

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

EOD
05/05/2016

In re:)	
)	JOINTLY ADMINISTERED
TEXAS PELLETS, INC. ¹)	under Case No. 16-90126
)	
Debtors.)	Chapter 11
)	

**INTERIM ORDER (1) AUTHORIZING DEBTORS IN POSSESSION
TO OBTAIN POSTPETITION FINANCING; (2) AUTHORIZING DEBTORS IN
POSSESSION TO USE CASH COLLATERAL; (3) PROVIDING ADEQUATE
PROTECTION; AND (4) GRANTING LIENS, SECURITY
INTERESTS AND SUPERPRIORITY CLAIMS**

This Interim Order (1) Authorizing Debtors in Possession to Obtain Postpetition Financing; (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; and (4) Granting Liens, Security Interests and Superpriority Claims (this “Interim Order”) is entered into by this Court after adequate notice and hearing upon the *Emergency Motion for Interim Order and Final Order (1) Authorizing Debtors in Possession to Obtain Postpetition Financing; (2) Authorizing the Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; and (3) Granting Liens, Security Interests and Superpriority Claims* (the “Motion”), and upon the terms agreed to by and among Texas Pellets, Inc. (“TPI”) and German Pellets Texas LLC (“GPTX”; and together with TPI, the “Debtors”) and UMB Bank, National Association, as the successor trustee (the “Bond Trustee”) with respect to the Sanger Texas Industrial Development Corporation Industrial Development Revenue Bonds (Texas Pellets Project), Series 2012B and 2012C issued under that certain Indenture of Trust,

¹ The jointly-administered Chapter 11 Debtors, along with the last four digits of each such Debtor’s federal tax identification number, are Texas Pellets, Inc. (3478) and German Pellets Texas, LLC (9084). The corporate headquarters and service address for the jointly-administered debtors is: 164 CR 1040, Woodville, TX 75979.

dated as of August 1, 2012 (as amended and supplemented from time to time, the “Indenture”), between the Sanger Texas Industrial Development Corporation (the “Issuer”) and Wells Fargo Bank, N.A. as original trustee. Upon the terms of the Motion, the stipulations, acknowledgements and agreements of the Debtors and the Bond Trustee, the statements of the parties and their counsel at the hearing on the Motion, and the record of the proceedings, the Court makes the following findings of fact and rulings of law:

FINDINGS OF FACT

The Debtors’ Chapter 11 Cases; Procedural Background; Jurisdiction and Notice

A. On April 29, 2016 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and thereby commenced cases thereunder (together, the “Chapter 11 Case”). Since the Petition Date, the Debtors have been operating their businesses and managing their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no official committee of unsecured creditors (the “Committee”) has been appointed in the Chapter 11 Case.

B. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue of the Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The Debtors have properly served notice of the Motion and the interim hearing thereon pursuant to sections 102, 361, 362, 363 and 364 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002 and 4001(b) and/or (d), which notice was sent to among others (i) Daniel S. Bleck, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial

Center, Boston, Massachusetts 02111, counsel to the Bond Trustee, (ii) the Debtors' 20 largest creditors, (iv) the United States Trustee, and (v) any party that has filed a notice of appearance in the Chapter 11 Case. Such notice is sufficient for all purposes under the Bankruptcy Code and the applicable Bankruptcy Rules in respect to the relief requested.

The Debtors and the Project

D. TPI is the owner and developer of a solid waste disposal and wood biomass pellet manufacturing facility located in Woodville, Tyler County, Texas (the "Manufacturing Facility"), and a five-silo pellet storage facility located at Port Arthur, Texas (the "Storage Facility"); and together with the Manufacturing Facility, the "Facility").

E. GPTX is the operator of the Facility and leases the Facility, pursuant to that certain Facilities License Agreement, dated July 25, 2012 (the "Operator License"), by and between TPI and GPTX. Under the Operator License, GPTX received a license to operate the Facility to manufacture and sell wood biomass pellets as part of one operational project (the "Project").

F. TPI is a party to that certain Ground Lease by and between Port of Port Arthur Navigation District of Jefferson County, Texas, as lessor, and TPI as lessee, dated February 28, 2012 (as amended and supplemented from time to time, the "Ground Lease"), pursuant to which TPI leases certain real and personal property located at Port Arthur as a wood pellet warehouse, storage, and loading facility. The Ground Lease is for an initial 20-year term and granted to TPI a right of first refusal to purchase the property subject to the lease.

G. TPI (as assignee of GPTX) is a party to that certain Agreement for the Sale and Purchase of Biomass FOB Loading Port, dated as of March 29, 2012, by and between Drax Power Limited (“Drax”) and GPTX (as amended and supplemented from time to time, the “Drax Contract”). Under the Drax Contract, Drax has agreed to purchase a set amount of pellets per year with an option to increase or decrease its pellet purchase amount up to a certain percentage of the original purchase amount. The receipts from the Drax Contract are deposited into the Revenue Fund held under the Indenture, which are used, among other things, to fund the debt service obligations on the Bonds (as defined herein) under the Indenture.

The Secured Bond Obligations

H. The Debtors admit, acknowledge and agree that TPI is obligated to the Bond Trustee for the benefit of the beneficial holders of the Bonds authorized and issued by the Issuer for the benefit of the Debtors.

I. The Debtors admit, acknowledge and agree that the Issuer issued its (i) \$157,250,000 Sanger Texas Industrial Development Corporation Industrial Development Revenue Bonds (Texas Pellets Project), Series 2012B (the “Series 2012B Bonds”); and (ii) \$29,285,000 Sanger Texas Industrial Development Corporation Industrial Development Revenue Bonds (Texas Pellets Project), Series 2012C (the “Series 2012C Bonds”); and together with the Series 2012B Bonds, the “Bonds”), pursuant to the Indenture.

J. The Debtors admit, acknowledge and agree that the proceeds from the sale of the Bonds were loaned to TPI pursuant to that certain Loan Agreement, dated as of August 1, 2012 (as amended and supplemented from time to time, the “Loan Agreement”), between the Issuer

and TPI, and were used by the Debtors primarily to, among other things: (i) finance the acquisition, design, development, and construction of the Facility; (ii) refund the previously issued 2012A Bonds; and (iii) pay certain expenses incurred in connection with the issuance of the Bonds. The rights of the Issuer under the Loan Agreement were assigned to the Bond Trustee under the terms of the Indenture.

Security for the Bond Obligations

K. The Debtors admit, acknowledge and agree that the Debtors have granted the Bond Trustee a first priority security interest in and lien on the following:

- i. The Pledged Revenues and the Note (each as defined in and pursuant to the Indenture), each as granted under the Indenture;
- ii. all of TPI's right, title and interest in and to its personal property and other assets, whether currently owned or subsequently acquired by or arising in favor of TPI, pursuant to that certain Security Agreement, dated July 25, 2012 (as amended and supplemented from time to time, the "TPI Security Agreement");
- iii. all of GPTX's right, title and interest in and to its personal property and other assets, whether currently owned or subsequently acquired by or arising in favor of GPTX, pursuant to that certain Security Agreement, dated July 25, 2012 (as amended and supplemented from time to time, the "GPTX Security Agreement");
- iv. all of GPTX's right, title and interest in and to those agreements entered into in connection with the Project, pursuant to that certain Consent, Subordination and

Attornment Agreement, dated July 25, 2012 (as amended and supplemented from time to time, the “Consent to Assignment”);

- v. all of TPI’s right, title and interest in and to the Drax Contract, pursuant to that certain Novation, Assignment, Assumption, Consent and Subordination Agreement Drax Power Limited, dated July 25, 2015 (as amended and supplemented from time to time, the “Drax Consent”);
- vi. all of TPI’s right, title and interest in its real property, pursuant to that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, as of July 25, 2012 (as amended and supplemented from time to time, the “Woodville Deed of Trust”);
- vii. all of TPI’s right, title and interest in the real property subject to the Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated July 25, 2012 (as amended and supplemented from time to time, the “Port Arthur Deed of Trust”); and
- viii. any other document or agreement delivered as security for, or in respect to, the Bonds or the Debtors’ obligations under any of such documents (“Other Security Documents”).

