankruptcy Code; (f) the Prepetition Secured Lenders and their counsel; (g) all other lienholders and their counsel if known; (h) all Colorado local counsel having entered a notice of appearance in these cases; (i) the Internal Revenue Service; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002.

41. The Debtors submit that, in light of the nature of the relief requested, no further notice of this Motion is required.

**NO PRIOR REQUEST**

42. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

Dated: September 4, 2019

Respectfully submitted,

**POLSINELLI PC**

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