The Indenture, Loan Agreement, Operator License, Ground Lease, Drax Contract, TPI Security Agreement, GPTX Security Agreement, Consent to Assignment, Drax Consent, Woodville Deed of Trust, Port Arthur Deed of Trust, and Other Security Documents, are collectively referred to in this Interim Order as the “Bond Documents.”

L. The Debtors admit, acknowledge and agree* that pursuant to the grants of security interest in and liens on the Debtors' assets under the Bond Documents, including but not limited to the agreements identified at Paragraph H above, the Bond Trustee holds first priority valid, binding, enforceable and perfected mortgages, pledges, liens and security interests (the "Prepetition Liens") in substantially all of the Debtors' real and personal property as security for its obligations associated with the Bonds (together with the other collateral described in the Bond Documents, the "Prepetition Collateral"), subject only to the Postpetition Liens (as defined herein); Permitted Liens (as defined herein); and the Carve-Out (as defined herein).

BP
The Debtors' agreement herein does not bind the bankruptcy estate or any other duly-authorized representative of the bankruptcy estate, with regard to the status of the Prepetition Liens or Prepetition Collateral pursuant to LBR 4001(e) and the terms of the appendix identified therein.

The Bond Claim

M. The Debtors admit, acknowledge and agree that as of the Petition Date, the amounts due and owing by the Debtors with respect to the Bonds are as follows (collectively, the "Bond Claim"):

- (i) Unpaid principal on the Bonds in the amount of \$184,675,000; and
- (ii) Accrued but unpaid interest on the Bonds in the amount of \$4,835,697.22 as of the Petition Date.

For purposes of this Interim Order, the term "Bond Claim" also includes, without duplication, any and all amounts owing or outstanding under the Bonds (whether incurred prepetition or postpetition), including all loans, advances, debts, liabilities, principal, accrued or hereafter accruing interest, fees, costs, charges, expenses (including, without limitation, any and all attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable, reimbursable or otherwise payable under the Indenture, pursuant to the terms

thereof) and obligations for the performance of covenants, tasks or duties, or for the payment of monetary amounts owing to the Bond Trustee by the Debtors, of any kind or nature, whether or not evidenced by any note, agreement or other instrument, and whether or not contingent or otherwise. The Bond Trustee reserves any and all rights to amend the amounts associated with the Bond Claim. Nothing herein shall be deemed to be a waiver of such rights. In the event the Bond Trustee seeks to increase the amount of such claim, the Debtors or any third party having standing may challenge any amounts in excess of (i) and (ii) above.

N. The Debtors admit, acknowledge and agree* that the Bond Claim constitutes a legal, valid and binding obligation of the Debtors, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), that no offsets, defenses or counterclaims to the Bond Claim exist and that no portion of the Bond Claim is subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

BP
The Debtors' agreement herein does not bind the bankruptcy estate or any other duly-authorized representative of the bankruptcy estate, with regard to the status of the Bond Claim or any action pertaining thereto pursuant to LBR 4001(e) and the terms of the appendix identified therein.

The Bridge Loan

O. The Debtors admit, acknowledge and agree that prior to the Petition Date they experienced an acute liquidity crisis by which it required sufficient funds in order to operate in the weeks leading up to filing the within Chapter 11 Case. The Debtors approached the Bond Trustee on behalf of the holders of the Bonds and requested an emergency loan sufficient to fund the acute liquidity needs of the Debtors with respect to the three week period prior to the Petition Date. The Bond Trustee agreed to provide an emergency loan in the aggregate amount of

\$1,507,275 to bridge the Debtors into an orderly commencement of the Chapter 11 Case (the “Bridge Loan”).

P. The Debtors admit, acknowledge and agree that the Bridge Loan is fully secured by valid, perfected liens on assets of the Debtors and are entitled to priority in repayment ahead of all other obligations under the Bond Documents.

Q. The Debtors admit, acknowledge and agree that due to the nature of the Bridge Loan, the parties thereto agreed that the Bridge Loan would be paid in full from use of Cash Collateral pursuant to the terms of the Budget (as defined herein).

The Debtors Need for Use of Cash Collateral

R. The Debtors have requested the use of the Cash Collateral (as defined herein) of the Bond Trustee in connection with the Chapter 11 Case. The Bond Trustee does not consent to the use of its Cash Collateral, except upon the express terms of this Interim Order.

S. Without the use of Cash Collateral, it would disrupt the Debtors as a going concern, the value of the underlying assets would significantly decline, and would not be in the best interest of the Debtors, their estate, or their creditors.

The Need for Debtor in Possession Financing

T. A critical need exists for the Debtors to obtain funds in order to fund the demonstrated operational, capital and administrative needs of the Project, solely to the extent set forth under the Budget and under the DIP Loan Facility (as defined herein). The Debtors are unable to obtain postpetition financing on an unsecured basis under sections 364(c)(1) or

503(b)(1) of the Bankruptcy Code. Further, the Debtors assert that they are also unable to obtain secured credit from sources other than the Bond Trustee that would be allowable under sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code for the purposes set forth in this Interim Order. Further, the Bond Trustee would not consent to any priming liens and would have argued that the Debtors could not have provided adequate protection for any such proposed financing.

U. In addition to the use of the Bond Trustee's Cash Collateral, the Bond Trustee in its capacity as DIP lender, has agreed to provide the requested DIP Loan (defined below) under the DIP Loan Facility and use of Cash Collateral in accordance with the terms contained in this Interim Order, in the amounts, categories and times set forth in the Budget, which shall be used for: (i) the necessary operational costs associated the Project; (ii) repayment of the Bridge Loan in full; and (iii) other costs and expenses of administration of the Chapter 11 Case.

V. Without the DIP Loan, the Debtors will be unable to pay necessary payroll, costs, and operating expenses, and obtain goods and services needed to preserve the Facility in a manner that will avoid irreparable harm to the Debtors' estates. At this time, the Debtors' ability to finance the ongoing operation and availability of sufficient liquidity through the incurrence of new indebtedness for borrowed money and other financial accommodations as provided herein are vital to the preservation of the Facility and maintenance of the going concern value of the Debtors' estates.

W. The Debtors have requested that the Bond Trustee, as DIP lender, provide a postpetition loan up to \$3,434,000 (the "DIP Loan"), which funds shall be used by the Debtors solely to the extent provided in the Budget. At the expiration of the Interim Order, the Bond

Trustee, in its sole and absolute discretion and subject to entry of the Final Order, may continue to advance funds up to a maximum amount as established and agreed to between the parties. The Debtors expressly acknowledge and agree, and this Interim Order provides, that there is no obligation by the Bond Trustee to continue funding upon expiration of the Interim Order, and at such time, the Bond Trustee may determine, in its sole and absolute discretion, to cease funding altogether.

X. The Bond Trustee has indicated its willingness to provide the DIP Loans, subject to the terms and conditions set forth herein, including, the provisions of this Interim Order providing that the Postpetition Liens (as defined herein) and the various claims, superpriority claims and other protections granted pursuant to this Interim Order will not be affected by any subsequent reversal or modification of this Interim Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

Y. The Bond Trustee's lending of the DIP Loans is conditioned upon the grant of a lien that (a) will prime and remain senior to the Bond Trustee's Prepetition Liens; and (b) will otherwise constitute a first priority lien in all other Postpetition Collateral (as defined herein), subject only to (i) valid, binding, enforceable and perfected liens, having priority over the liens of the Bond Trustee as of the Petition Date that are set forth on Schedule 1 hereto (together, the "Permitted Liens"²) and (ii) the Carve-Out.

² The Debtors, Bond Trustee and other parties in interest reserve all rights to contest the amount, extent, priority and validity of any putative claim, security interest or lien identified on Schedule 1. Nothing herein or otherwise shall be deemed a waiver of any such rights. To the extent that such claims and/or security interests or liens are deemed not to be valid senior liens, the DIP Loans shall not be subordinated to the claims of the estate under sections 544 or 545 of the Bankruptcy Code. Schedule 1 is subject to amendment in the Final Order on the Motion.

BP

Z. The terms of the DIP Loan have been negotiated in good faith and at arm's length among the Debtors and the Bond Trustee. The terms of the DIP Loan are at least as favorable to the Debtors as those available from alternative sources, under all of the circumstances. Given the current market conditions and under the particular circumstances of the Chapter 11 Case, there are no other sources of funding. Given the exigencies of the case, the Debtors believe the DIP Loan Facility is the best and only option. ~~In connection with its consent to this Interim Order, the Bond Trustee exercised its rights and powers and used the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs and the Bond Trustee acted consistent with its duties and responsibilities under, and entry of the Interim Order does not violate, the terms of any agreement relating to the Bonds.~~

AA. The terms of the DIP Loan are fair and commercially reasonable under the circumstances, reflect the Debtors' exercise of their prudent business judgment consistent with their fiduciary duties, are supported by reasonably equivalent value and fair consideration, and are enforceable in accordance with applicable law. As such, the funds advanced shall be deemed to have been extended by the Bond Trustee in "good faith" as that term is used in section 364(e) of the Bankruptcy Code and based upon the express reliance of the protections offered by section 364(e) of the Bankruptcy Code, the Postpetition Liens and the Superpriority Claim (defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code, including in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

Need for Adequate Protection to Bond Trustee

BB. Pursuant to the Bankruptcy Code and in light of the foregoing, the Debtors are required to provide adequate protection to the Bond Trustee in respect of its use of the Prepetition Collateral (including Cash Collateral) and granting of the priming Postpetition Liens. The Debtors wish to provide adequate protection of the security interests in and liens on the Prepetition Collateral pursuant to the terms set forth in this Interim Order.

CC. Good cause has been shown for the entry of this Interim Order. The terms of this Interim Order, inclusive of the adequate protection provided to the Bond Trustee relating to the Prepetition Liens, are fair and commercially reasonable, reflect the Debtors' prudent business judgment consistent with their respective fiduciary duties and constitute reasonable equivalent value and fair consideration. Entry of this Interim Order is in the best interest of the Debtors, their creditors including the holders of the Bonds, and their estates.

DD. To the extent any portion of the foregoing constitute rulings of law, they shall constitute this Court's rulings with respect to the matters so-stated.

NOW THEREFORE, THE COURT ORDERS AS FOLLOWS:

Motion Granted

1. The Motion is hereby granted in accordance with the terms and conditions set forth in this Interim Order. No objections to the entry of this Interim Order were filed or were otherwise raised at the emergency hearing conducted on the Motion which resulted in the entry of this Interim Order.

BP

The DIP Loan

2. DIP Loan. Pursuant to sections 361 and 364 of the Bankruptcy Code and the terms and conditions hereof, until the occurrence of an Event of Default (as defined herein), the Debtors are hereby authorized to borrow funds pursuant to the terms, conditions and provisions of this Interim Order (the “DIP Loan Facility”) in an amount up to \$3,434,000 based upon advances pursuant to the terms set forth herein (each individual advanced defined as a “DIP Loan”; and collectively, the “DIP Loans”); provided, however, that the Debtors shall use the proceeds of the DIP Loans solely in compliance with the budget attached hereto as **Exhibit A** and incorporated herein by reference (as it may be amended from time to time with the consent of the Bond Trustee, the “Budget”) and as expressly set forth herein. For the avoidance of doubt, the Budget includes repayment in full of the Bridge Loan upon closing of the DIP Loan Facility.

3. Payment of Principal, Interest, Fees, Etc.

- (i) The DIP Loans made under this Interim Order shall accrue no interest (the “Applicable Rate”).
- (ii) Upon the occurrence of an Event of Default, the DIP Loans shall accrue interest at a default rate of interest equal to 2% over the Applicable Rate and such interest will be payable on demand.
- (iii) The principal, interest and any other obligations owed with respect to the DIP Loans shall be due and payable upon the earlier of (i) the occurrence of an Event of Default (as defined herein); and (ii) May 31, 2016 (the “Maturity Date”). Subject to the terms of this Interim Order, the DIP Loan under the DIP Loan Facility may be voluntarily paid at any time with no penalty or premium.

4. Conditions to the Initial DIP Loan. The funding of the initial DIP Loan is conditioned on the satisfaction of the following:

- (i) entry of this Order, including the provisions authorizing the immediate repayment of the Bridge Loan;

- (ii) evidence of insurance reasonably satisfactory to the Bond Trustee (and receipt of additional insured and loss payee insurance certificates); and
- (iii) all fees and expenses, including the reasonable fees and expenses of the Bond Trustee's professionals, have been paid in full.

5. Conditions to, and Disbursements of, DIP Loans. The following conditions and processes shall govern the funding of each DIP Loan,

- (i) the Debtors shall deliver to the Bond Trustee not later than Wednesday at 12:00 pm (EDT) for expenditures to be incurred in accordance with the Budget for the following week a certificate signed by a responsible person for the Debtors and thereafter by the CRO (as defined herein) upon his or her retention (the "Borrowing Certificate") in the form attached hereto as **Exhibit B**, certifying: (a) no Event of Default (as defined herein) has occurred or is continuing; (b) the making of such DIP Loan shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently; (c) this Interim Order is in full force; (d) all requirements under the Interim Order for a DIP Loan have been satisfied; and (e) the amount requested is consistent with the terms of the Budget.
- (ii) each request for a DIP Loan must exceed a minimum amount of \$100,000;
- (iii) such funds will be used for the proposed operating expenses of the Project as set forth in the Budget for the following week;
- (iv) there are no funds on deposit in the Debtors' operating account available for such purpose and the total available funds in the Debtors' operating account does not exceed \$10,000;
- (v) such expenditures have not been subject to any prior requisition or payment or reimbursement from any other source;
- (vi) the representations and warranties of the Debtors contained in the Interim Order shall be true and correct immediately prior to, and after giving effect to, the DIP Loan; and
- (vii) the Debtors are in compliance with each of the covenants contained in the Interim Order.

6. Use of DIP Loan Proceeds. The DIP Loans shall be used solely as set forth in the Budget for: (i) the necessary operation and maintenance costs associated with the Project in the

amounts and categories and time set forth in the Budget; (ii) repayment of the Bridge Loan in full; and (iii) other costs and expenses of administration of the Chapter 11 Case as set forth in the Budget.

7. Effectiveness of DIP Loans. From and after the entry of this Interim Order (the “Effective Date”), the terms and conditions hereof shall constitute a valid and binding obligation of the Debtors, enforceable against the Debtors in accordance with the terms of this Interim Order for all purposes during the Chapter 11 Case, any subsequently converted cases of any of the Debtors under chapter 7 of the Bankruptcy Code or after the dismissal of the Chapter 11 Case. No obligation, payment, transfer or grant of security under this Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under sections 502(d), 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

8. Payments to Bond Trustee. Any and all payments or proceeds remitted to the Bond Trustee pursuant to the provisions of this Interim Order or otherwise shall be received by the Bond Trustee, free and clear of any claim, charge, assessment or other liability, including, without limitation, any such claim or charge arising out of or based on sections 506(c) and/or 552(b) of the Bankruptcy Code, whether directly or indirectly, all of which are hereby waived by the Debtors. In the event that it is determined by final order of the Court that the Bond Trustee is not entitled under Bankruptcy Code section 506(b) to any payments or proceeds remitted to the

Bond Trustee on account of postpetition interest, fees and expenses, then any such payments or proceeds remitted to the Bond Trustee shall reduce the Bond Claim held by the Bond Trustee.

Security for the DIP Loan

9. Postpetition Liens. Pursuant to section 364(c)(2), (c)(3) and (d) of the Bankruptcy Code and as security for the repayment of the DIP Loans and any and all other obligations under or with respect to the DIP Loan Facility, the Bond Trustee is hereby granted valid, binding, enforceable and perfected first priority mortgages, pledges, liens and security interests (the “Postpetition Liens”) in all currently owned or hereafter acquired property and assets of the Debtors of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds, products, rents and profits thereof, including, without limitation, accounts, inventory, equipment, capital stock in subsidiaries, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks, deposit accounts, intercompany claims, claims against affiliates, causes of action, tax refund claims, commercial tort claims, insurance proceeds and insurance premium refunds, and the proceeds, products, rents and profits of all of the foregoing (all of the foregoing, the “Postpetition Collateral”; provided, however, actions for preferences, fraudulent conveyances or other avoidance power claims and any recoveries under sections 542, 544, 545, 547, 548 (exclusive of transferees under Section 549), 550 and 553 and the Bankruptcy Code (collectively, the “Avoidance Actions”) and the proceeds thereof shall not be Postpetition Collateral under this Interim Order. Notwithstanding the foregoing, the Bond Trustee reserves the right to request that the Postpetition Collateral include Avoidance Actions and proceeds of Avoidance Actions in any Final Order on the Motion.

10. The Postpetition Liens are in addition to the superpriority administrative expense claim set forth in Paragraph 11 hereof, and pursuant to sections 364(c) and 364(d), shall be valid, binding, continuing, enforceable, fully-perfected, senior and priming on all Postpetition Collateral that (a) will be and remain senior to the Prepetition Liens, Rollover Liens and Supplemental Liens granted to the Bond Trustee as adequate protection for its Prepetition Liens; and (b) will otherwise constitute a first priority lien on all other assets of the Debtors, subject only to (i) Permitted Liens, if any, and (ii) the Carve-Out.

11. Superpriority Administrative Expense Claim. The DIP Loans shall have the status of a superpriority administrative expense claim (the “Superpriority Claim”) pursuant to section 364(c)(1) of the Bankruptcy Code, including, without limitation, having priority over all other unpaid administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code (subject only to Carve-Out), and shall at all times be senior to the rights of the Debtors, any successor trustee or any creditor in the Chapter 11 Case or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy or attachment. The Superpriority Claim granted to the Bond Trustee by this Paragraph 11 shall be payable from and have recourse to all pre-and postpetition property of the Debtors and all proceeds thereof.

Debtors’ Use of Cash Collateral

12. The Debtors are hereby authorized to use cash collateral (as defined in section 363(a) of the Bankruptcy Code) constituting proceeds of accounts and revenues from operations

of the Facilities (collectively, the “Cash Collateral”). Cash Collateral shall not include any other funds received by the Debtors during these proceedings.

13. The Debtors’ use of Cash Collateral shall be solely as set forth in the Budget and as otherwise provided in this Interim Order for: (i) the necessary operation and maintenance costs associated with the Project in the amounts and categories and time set forth in the Budget; and (ii) other costs and expenses of administration of the Chapter 11 Case as set forth in the Budget. Use of Cash Collateral other than as set forth in this Interim Order, including in accordance with the Budget, shall be strictly prohibited.

Adequate Protection to Bond Trustee for the Prepetition Liens and Prepetition Collateral Securing the Bond Claim

14. As adequate protection of the Bond Trustee’s interests in the Prepetition Collateral, including Cash Collateral, pursuant to sections 361, 363 and 552(b) of the Bankruptcy Code, and the Bond Trustee’s consent to the priming of its liens and claims pursuant to the Postpetition Liens and the Superpriority Claim provided to the Bond Trustee as DIP Loan lender, the Bond Trustee is hereby provided the following adequate protection:

- (i) Rollover Liens. As adequate protection for any diminution in the value of the Prepetition Collateral (“Diminution”), the Bond Trustee shall continue to have valid, binding, enforceable and perfected additional and replacement mortgages, pledges, liens and security interests in all Postpetition Collateral and the proceeds, rents, products and profits therefrom, whether acquired or arising before or after the Petition Date, to the same extent, priority and validity that existed as of the Petition Date (such liens, the “Rollover Liens”); provided, however, the Rollover Liens shall be subject to the (i) Postpetition Liens, (ii) Permitted Liens, and (iii) Carve-Out.
- (ii) Supplemental Liens. As additional adequate protection for any Diminution, the Bond Trustee shall have a valid, perfected and enforceable continuing supplemental lien on, and security interest in, all of the assets of the Debtors of

any kind or nature whatsoever within the meaning of section 541 of the Bankruptcy Code, whether acquired or arising before or after the Petition Date, and the proceeds, rents, products and profits therefrom, exclusive of Avoidance Actions (collectively, the “Supplemental Liens”); provided, however, the Supplemental Liens shall be subject to the (i) Postpetition Liens, (ii) Permitted Liens, and (iii) Carve-Out.

- (iii) Prepetition Superpriority Claim. As additional adequate protection for any Diminution, the Bond Trustee shall receive a superpriority expense claim allowed under section 507(b) of the Bankruptcy Code (the “Prepetition Superpriority Claim”) against all assets of the Debtors’ estates. The Prepetition Superpriority Claim shall have priority over any and all other unpaid administrative expenses now existing or hereafter arising, of any kind whatsoever, of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtors, any successor trustee or any creditor in the Chapter 11 Case or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy or attachment; provided, however, the Prepetition Superpriority Claim shall be subject to the (i) Postpetition Liens, (ii) Superpriority Claim, (iii) Permitted Liens, and (iv) Carve-Out;
- (iv) Adequate Protection Interest Payments. Subject to Paragraph 8 herein, the Bond Trustee, for the benefit of holders of the Bonds, shall be entitled to interest payments at the non-default contract rate (provided, however, that the Bond Trustee reserves the right to assert interest at the default rate in connection with any claims asserted in the Chapter 11 Case), which shall be accrued in accordance with the Bond Documents and payable pursuant to the Budget (the “Adequate Protection Payments”);
- (v) Financial Reports. The Debtors shall provide the Bond Trustee with all reports, documents and other materials, including financial reports, as may be required in this Interim Order and such other and further access to the Debtors’ books and records, advisors and professionals as may be reasonably requested by the Bond Trustee from time to time; and
- (vi) Compliance with Bond Documents. The Debtors shall be in compliance with those terms and provisions of the Bond Documents set forth on Schedule 2 attached hereto.

PROVISIONS COMMON TO THE DIP LOANS AND BOND TRUSTEE AS HOLDER OF THE BOND CLAIM

Covenants

15. Covenants. The Debtors shall observe all covenants in this Interim Order at all times prior to and after the Termination Date. The Debtors agree as follows (and the parties acknowledge that failure to comply with such covenants shall constitute an Event of Default (as defined herein) under this Interim Order:

Budget and Reporting Covenants:

- (i) The Debtors shall be in Compliance with the Budget. Compliance with the Budget (“Compliance”) means a weekly report (the “Weekly Budget Report”) certified by a responsible person for the Debtors and thereafter by the CRO upon his or her retention, in the same form as the Budget indicating all receipts received and disbursements made by the Debtors during the applicable measuring period compared to the Budget for such period (each, a “Measuring Period”), with (a) aggregate disbursements during such period not exceeding 110% of the total budgeted disbursement for such period; (b) any single disbursement line item not exceeding 115% of the such budgeted line item for such period; (c) total receipts not less than 90% of such budgeted receipts for such period, and (d) expenditures for estate professional fees shall not exceed 100% of the amount allocated for such expenditures in the Budget for such period (both in the aggregate and with respect to each professional’s respective line on the Budget). Each “Variance” shall be measured on a rolling four week basis; provided, however, that, for purposes of calculating such Variance, (i) the first Measuring Period shall be the one week period after the Effective Date and the first week of the Budget, (ii) the second Measuring Period shall be the two weeks after the Effective Date and the first two weeks of the Budget, (iii) the third Measuring Period shall be the three weeks after the Effective Date and the first three weeks of the Budget, (iv) the fourth Measuring Period shall be the four weeks after the Effective Date and the first four weeks of the Budget.
- (ii) The Debtors shall provide the following reports to the Bond Trustee: (a) no later than 5:00 p.m. (prevailing Central time) on Tuesday of each week (but no earlier than the seventh day after the date of this Interim Order), the Weekly Report, providing for a comparison of the items in the Budget for the preceding week to the Debtors’ actual performance that includes (1) a narrative summary of any Variances from the Budget for the preceding week and on a cumulative basis, and (2) a detailed bank account and loan balance reconciliation and report summarizing, for the previous week, actual daily cash activity, including

expenditures (i.e., checks issued and wire transfers sent) by line item as set forth in the Budget.

- (iii) Deliver to the Bond Trustee a monthly reporting package, no later than 30 days after the end of each calendar month, including cash flow, income statement and balance sheet for such month, accounts payable and receivable reports with aging information.
- (iv) No later than each Friday, a certification from the Debtors that they reasonably expect to have sufficient pellets available for loading the next vessel due to depart the Port of Port Arthur to satisfy the Drax Contract as projected in the Budget.

Operational Covenants:

- (v) The Debtors shall maintain the Facility sufficient to operate the Project and all business operations of the Project.
- (vi) The Debtors shall timely comply with their postpetition obligations under the Ground Lease and Drax Contract.
- (vii) As of each Friday, the Debtors shall produce no less than 5,000 tons of wood pellets per week, no less than 12,500 tons in the trailing two week period and no less than 30,000 tons in the trailing four week period.
- (viii) [*RESERVED FOR FINAL HEARING* -- As of each Friday, the Borrowers covenant to maintain an inventory of round logs and spare parts as set forth in **Schedule 15(viii)** hereto.]
- (ix) Deliver to the Lender and the Trustee at the end of each Business Day, a report on the prior day's (a) production volume, (b) pellet inventory located at the Project in Port Arthur and Woodville, Texas, and (c) tons of wood delivered.

General Covenants:

- (x) The Debtors agree, and agree to instruct its advisors, employees, managers and professionals, to reasonably cooperate with the Bond Trustee and its respective counsel, advisors, appraisers and professionals, with respect to the obligations owing under the Bond Documents, DIP Loans and the Chapter 11 Case.
- (xi) The Debtors agree, and agree to instruct their advisors, employees, managers and professionals to provide the Bond Trustee and its professionals independent access, with reasonable notice, to the Facility, the Debtors' advisors, employees, managers and professionals (including any investment banker and CRO) with respect to any matter relating to the Chapter 11 Case, and any reports and information as the Bond Trustee and holders of the Bonds, and their respective

counsel, advisors and professionals may reasonably request from time to time, including but not limited to marketing and sale/affiliation matters, balance sheets, payables, receivables, income statements, and cash flow statements, with all information provided being subject to the confidentiality protections agreed to between the Bond Trustee and the Debtors.³ The Debtors shall provide all such reports and information to the Bond Trustee no later than three (3) business days after such request.

Bankruptcy Milestones

16. The Debtors agree that failure to materially comply with the following milestones (the "Bankruptcy Milestones") set forth below shall constitute an Event of Default (as defined herein)), unless any such conditions have been waived or modified by the Bond Trustee in its sole discretion:

- (i) On or before May 9, 2016, the Debtors shall file a motion with the Bankruptcy Court seeking the retention of an independent Chief Restructuring Officer (the "CRO") acceptable to the Bond Trustee, upon such terms and conditions of retention acceptable to Debtors and the Bond Trustee. Such terms and conditions shall provide that the CRO shall, among other things, and subject to his business judgment and fiduciary responsibilities and with the assistance of the Debtors' executive officers, assume a lead management position in guiding the Debtors through their reorganization efforts and the evaluation, development, negotiation and implementation of such restructuring efforts, provide advisory services, management of the Project and Debtors' business, facilitate, assist in the development and implementation of an affiliation or sale, if any, of substantially all assets under the Bankruptcy Code;
- (ii) The Debtors shall obtain the retention of the CRO no later than May 25, 2016
- (iii) On or before July 11, 2016, the Debtors shall file a motion with the Bankruptcy Court seeking the retention (the "IB Motion") of an investment banker (the "IB") acceptable to the Bond Trustee, upon such terms and conditions of retention acceptable to the Debtors and Bond Trustee to solicit offers relating to the

³ Nothing in this paragraph shall waive or allow legal counsel for the Bond Trustee to communicate directly with personnel, employees, or officers of the Debtors, unless counsel for the Debtors is also included in such communications, or upon appropriate waiver.

affiliation or acquisition of the Project through a section 363 sale or as a plan sponsor under a plan of reorganization; provided, however, that the obligation to file the IB Motion shall be suspended to the extent the Bond Trustee receives a term sheet in form and substance acceptable to the Bond Trustee in its sole and absolute discretion that provides for the refinancing/restructuring of the Bonds and the process for consummation of such refinancing/restructuring within a time period acceptable to the Bond Trustee;

BP

- (iv) Subject to the proviso in subsection (iii) above, the Debtors shall obtain the retention of the IB no later than August 1, 2016;
- (v) On Tuesday of each week (or such other day as may be agreed upon by the parties) the Debtors, CRO and IB (if/when approved) shall make available representatives reasonably acceptable to the Bond Trustee for a telephone conference call with the Bond Trustee, holders of the Bonds, and their respective agents, advisors and/or representatives to discuss the cash flows, operations, the marketing, affiliation or acquisition process of the Project, and such other matters as are relevant or are reasonably requested by the Bond Trustee; and
- (vi) On or before fourteen days after approval of the IB Motion, the Debtors and the Bond Trustee shall have agreed to a marketing and sale process with specific further milestone dates acceptable to the Bond Trustee.

17. No Liens or Encumbrances. Prior to payment in full of the DIP Loan, the Debtors shall not sell, pledge, hypothecate, or otherwise encumber any Postpetition Collateral (any such sale, pledge, hypothecation, or other transfer shall be void ab initio). Further, there shall be no other claim or expense having priority or being pari passu to the priority granted to the Bond Trustee in this Interim Order while any portion of the DIP Loans remain outstanding, except with respect to the Carve-Out.

18. No Modification. Nothing contained herein shall alter or modify, or be deemed to alter or modify, the Bond Documents (or any other agreement to which the Bond Trustee is party).

19. No Waiver. No consent by the Bond Trustee to any administrative claims, including fees and expenses of professionals, sought to be assessed against or attributed to the Bond Trustee, as applicable, in the Prepetition Collateral, or the Postpetition Collateral pursuant to the provisions of sections 506(c) and/or 552(b) of the Bankruptcy Code or otherwise by, through or on behalf of the Debtors, shall be implied from any action, inaction or acquiescence. Except as expressly set forth herein, the Effective Date is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, (a) any of the rights of the Bond Trustee under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of the Bond Trustee to (i) request additional adequate protection of their interests in the Prepetition Collateral or Postpetition Collateral or relief from or modification of the automatic stay under section 362 of the Bankruptcy Code (or the Debtors' right to object thereto); or (ii) request conversion of the Chapter 11 Case to one pursuant to chapter 7 of the Bankruptcy Code (or the Debtors' right to object thereto); or (b) any other rights, claims or privileges (whether legal, equitable or otherwise) of the Bond Trustee.

BP
~~20. No Challenge. Notwithstanding anything else herein, subject to the proviso at the end of this sentence, no amounts under the Carve-Out (as defined below), the proceeds of the DIP Loans and the proceeds of Prepetition Collateral (including Cash Collateral) and Postpetition Collateral shall be used for the purpose of: (i) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, perfection, priority, or enforceability of the (a) Bond Claim or the Prepetition Liens with respect thereto, (b) the DIP Loans or the Postpetition Collateral with respect thereto, or (c) any other rights or interests of the Bond Trustee, (ii) in asserting any claims or causes of action, including, without limitation, any actions~~


BP

under chapter 5 of the Bankruptcy Code against the Bond Trustee or the holders of the Bonds or invoking the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the Prepetition Collateral, the Postpetition Collateral or otherwise; (iii) preventing, hindering, or delaying the enforcement or realization by the Bond Trustee, as applicable, upon any of the Prepetition Collateral or Postpetition Collateral; (iv) incurring indebtedness except as permitted by this Interim Order; (v) to fund acquisitions, capital expenditures, capital leases or other transactions not in the ordinary course of the Debtors’ business other than as set forth in the Budget; (vi) modifying the rights of the holders of the Bonds; (vii) modifying any adequate protection granted the Bond Trustee; or (viii) commencing or prosecuting any motion, proceeding or cause of action against the Bond Trustee, or their respective agents, attorneys, advisors or representatives; provided however, that up to an aggregate amount not to exceed \$10,000 may be incurred by the Committee (as defined below) to investigate the validity, enforceability, perfection, priority, or extent of the Bond Claim, the Prepetition Collateral or the Prepetition Liens during the Investigation Period (as defined below).

Events of Default

21. Each of the following shall be considered an Event of Default (“Event of Default”) under the DIP Loan Facility and this Interim Order:

- (i) the failure to make payments of interest on the DIP Loans as and when due;
- (ii) the failure to make Adequate Protection Payments to the Bond Trustee as and when due;
- (iii) the failure of the Debtors to pay all of their administrative expenses in full in accordance with and subject to the terms as provided for in the Budget, including fees under 28 U.S.C. § 1930;

- (iv) this Interim Order becomes stayed, reversed, vacated, amended or otherwise modified in any respect without the prior written consent of the Bond Trustee;
- (v) failure to meet any of the Bankruptcy Milestones or other covenants set forth in this Interim Order;
- (vi) the closing of a sale of all or substantially all of the Debtors' assets;
- (vii) the dismissal of the Chapter 11 Case, conversion of the Chapter 11 Case to a chapter 7 case, or suspension of the Chapter 11 Case under section 305 of the Bankruptcy Code;
- (viii) the appointment of a chapter 11 trustee or an examiner with enlarged powers (beyond those set forth in section 1104(c) and 1106(a)(3) and (4) of the Bankruptcy Code);
- (ix) the granting of relief from the automatic stay to permit foreclosure with respect to a material asset of the Debtors, by any entity other than the Bond Trustee on any Postpetition Collateral;
- (x) the entry of an order granting any superpriority claim which is senior or pari passu with the Bond Trustee's claims under the DIP Loan Facility (other than the Carve-Out);
- (xi) termination of the CRO, modification of the order appointing the CRO without the consent of the Bond Trustee or rejection of the retention agreement with the CRO;
- (xii) termination of or rejection of the Ground Lease or Drax Contract;
- (xiii) the payment of or granting adequate protection with respect to prepetition indebtedness of the Debtors other than as set forth in the Budget or as provided for in this Interim Order;
- (xiv) the cessation of Postpetition Liens, Rollover Liens, Adequate Protection Payments, Supplemental Liens, Superpriority Claims, or Prepetition Superpriority Claim granted with respect to the DIP Loan Facility or to the Bond Trustee as provided herein, to be valid, perfected and enforceable in all respects;
-  ~~(xv) the filing of any challenge to the Prepetition Liens or Prepetition Collateral;~~
- (xvi) the payment of estates' professional fees by the Debtors other than to the extent set forth in the Budget;

(xvii) failure to pay the amounts due under the DIP Loan Facility by the Maturity Date;
or

(xviii) the Debtors' failure to secure entry of the Final Order on or before May 31, 2016.

Notwithstanding any provision above to the contrary, the following shall not constitute an Event of Default: any proposal of a transaction that would result in the indefeasible payment in full at closing of the transaction, of all outstanding amounts under the DIP Loan Facility.

Termination and Maturity

22. Notwithstanding anything herein, and except as provided in Paragraph 23, the Debtors shall no longer, pursuant to this Interim Order or otherwise be authorized to borrow funds and/or use Cash Collateral for any purpose hereunder upon the earliest of (i) the occurrence of an Event of Default or (ii) the Maturity Date (such earlier date, the "Termination Date").

23. Notwithstanding the occurrence of an Event of Default, the Bond Trustee may elect in writing not to terminate the Debtors' authority to borrow funds and/or use Cash Collateral hereunder, to waive defaults hereunder, to forbear from the exercise of rights and remedies hereunder and, subject to Court approval and the approval of the Bond Trustee, to modify the Maturity Date and any Event of Default. Any such continued extension of financial accommodations shall be without prejudice to the Bond Trustee's ability to terminate funding.

24. Notwithstanding the occurrence of an Event of Default or anything herein to the contrary, all of the rights, remedies, benefits and protections provided to the Bond Trustee and the Bond Trustee as lender to the DIP Loan Facility shall survive the Termination Date. Upon

the Termination Date, the principal of and accrued interest and all other amounts owed to the Bond Trustee under the DIP Loans hereunder shall be immediately due and payable.

Exercise of Rights

25. (a) Without further order from the Bankruptcy Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit, upon the occurrence of any Event of Default, the Bond Trustee to cease making any advances under the DIP Loan Facility and to exercise all rights and remedies against the Postpetition Collateral to satisfy the obligations under the DIP Loan Facility; provided, however, that to the extent a Challenge is brought under Paragraph 27, the Debtors may continue to use Cash Collateral but the Bond Trustee may immediately cease making any advances under the DIP Loan Facility, with advances to resume upon resolution of the Challenge in favor of the Bond Trustee and no other Events of Default have occurred.

(b) The Bond Trustee shall be entitled to apply the payments or proceeds of the Postpetition Collateral as it deems appropriate, subject to the Permitted Liens, and Carve-Out, and in no event shall the Bond Trustee be subject to the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the Postpetition Collateral or otherwise.

Release

26. The Debtors hereby release the Bond Trustee (including in its capacity as DIP lender), all holders of the Bonds, and their respective affiliates, agents, attorneys, officers, directors and employees of all claims and/or causes of action by, and liabilities owing to, the

Debtors arising out of or based upon or related to, in whole or in part, the Bonds, and any aspect of the prepetition relationship between the Bond Trustee and the Debtors and any other acts or omissions by the Bond Trustee in connection with either the Bond Documents or its prepetition relationship with the Debtors. Further, the Debtors ~~and their estates~~ waive any and all right to object to or contest the amount of the Bond Claim or the Bond Trustee's security interests in the Prepetition Collateral and agree that all such claims and security interests have been duly perfected and are in all respects valid and enforceable first priority security interests and liens, subject and subordinate only to (i) Postpetition Liens to the extent set forth herein, (ii) Permitted Liens; and (iii) the Carve-Out. Notwithstanding the foregoing, the Interim Order shall not be deemed to impair or restrict the Debtors' rights under section 1129 of the Bankruptcy Code, including to propose and/or confirm a plan of reorganization, and the provisions of any such plan, solely with respect to classification (i.e., bifurcation of secured and unsecured claims) and/or treatment (i.e., terms and conditions of a restructuring of the Bond Claim) under any plan; provided, further, that the Bond Trustee reserves all of its right to reject or otherwise object to

BP

The Debtors' agreement herein does not bind the bankruptcy estate or any other duly-authorized any such plan. representative of the bankruptcy estate to any release or waiver pursuant to LBR 4001(e) and the terms of the appendix identified therein.

BP

27. Investigation Period. Notwithstanding the foregoing paragraph, any party in interest (including the Committee, but excluding the Debtors ~~and any trustee under 726(b) of the Bankruptcy Code~~) as to claims against the Bond Trustee may file an adversary proceeding or contested matter (a "Challenge") challenging the amount, validity, extent, enforceability, perfection or priority of the Bond Claim or the Prepetition Liens in respect thereof, or (ii) otherwise asserting any claims or causes of action against the Bond Trustee and/or holders of the Bonds on behalf of the Debtors' estates, no later than ~~60~~^{90*} days after the Effective Date (such

30

The proposed sixty-day period is unreasonably short, given that the proposed Investigation Period would expire only 10 days after the first date set for the Debtors' 341 meetings.

BP

period of time, the “Investigation Period”). Any such adversary proceeding or contested matter brought after the conclusion of the Investigation Period shall be barred. If no Challenge is commenced by a party during the Investigation Period against the Bond Trustee, and/or the holders of the Bonds, then as to such party, (i) any repayment of the Bond Claim shall be deemed final and indefeasible, not subject to subordination or recharacterization and otherwise unavoidable, (ii) the Bond Claim shall constitute allowed claims, not subject to subordination or recharacterization and otherwise unavoidable, for all purposes in the Chapter 11 Case and any subsequent chapter 7 case or cases, (iii) the Prepetition Liens on the Prepetition Collateral shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim, offset of any kind, subordination and otherwise unavoidable, (iv) the Bond Trustee, the Bond Claim and the Prepetition Liens of the Bond Trustee on the Prepetition Collateral shall not be subject to any other or further claims, causes of action or challenges by any party in interest including, without limitation, any successor thereto; and (v) the Bond Trustee, all holders of the Bonds and their respective affiliates, agents, attorneys, officers, directors and employees, shall be deemed released of all claims and/or causes of action by, and liabilities owing to, the Debtors, the Committee appointed in this Chapter 11 Case, the Debtors’ estates, all parties in interest, and any subsequently appointed trustee arising out of or based on any facts or circumstances occurring prior to the date hereof; *provided further* that if one or more claims are timely under this Paragraph 27 and properly filed, then except for such claims, all other potential claims and causes of action are hereby deemed forever waived and barred. Notwithstanding the foregoing, no claims or cause of actions of any kind or nature may be asserted against the Bond Trustee in

its capacity as lender of the DIP Loans, or the liens and claims granted to the Bond Trustee under and/or related to the DIP Loan Facility.

28. Section 364(e); Section 506(c); Section 552(b). The Bond Trustee shall be entitled to all of the benefits of section 364(e) of the Bankruptcy Code for all DIP Loans hereunder. Except to the extent of the Carve-Out, subject to entry of the Final Order, no expenses of administration of the Chapter 11 Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Postpetition Collateral, the Prepetition Collateral or collateral subject to Rollover Liens and Supplemental Liens, pursuant to section 506(c) or 552(b) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the Bond Trustee and no such consent shall be implied from any other action, inaction, or acquiescence by the Bond Trustee. **For the avoidance of doubt, and notwithstanding anything else in this Interim Order, nothing in this Interim Order shall be construed as a waiver of Section 506(c) of the Bankruptcy Code, with such waiver to be addressed at the time of the Final Hearing on the Motion.**

Carve-Out

29. Notwithstanding anything to the contrary contained in this Interim Order, the liens and claims granted to the Bond Trustee in this Interim Order shall be subject to (a) \$100,000 for the sole benefit of the estate professionals (to the extent of any unpaid amounts set forth in the Budget at the time of a Termination Event, and subject to approval by the Court), and (b) the payment of fees pursuant to 28 U.S.C. § 1930 (together, the “Carve-Out”); provided, however, nothing herein shall constitute a waiver of any right of the Bond Trustee to object to fees and

expenses of professionals retained by the Debtors or the Committee. The Carve-Out contemplated hereby is intended to represent a single surcharge against the liens, security interests and superpriority administrative expenses granted under either and both of the Cash Collateral and the financing component of this Interim Order and in partial consideration of the sections 506(c) and 552(b) waivers, which waivers shall be sought as part of the Final Order.

Credit Bid.

30. The Debtors admit, acknowledge, and agree that the Bond Trustee (both as DIP lender and as Bond Trustee under the Bond Documents up to the amount of the Bond Claim) has an absolute right to credit bid their respective obligations in any sale or other disposition of their respective collateral under the Bankruptcy Code.

Miscellaneous

31. The Debtors shall execute and deliver to the Bond Trustee as applicable, any and all such agreements, financing statements, instruments and other documents as such parties may reasonably request to evidence, confirm, validate or perfect the liens granted pursuant hereto. The Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents; *provided, however*, that the liens and security interests in favor of the Bond Trustee as provided herein are valid, binding, enforceable and perfected with the priorities set forth herein without any further action of such parties, including filing any financing statements, mortgages or other instruments.

32. Based on the findings herein set forth, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by a subsequent order of this or any other Court, no such

modification, amendment or vacation shall affect the validity and enforceability of any lien or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the Bond Trustee hereunder arising prior to the effective date of such modification, amendment or vacation shall be governed in all respects by the original provisions of this Interim Order and the Bond Trustee shall be entitled to all of the rights, remedies, privileges and benefits, including the liens and priorities granted herein, with respect to any such claim.

BP

~~33. Deemed Request for Stay Relief. This Interim Order shall be deemed to constitute a request by the Bond Trustee for relief from the automatic stay with respect to the Petition Collateral and for adequate protection as of the Petition Date, and shall suffice for all purposes of section 507(b) of the Bankruptcy Code.~~

34. No Control. The Bond Trustee (including in its capacity as DIP Loan lender) nor the holders of the Bonds shall not be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person,” “managing agent” or “owner or operator” (as such terms or any similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar Federal or state statute) with respect to the operation or management of the Debtors, notwithstanding its consent to this Interim Order and extending financial accommodations of any type, kind or nature under this Interim Order

35. To the extent obligations remain due and owing under the DIP Loans, such obligations of the Debtors in respect of the DIP Loans shall not be discharged by the entry of an order confirming a plan of reorganization or a plan of liquidation in these cases, and, pursuant to

section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived such discharge with respect to the payment of the DIP Loans only.

36. No Third Party Beneficiaries. The provisions of this Interim Order shall be binding upon and inure to the benefit of the Bond Trustee, the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors). No rights are created hereunder for the benefit of any third party, any creditor, or any direct, indirect or incidental beneficiary.

37. Modification of Stay. The automatic stay imposed by virtue of section 362 of the Bankruptcy Code is hereby vacated and modified insofar as necessary to permit (i) the Debtors to grant the Postpetition Liens, and Rollover Liens and Supplemental Liens to the Bond Trustee, as applicable, (ii) to accept and receive disbursements and/or payments and to apply such moneys pursuant to the Bond Documents, and (iii) the parties to take any action specifically authorized or contemplated by this Interim Order.

38. Effectiveness. The findings of fact and conclusions of law contained in this Interim Order shall take effect immediately upon the Effective Date. The liens and claims granted to the Bond Trustee under this Interim Order, and the priority thereof, and any payments made pursuant to this Interim Order, shall be binding (subject to the terms of this Interim Order) on the Debtors, any successor trustee or examiner, and all creditors of the Debtors, as provided in section 364(e) of the Bankruptcy Code.

39. Any notice required hereunder shall be served on:

(a) *counsel to the Debtors:*

C. Davin Boldissar (La. #29094)
Bradley C. Knapp (La. #35867)
Locke Lord LLP
601 Poydras Street, Suite 2660
New Orleans, Louisiana 70130-6036
Telephone: (504) 558-5100
Fax: (504) 558-5200
dboldiss@lockelord.com

(b) *counsel to the Bond Trustee:*

P. Miyoko Sato
Daniel S. Bleck
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Phone: (617) 348-4498
Fax: (617) 542-2241
DSBleck@mintz.com

(c) *the Office of the United States Trustee:*

Office of the U.S. Trustee
110 N. College Ave.
Suite 300
Tyler, TX 75702
(903) 590-1450
Timothy.W.O'Neal@usdoj.gov

40. Final Hearing. A final hearing with respect to this Interim Order is hereby scheduled for **May 25, 2016 at 1:30 p.m. in Tyler**, at which time any party in interest may present any timely filed objections to the entry of a final order (the "Final Order"). The Debtors shall, within 24 hours of the Effective Date, promptly serve a copy of this Interim Order and a notice of the final hearing by regular mail upon (i) Daniel S. Bleck, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts 02111, counsel to the Bond Trustee, (ii) the Debtors' 20 largest creditors, (iii) the United States Trustee, and (iv) any

party that has filed a notice of appearance in this case. Such notice shall state that objections to the entry of a Final Order shall be in writing and shall be filed with the United States Bankruptcy Clerk for the Eastern District of Texas (Lufkin Division) **no later than Friday, May 20, 2016**. Any objections by creditors or other parties in interest to any of the provisions of a Final Order incorporating the terms of this Interim Order, or including any other or different provisions, shall be deemed waived unless filed and served in accordance with this paragraph.

41. To the extent there exists any conflict between the Motion, any other motion, pleading, document, agreement or term sheet or the Interim Order and the terms of this Interim Order, this Interim Order shall govern and control.

Signed on 05/05/2016

A handwritten signature in black ink, appearing to read "Bill Parker", written in a cursive style.

THE HONORABLE BILL PARKER
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT "A"

Texas Pellets, Inc. / German Pellets Texas, LLC
Debtor-in-Possession Financing Facility Budget - Interim Period
(\$ thousands)

Week Beginning:	5/2/16	5/9/16	5/16/16	5/23/16
Beginning Cash Balance	\$ 30	\$ 30	\$ 30	\$ 3,201
Cash Receipts				
Drax Payments	-	-	6,416	-
DIP Facility Financing	2,561	873	-	-
Other (DSRF Usage)	-	-	-	-
Net Operating Receipts	2,561	873	6,416	-
Operating Disbursements				
Critical Vendor	(100)	-	(400)	-
Repair	(200)	-	(300)	-
Utility Deposits	(50)	-	-	-
Wood Charges (Incl. Fuel)	(625)	(625)	(625)	(625)
Starch Charges	(9)	(17)	(17)	(17)
Energy Charges (Power, Gas)	-	(31)	(18)	(400)
Material Disbursements	(634)	(673)	(660)	(1,042)
Payroll, Payroll Taxes, and Employee Benefits	(175)	-	(212)	-
Operational Costs	(7)	(7)	(7)	(7)
Trucking (incl. Truck Lease)	(32)	(66)	(32)	(32)
Handling and Storage	-	-	-	(228)
Major Maintenance	(58)	(58)	(58)	(58)
Additional Costs	(23)	(23)	(23)	(23)
Management Cost	(45)	(45)	(45)	(45)
Total Operating Disbursements	(1,324)	(873)	(1,737)	(1,436)
Other Disbursements				
Insurance / Premium Financing	(1,232)	-	-	-
Property Taxes	-	-	-	-
Debtor Professional Fees	-	-	-	-
CRO Fees	-	-	-	-
Investment Banker Fees & Expenses	-	-	-	-
UCC Fees	-	-	-	-
Debt Service - Bonds	-	-	-	-
Debt Service - Emergency Bridge / DIP Facility	-	-	-	-
Emergency Bridge Financing Repayment	-	-	(1,507)	-
Other / Bond Trustee	(5)	-	-	-
Ending Cash Balance	30	30	3,201	1,765

EXHIBIT "B"

BORROWING CERTIFICATE

_____, [title of responsible person or CRO] of Texas Pellets, Inc. and German Pellets Texas LLC (together, the "Debtor"), hereby certifies as follows:

1. Pursuant to sections 361 and 363 of the Bankruptcy Code and the terms of that certain Interim Order (1) Authorizing Debtors in Possession to Obtain Postpetition Financing; (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; and (4) Granting Liens, Security Interests and Superpriority Claims (the "DIP Order")¹ the Debtor is authorized to borrow (the "DIP Loan Facility") in an aggregate amount of up to \$3,434,000 (the "DIP Loan"); solely in compliance with the DIP Order. The Debtor acknowledges and agrees that delivery of this Borrowing Certificate is a condition precedent to each DIP Loan.

2. As of the date hereof, no Event of Default as enumerated in the DIP Order has occurred or is continuing,

3. The making of this DIP Loan shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently.

4. The DIP Order is in full force and effect in a form reasonably satisfactory to the Bond Trustee, and the Debtor has taken no action and is unaware of any action (actual or threatened) that may impair the rights of the Bond Trustee under the DIP Order.

5. The amount requested under this DIP Loan is \$ _____ (this "DIP Loan Request"), representing the items identified at Exhibit A. The proceeds of the DIP Loan Request will be used for operating expenses of the Facilities, consistent with the terms of the Budget; there are no funds on deposit in the Debtor's operating account available for such purpose; and reflects expenses (a) not subject to any prior requisition or payment or reimbursement from any other source, and (b) to be incurred in accordance with the Budget for the following week and are consistent with the amounts and categories set forth in the Budget.

IN WITNESS WHEREOF, the undersigned has executed this Borrowing Certificate this day of _____, 2016.

Texas Pellets, Inc. and
German Pellets Texas LLC

By: _____
Name:
Title:

¹ Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such term in the DIP Order.

EXHIBIT A
(Funding Schedule)

SCHEDULE 1

None.

SCHEDULE 2

The Debtors shall be in compliance with the following sections of the Loan Agreement:

1. Section 3.1(a), (b) and (c)
2. Section 5.1(d), (f), (h) and (i)
3. Section 5.2
4. Section 5.9
5. Section 5.11
6. Section 5.19
7. Section 5.20
8. Section 5.22